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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
STATE BOARD OF MEDICINE

MAY 21 2 27 PM '99

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Alan R. Vinitzky, M.D.,  
Respondent

00406-4995

Docket No.

File No. 99-49-02693

**REINSTATEMENT ORDER**

AND NOW, this 21<sup>st</sup> day of May, 1999, upon consideration of Respondent's showing of compliance with the terms of the State Board of Medicine's Adjudication and Order issued July 22, 1996, at File No. 95-49-02496, Respondent's license, License No. MD-018171-E, is hereby **REINSTATED.**

This Order shall take effect **IMMEDIATELY.**

**BY ORDER:  
STATE BOARD OF MEDICINE**

*Daniel B. Kimball, Jr.*

Daniel B. Kimball, Jr., Chairman

Respondent's Address:

Alan R. Vinitzky, M.D.  
11509 Twining Lane  
Potomac, MD 20854

Prosecuting Attorney:

Board Counsel:

Gerald S. Smith, Esquire

Date of Mailing:

May 21, 1999



### HISTORY

This matter comes before the hearing examiner for the Bureau of Professional and Occupational Affairs on an order to show cause filed September 7, 1995, alleging that Alan Robert Vinitzky, M.D. (Respondent) is subject to disciplinary action under the Medical Practice Act of 1985<sup>1</sup> (Act) at 63 P.S. § 422.41(4) by reason of disciplinary action taken against his medical license in another jurisdiction. Respondent filed an answer to the order to show cause October 4, 1995, and a formal administrative hearing was held in Harrisburg December 12, 1995. Kathleen K. Ryan, Esquire represented the Commonwealth as prosecuting attorney. Respondent attended the hearing without counsel. The last day for submitting posthearing briefs was February 22, 1996.

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<sup>1</sup> The Act of December 20, 1985, P.L. 457, No. 112, as amended, 63 P.S. § 422.1 et seq.

### FINDINGS OF FACT

1. Respondent is the holder of license no. MD-018171-E, issued by the State Board of Medicine (Board) on July 16, 1976, authorizing him to practice as a physician and surgeon in the Commonwealth of Pennsylvania. (Board records)

2. Respondent's license has been "inactive" since the expiration of his registration December 31, 1992. (Board records)

3. On June 28 1995, the Maryland State Board of Physician Quality Assurance (Maryland board) accepted a Consent Order between Respondent and the Maryland board reprimanding Respondent and fining him \$10,000. Respondent also agreed to provide the Maryland board with annual reports from Respondent concerning his employees' duties and independent billing audits for the next three years. (Exhibits C-1, C-2)

4. The Maryland board's Consent Order was based on a finding that Respondent employed three unlicensed foreign medical school graduates and an unlicensed physician assistant student to perform physical and ultrasound therapy on patients and to take x-rays. (Exhibits C-1, C-2)

5. The Maryland board's Consent Order also included a finding that "Immediately upon being notified by the [Maryland board] that the [unlicensed employees] should not be performing ultrasound or taking x-rays, the Respondent had the employees cease

all such activities. (Exhibit C-2)

6. Respondent was served with the order to show cause issued in this matter and all subsequent pleadings, notices and orders issued at this docket number. (N.T. 3)

7. Respondent attended the formal administrative hearing held in this matter in Harrisburg December 12, 1995. (N.T. 3)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact nos. 1, 6)

2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding. (Finding of Fact no. 6)

3. Respondent is subject to disciplinary or corrective measures in accordance with the Act at 63 P.S. § 422.41(4) by reason of the Consent Order of the Maryland board reprimanding and fining Respondent. (Finding of Fact no. 3)

## DISCUSSION

This action is brought under the Act at 63 P.S. § 422.41, which provides as follows:

**§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder**

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

\* \* \*

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken . . . by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

The Commonwealth's case at hearing consisted of certified records from the Maryland board evidencing the disciplinary action taken against Respondent's medical license. Respondent attended the hearing without legal counsel and submitted a posthearing brief.

Respondent does not dispute the fact that the Maryland board issued a Consent Order based on his use of unlicensed or unregistered personnel to perform physical therapy and take x-rays within his office. At the hearing, Respondent accepted full responsibility for his conduct. Noting that ignorance of the law was not an excuse for violations of the law, Respondent pointed out

that his violations of the Maryland standards relating to auxiliary office personnel were not intentional and that no patients were harmed. Respondent also argued that his immediate action discontinuing the use of unlicensed or unregistered personnel after he was informed that their practice within his office was prohibited is evidence of his good faith.

In his brief, Respondent argued that the Pennsylvania Board should not take any additional action against him, in part, because Pennsylvania has no statute or regulation corresponding with the Maryland provisions which he violated. This argument is mistaken since the Act and regulations both provide rules governing the performance of radiological procedures by auxiliary personnel.<sup>2</sup> Nevertheless, Respondent's absence of intent to violate the Maryland law and his good faith in promptly stopping his unlawful office practices are significant and support his contention that no additional penalty should be imposed in this action. Therefore, the following ORDER shall issue:

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<sup>2</sup> 63 P.S. § 422.45, 49 Pa. Code §§ 18.201-.204.



COMMONWEALTH OF PENNSYLVANIA PROTHONOTARY  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE

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Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Alan Robert Vinitzky, M.D.,  
Respondent

BUREAU OF PROFESSIONAL  
AND  
OCCUPATIONAL AFFAIRS

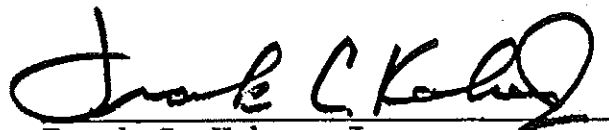
Docket no. 0406-49-95  
BPOA File no. 95-49-02496

ORDER

AND NOW, this 22nd day of July, 1996, in accordance with the foregoing findings of facts, conclusions of law and discussion, the hearing examiner for the Bureau of Professional and Occupational Affairs hereby finds that Respondent Alan Robert Vinitzky, M.D. is subject to disciplinary action under the Medical Practice Act of 1985 at 63 P.S. § 422.41(4), and it is hereby ORDERED that his license, no. MD-018171-E, be placed on probation until all terms of his Consent Order with the Maryland State Board of Physician Quality Assurance (Maryland board) have been satisfied. Respondent shall immediately notify the Board of any violation of the terms of his Consent Order with the Maryland board and/or his successful completion of those terms.

This Order shall be effective in twenty (20) days unless otherwise ordered by the State Board of Medicine.

BY ORDER:



Frank C. Kahoe, Jr.  
Hearing Examiner

DATE OF MAILING: July 23, 1996

For the Commonwealth: Kathleen K. Ryan, Esquire  
P.O. Box 2649  
Harrisburg, PA 17105-2649

Respondent pro se: 902 Wind River Lane  
Suite 201  
Gaithersburg, MD 20878-1977

(Medicine)

NOTICES

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

An application to the hearing examiner for rehearing or reconsideration may be filed by a party within 15 days after the mailing date of this adjudication and order. The application must be captioned "Application for Rehearing," "Application for Reconsideration," or "Application for Rehearing or Reconsideration." The application must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order may be filed by a party within 20 days after the mailing date of this adjudication and order. The application must be captioned "Application for Review." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration, nor the filing of an application for review operates as an automatic stay of the hearing examiner's order. If a party desires a stay of a hearing's examiner's order, he must file an application for stay directed to the hearing examiner. If the hearing examiner denies the stay, an application for stay directed to the Board may then be filed.

FILING AND SERVICE

An original and three copies of all applications must be filed with Deanna Walton, Prothonotary, 124 Pine Street, Suite 200, Harrisburg, Pennsylvania 17101. A copy of the application must also be served on all parties.

Applications must be received for filing by the prothonotary within the time limits specified herein. The date of receipt at the office of prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

#### STATUTES AND REGULATIONS

Statutes and regulations relevant to post-hearing procedures are the Medical Practice Act at 63 P.S. §271.15(a)(3). Section 905 of the Health Care Services Malpractice Act, 40 P.S. §1301.905; and the General Rules of Administrative Practice and Procedure at 1 Pa. Code Part II to the extent they are not inconsistent with regulations promulgated by the Board or provisions of the Medical Practice Act or the Health Care Services Malpractice Act.

Not having an attorney will not be accepted as an excuse for failing to comply with the requirements contained in these notice provisions and relevant statutes and regulations.