

DOCKET NO.: CV08-4016294S

: SUPERIOR COURT

CHARLES RAY JONES, M.D.  
PLAINTIFF,

: J.D. OF NEW BRITAIN

VS.

: FEBRUARY 19, 2008

CONNECTICUT MEDICAL EXAMINING  
BOARD  
DEFENDANT

FILED  
FEB 20 9 44 AM '08  
SUPERIOR COURT

**ORDER OF THE COURT ON PLAINTIFF'S APPLICATION FOR STAY**

Following a hearing on the Plaintiff's Application for Stay, review of the evidence and the parties' briefs and consideration of the parties' arguments, it is hereby ordered:

1) The reprimand issued by the Defendant of Public Health against the Plaintiff is stayed, *pendente lite*. Any report of a reprimand to any public body shall be withdrawn in writing.

2) The civil penalty has been paid into an escrow account and shall be maintained there pending the resolution of this appeal.

3) The imposition of the two year probationary period against the Plaintiff is stayed, *pendente lite*.

4) Paragraph 4 on page 10 of the Defendant's Order dated December 18, 2007 shall remain in effect subject, however, to the following modifications, *pendente lite*;

a) The monitor may not find the Plaintiff to be in violation of the Defendant's Order solely on the basis of the diagnosis and treatment of Lyme Disease

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in a very low risk patient, with non-specific history, non-specific signs and symptoms and negative laboratory tests.

b) In the event the monitor disagrees with any of the Plaintiff's clinical decisions following his/her record review, the monitor must discuss the issues(s) with the Plaintiff to reach a resolution. If the monitor and the Plaintiff cannot reach a resolution, the monitor shall have the right to call the matter to the attention of the Department of Public Health in his/her quarterly report.

c) If the Plaintiff believes that any request by the monitor under section (2) Paragraph 4 of the Defendant's Order is not reasonable, he may file a motion with the court to challenge it.

BY THE COURT

  
Cohn, J.

2/20/08

Hartford/70757.1/EBP/279119v3

**STATE OF CONNECTICUT  
CONNECTICUT MEDICAL EXAMINING BOARD**

Charles R. Jones, M.D.  
License No. 012860

Petition No. 2004-0917-001-221

**MEMORANDUM OF DECISION**

***Procedural Background***

On August 29, 2005, the Department of Public Health ("the Department") presented the Connecticut Medical Examining Board ("the Board") with a Statement of Charges brought against license number 012860 of Charles R. Jones, M.D. ("respondent") in Petition No. 2004-0917-001-221 ("the Charges"). The Charges alleging that respondent violated Conn. Gen. Stat. §20-13c *et seq.* Board Exh. 1.

On October 13, 2005, a Notice of Hearing was sent via certified mail and first class mail to the respondent, scheduling a hearing for December 1, 2005. Board Exh. 2.

Numerous substantive motions were filed and the rulings are summarized in attachment A to this decision.

A hearing was held regarding the allegations contained in the Charges on March 23 and 26, 2006, June 22, 2006, September 7 and 28, 2006, November 9 and 16, 2006, January 25, 2007, April 19, 2007, and May 15 and 31, 2007, before a duly authorized panel of the Board comprised of Robert P. Fuller, M.D., Anne C. Doremus, and John H. Senechal, M.D. ("the panel").

The panel conducted the hearing in accordance with Conn. Gen. Stat. Chapter 54 and the Regulations of Connecticut State Agencies ("the Regulations") §19a-9a-1 *et seq.* Respondent appeared with his attorney Elliot Pollack, Esq., of Hartford, CT. David Tilles, Esq., represented the Department. Both the Department and respondent presented evidence, conducted cross-examination, and provided arguments on all issues.

All panel members involved in this decision attest that they have either heard the case or read the record in its entirety. The Board reviewed the panel's proposed final decision in accordance with the provisions of Conn. Gen. Stat. §4-179. The Board considered whether respondent poses a threat, in the practice of medicine, to the health and safety of any person. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

*Allegations*

COUNT ONE

1. Charles R. Jones, M.D. of Hamden, Connecticut (hereinafter "respondent") is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut physician and surgeon license number 012860.
2. On or about December 17, 2003, respondent gave a telephone consultation with S.S.'s mother and diagnosed S.S. as having gestational Lyme Disease. S.S. is a minor and has resided in Nevada and California his entire life.
3. On or about March 18, 2004, respondent prescribed Zithromax to patient S.S., without ever having examined him. On or about March 26, 2004, respondent made recommendations to the principal of S.S.'s school for S.S.'s education based on a diagnosis of Lyme Disease without ever having examined him. Respondent examined S.S. on May 21, 2004, and diagnosed late-stage Lyme disease, principally in the central nervous system. He treated him with a continuous prescription of amoxicillin 400mg bid until March 2005 and then continuously with Omnicef 300mg bid until the present time. After May 21, 2004, respondent did not examine S.S. until on or about April 11, 2005, nor did he make any arrangements for a physician in Nevada to monitor S.S. in that interim.
4. On April 11, 2005 respondent examined S.S. again. At that time, he repeated the Western Blot tests for Lyme Disease and ordered qualitative polymerase chain reaction (PCR) tests of urine and serum samples for *Borrelia burgdoferi* and other pathogens and parameters. All the tests were reported negative, except the mycoplasma fermentans and a weakly positive titer for streptococcus A antibodies. Respondent diagnosed mycoplasma fermentans as a tick borne co-infection. Following the April 2005 visit, respondent prescribed amoxicillin, rifampin, bactrim, and omnicef.
5. Respondent's care for S.S. violates the applicable standard of care in one or more of the following ways:
  - a. He prescribed an antibiotic to a patient he did not know and had never examined;
  - b. He made a diagnosis of Lyme Disease in April 2004 without having examined the patient and without having performed any laboratory tests;
  - c. He made educational recommendations for a child he did not know and had never examined;
  - d. He diagnosed Lyme Disease when S.S.'s history did not support the diagnosis;
  - e. He made a diagnosis of Lyme Disease on May 21, 2004 when the patient's laboratory tests were negative and his signs and symptoms were non-specific;
  - f. He failed to consider a differential diagnosis;
  - g. He prescribed an antibiotic that has no effect on the brain or the central nervous system even though his diagnosis was an infection primarily in the central nervous system;

- h. He prescribed antibiotics for nearly a year without repeat examinations and without any arrangement with another physician to monitor the patient for side effects of long term antibiotic therapy.
  - i. He prescribed bactrim following the April 2005 visit, even though bactrim is not effective against any infection he diagnosed; and/or,
  - j. He failed to reconsider his diagnosis of Lyme Disease in light of the negative Western Blot tests in April 2005.
6. The above-described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-13c, including but not limited to:
  - a. §20-13c(4); and/or
  - b. §20-13c(5).

#### SECOND COUNT

7. Paragraph 1 is incorporated herein by reference as if set forth in full.
8. On or about December 17, 2003, respondent gave a telephone consultation with E.S.'s mother and diagnosed E.S. as having gestational Lyme Disease. E.S. is a minor and has resided in Nevada her entire life. Respondent prescribed Doxycycline for Lyme Disease on or about January 5, 2004. Respondent examined E.S. on May 21, 2004, and wrote a diagnosis of possible gestational Lyme Disease. Respondent treated E.S. with a continuous prescription of amoxicillin 400mg bid until March 2005, and then with Omnicef 300mg bid since then.
9. On April 11, 2005 respondent examined E.S. again. At that time, he repeated the Western Blot tests for Lyme Disease and ordered qualitative polymerase chain reaction (PCR) tests of urine and serum samples for *Borrelia burgdoferi* and other pathogens and parameters. All the tests were reported negative, except for a positive antibody finding for Epstein-Barr virus.
10. Respondent's care for E.S. deviates from the applicable standard of care in one or more of the following ways:
  - a. He prescribed an antibiotic to a patient he did not know and had never examined;
  - b. He made a diagnosis of Lyme Disease in January 2004 without having examined the patient and without having performed any laboratory tests;
  - c. He based his diagnosis of Lyme Disease when E.S.'s history did not support the diagnosis;
  - d. He made a diagnosis of Lyme Disease on May 21, 2004 when the patient's laboratory tests were negative and her signs and symptoms were non-specific;
  - e. He failed to consider a differential diagnosis;
  - f. He prescribed antibiotics for nearly a year without repeat examinations and without any arrangement with another physician to monitor the patient for side effects of long term antibiotic therapy.
  - g. He failed to reconsider his diagnosis of Lyme Disease in light of the negative Western Blot tests in April 2005.

***Findings Of Fact***

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut physician and surgeon license number 012860. Board Exh. 1A.
2. On or about December 17, 2003, respondent consulted by telephone with SS's mother. SS is a minor who has resided in Nevada and California for his entire life. Board Exh. 1A; Dept. Exh. 2; Tr. 09/07/06, pp. 70-71.
3. The evidence is insufficient to establish that on or about December 17, 2003, respondent diagnosed SS as having gestational Lyme disease Dept. Exh. 2; Tr. 09/07/06, p. 106.
4. On or about March 18, 2004, respondent prescribed Zithromax for SS, without having examined him. Board Exh. 1A; Dept. Exh. 2; Tr. 05/23/06, pp. 121, 127.
5. On or about March 26, 2004, respondent made recommendations to the principal of SS's school for SS's education based on a provisional diagnosis of late-stage Lyme disease, principally in the central nervous system. Respondent treated him with a continuous prescription of amoxicillin 400 mg bid until March 2005, and then continuously with Omnicef 300mg BID. After the initial examination on May 21, 2004 the respondent did not examine SS until April 11, 2005, nor did he make arrangements for a physician to monitor SS in that interim. Dept. Exh. 2, p. 160; Tr. 09/07/06, pp. 71, 72, 79, 93; Tr. 9/28/06, p. 99; Tr. 04/19/07, pp. 162-163.

This violates the standard of care in that he made educational recommendations for a child he did not know and had never examined. Exh. 2; Tr. 05/25/06, p. 112. This violates the standard of care in that respondent prescribed an antibiotic to a patient he did not know and had never examined. Dept. Exh. 2; Tr. 05/25/06, p. 112; Tr. 04/19/07, pp. 161, 162.

This violates the standard of care in that he prescribed antibiotics for nearly a year without repeat examinations and without any arrangement with another physician to monitor the patient for side effects of long term antibiotic therapy. Dept. Exh. 2; Tr. 09/28/06; Tr. 09/07/06, pp. 94, 178; Tr. 09/28/06, p. 60; Tr. 04/19/07, pp. 156-157.
6. On April 11, 2005, respondent examined SS again. At that time, he repeated the Western Blot tests for Lyme disease and ordered PCR tests of urine and serum for *Borrelia burdoferi* and other pathogens. All tests were negative, except for *Mycoplasma fermentans* and a weakly positive titer for *Streptococcus A* antibodies. Respondent diagnosed *Mycoplasma fermentans* as a tick born co-infection. Following the April 2005 visit, respondent prescribed amoxicillin, rifampin, bactrim and omnicef. Board Exh. 1A; Tr. 09/07/06, pp. 96, 97; Tr. 09/2/06, p. 55.
7. Respondent diagnosed a disease in SS when the exposure risk was extremely low, the medical history was non-specific, the signs and symptoms were non-specific, and the laboratory tests were negative. Dept. Exh. 2, pp. 2-7.

This violates the standard of care.

8. Respondent considered a differential diagnosis in his care of SS. Dept. Exh. 2, pp. 126-129.
9. Experts provided testimony that the drugs given, in the dose prescribed, are ineffective to treat CNS Lyme disease. However, the Department failed to establish the drugs have "no effect" on the CNS in the amount prescribed by respondent. Tr. 5/25/06, 116.
10. The respondent prescribed bactrim following the April 11, 2005 visit for a diagnosis of *Mycoplasma fermentans*. The evidence is insufficient to determine if bactrim is effective or not against this organism. Dept. Exh. 2, p. 161; Tr. 09/07/06, p. 135.
11. Respondent failed to reconsider his diagnosis of the disease for which he was treating SS in light of the negative Western Blot tests obtained in April 2005. Dept. Exh. 2. P 169-70.
12. On or about December 17, 2003, respondent provided a telephone consultation with ES's mother and diagnosed ES as having gestational Lyme disease. ES is a minor and has resided in Nevada her entire life. Respondent prescribed ES Doxycycline for Lyme disease on or about January 5, 2004. Respondent examined ES on May 21, 2004, and wrote a diagnosis of possible gestational Lyme disease. Respondent treated ES with a continuous prescription of amoxicillin 400 mg bid until March 2005, and then with Omnicef 300 mg bid since then. Dept. Exh. 1, p. 1-2; Tr. 09/07/06, pp. 113, 115; Tr. 09/28/06, p. 55. This violates the standard of care in that respondent prescribed an antibiotic to a patient he did not know and had never examined. Dept. Exh. 2; Tr. 05/25/06, p. 112; Tr. 04/19/07, pp. 161, 162.  
This violates the standard of care in that he prescribed antibiotics for nearly a year without repeat examinations and without any arrangement with another physician to monitor the patient for side effects of long term antibiotic therapy. Dept. Exh. 2; Tr. 09/28/06; Tr. 09/07/06, pp. 94, 178; Tr. 09/28/06, p. 60; Tr. 04/19/07, pp. 156-157.
13. On April 11, 2005, respondent examined ES again. At that time, he repeated the Western Blot tests for Lyme disease and ordered qualitative PCR tests of urine and serum samples for *Borrelia burgdoferi* and other pathogens and parameters. All the tests were reported negative, except for a positive antibody finding for Epstein-Barr Virus. Board Exh. 1A; Tr. 09/07/06, p. 115.
14. Respondent diagnosed a disease in ES when the exposure risk was extremely low, the medical history was non-specific, the signs and symptoms were non-specific, and the laboratory tests were negative. Dept. Exh. 1. P2-7  
This violates the standard of care.
15. The evidence is insufficient to establish that respondent failed to consider a differential diagnosis when caring for ES. Dept. Exh. 1, pp. 65-67.

16. Respondent failed to reconsider the diagnosis of the disease for which he was treating ES in light of the negative Western Blot tests obtained in April 2005. Dept. Exh. 1, p. 58.

#### *Discussion And Conclusions Of Law*

*Conn. Gen. Stat.* § 20-13c provides, in pertinent part, that:

The Board is authorized to restrict, suspend or revoke the license or limit the right to practice of a physician or take any other action in accordance with section 19a-17, for any of the following reasons: . . . (4) illegal, incompetent or negligent conduct in the practice of medicine; (5) possession, use, prescription for use, or distribution of controlled substances or legend drugs, except for therapeutic or other medically proper purposes . . . .

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, No. CV970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

The Department sustained its burden of proof with regard to some of the allegations in the First and Second Counts of the Charges. Accordingly, respondent's conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-13c.

With regard to the allegations contained in paragraph 2 of the Charges, the Department partially sustained its burden of proof. A preponderance of the evidence establishes that that on or about December 17, 2003, respondent consulted telephonically with SS's mother, and that SS is a minor who has resided in Nevada and California for his entire life. However, the evidence is insufficient to establish that on or about December 17, 2003, respondent diagnosed SS as having gestational Lyme Disease. The evidence is sufficient to establish that a provisional diagnosis was rendered and treatment initiated.

With regard to the allegations contained in paragraph 3 of the Charges, the Department sustained its burden of proof. A preponderance of the evidence establishes that on or about March 18, 2004, respondent prescribed Zithromax to SS, without ever having examined him. On or about March 26, 2004, respondent made recommendations to the principal of SS's school for SS's education based on a provisional diagnosis of late-stage Lyme disease, principally in the central nervous system. Respondent treated SS with a continuous prescription of amoxicillin 400 mg bid until March 2005, and then



continuously with Omnicef 300 mg bid until the present time. Between May 21, 2004, and on or about April 11, 2005, respondent did not examine SS, nor did he make any arrangements for another physician to monitor SS during the interim. Therefore, the Department met its burden of proof with regard to the allegations contained in paragraph 3 of the Charges.

With regard to the allegations contained in paragraph 4 of the Charges, the Department sustained its burden of proof. A preponderance of the evidence establishes that on April 11, 2005, respondent examined SS again. At that time, he repeated the Western Blot tests for Lyme disease and PCR tests of urine and serum samples for *Borrelia burdoferi* and other pathogens and parameters. All the tests were reported negative, except the *Mycoplasma fermentans* and a weakly positive titer for *Streptococcus A* antibodies. Respondent diagnosed *Mycoplasma fermentans* as a tick co-infection. Following the April 2005 visit, respondent prescribed amoxicillin, rifampin, bactrim, and omnicef. Therefore, the Department sustained its burden of proof.

With regard to the allegations contained in paragraph 5a of the Charges, the Department sustained its burden of proof in establishing that respondent violated the standard of care by prescribing an antibiotic to a patient he did not know and had never examined.

With regard to the allegations contained in paragraph 5b of the Charges, the Department sustained its burden of proof that respondent made a provisional diagnosis of Lyme disease in April 2004 without having examined the patient and without having performed laboratory tests. Making a provisional diagnosis in and of itself does not violate the standard of care.

With regard to the allegations contained in paragraph 5c of the Charges, the Department sustained its burden of proof that respondent's care of SS violates the standard of care in that he made educational recommendations for a child he did not know and had never examined.

With regard to the allegations contained in paragraph 5d of the Charges, the Department established that respondent diagnosed SS as having Lyme disease.

With regard to the allegation contained in paragraph 5e of the Charges, the Department sustained its burden proof that respondent violated the standard of care by diagnosing a disease in a very low risk patient, with a non-specific history, non-specific signs and symptoms, and negative laboratory tests.

With regard to the allegations contained in paragraph 5f of the Charges, the Department failed to sustain its burden of proof since respondent presented a credible defense that he did consider a differential diagnosis in his care of SS.

With regard to the allegations contained in paragraph 5g of the Charges, the Department failed to sustain its burden of proof since it failed to establish that the drug has "no effect" on the CNS. However, credible experts provided testimony that the drug given in the dose prescribed, is ineffective to treat CNS Lyme disease.

With regard to the allegations contained in paragraph 5h of the Charges, the Department sustained its burden of proof. A preponderance of the evidence establishes that respondent's care of SS violates the applicable standard of care in that he prescribed antibiotics for nearly a year without repeat examinations and without any arrangement with another physician to monitor the patient for side effects of long term antibiotic therapy.

With regard to the allegations contained in paragraph 5i of the Charges, the Department failed to sustain its burden of proof. The evidence is insufficient to establish that respondent violated that standard of care in his treatment of SS when respondent prescribed bactrim following the April 2005 visit, even though credible experts presented testimony that bactrim is not effective against any infection he diagnosed.

With regard to the allegations contained in paragraph 5j of the Charges, the Department sustained its burden of proof. Respondent failed to reconsider his diagnosis of SS in light of the negative Western Blot tests obtained in April 2005.

With regard to the allegations contained in paragraph 8 of the Charges, the Department sustained its burden of proof that on or about December 17, 2003, respondent consulted by telephone with ES's mother and diagnosed ES as having gestational Lyme disease; that ES is a minor and has resided in Nevada her entire life; that respondent prescribed Doxycycline for Lyme disease on or about January 5, 2004; that respondent examined ES on May 21, 2004, and wrote a diagnosis of possible gestational Lyme disease; and, that respondent treated ES with a continuous prescription of amoxicillin 400 mg bid until March 2005, and then with Omnicef 300 mg bid since then.

With regard to the allegations contained in paragraph 9 of the Charges, the Department sustained its burden of proof that on April 11, 2005, respondent examined ES again, repeated the Western Blot tests for Lyme disease, and ordered qualitative PCR tests of urine and serum samples for *Borrelia burgdoferi* and other pathogens and

parameters. All the tests were reported negative, except for a positive antibody finding for Epstein-Barr Virus.

With regard to the allegations contained in paragraph 10a of the Charges, the Department sustained its burden of proof. Respondent's care for ES deviated from the applicable standard of care in that he prescribed an antibiotic to a patient he did not know and had never examined.

With regard to the allegations contained in paragraph 10b of the Charges, the Department sustained its burden of proof. Respondent's care for ES deviated from the applicable standard of care in that he made a diagnosis of Lyme disease in January 2004 without having examined ES and without having performed any laboratory test.

With regard to the allegations contained in paragraph 10c of the Charges, the Department failed to sustain its burden of proof. The evidence is insufficient to establish that ES's nonspecific history did not support the diagnosis.

With regard to the allegations contained in paragraph 10d of the Charges, the Department sustained its burden proof that respondent violated the standard of care by diagnosing a disease in a very low risk patient, with a non-specific history, non-specific signs and symptoms, and negative laboratory tests.

With regard to the allegations contained in paragraph 10e of the Charges, the Department failed to sustain its burden of proof. The evidence is insufficient to establish that respondent failed to consider a differential diagnosis when caring for ES.

With regard to the allegations contained in paragraph 10f of the Charges, the Department sustained its burden of proof. Respondent's care of ES deviates from the applicable standard of care in that he prescribed antibiotics for nearly a year without repeat examinations and without any arrangement with another physician to monitor the patient for side effects of long term antibiotic therapy.

With regard to the allegations contained in paragraph 10g of the Charges, the Department sustained its burden of proof. A preponderance of the evidence establishes that respondent failed to reconsider the diagnosis of the disease for which he was treating ES in light of the negative tests obtained in April 2005.

Based on the foregoing, respondent's license is subject to discipline pursuant to *Conn. Gen. Stat.* §§20-13c(4) and (5), for the allegations contained Counts One and Two that were proven by a preponderance of the evidence. The evidence was insufficient to

establish violations pursuant to *Conn. Gen. Stat.* §§20-13c (4) and (5) for the allegations contained in paragraphs part of 2, 5d, 5f, 5g, 5i, 10c, and 10e.

Accordingly, the Board concludes that there is sufficient basis upon which to issue the following order.

***Order***

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by *Conn. Gen. Stat.* §19a-17 and §20-13c, the Board orders the following in the case of Charles R. Jones, M.D., who holds Connecticut physician and surgeon license number 012860, Petition number 2004-0917-001-221:

1. Respondent's license number 012860 to practice as a physician and surgeon in the State of Connecticut is hereby reprimanded.
2. Respondent shall pay a civil penalty of five thousand dollars (\$5,000) for each count for a total civil penalty of ten thousand dollars (\$10,000) by a certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within 30 days of the effective date of this Decision.
3. Respondent's license number 012860 to practice as a physician and surgeon in the State of Connecticut is hereby placed on probation for a period of two years from the date of this decision.
4. No later than 60 days, respondent shall submit to the Department for its pre-approval, the name of a physician licensed in Connecticut <sup>and Board Certified in Pediatrics</sup> ("monitor") who, at respondent's expense, will conduct a quarterly random review of 30 of respondent's patient records, created or updated during the probationary period, whichever is the larger number. Within fifteen days of the Department's approval, respondent shall provide the monitor with a copy of this Decision. Respondent shall cause the monitor to confirm receipt of this Decision within fifteen days after he has received the Decision. In the event respondent has 30 or fewer patients, the monitor shall review all of respondent's patient records.

- (1) Respondent's monitor shall meet with respondent not less than once every quarter for the entire probationary period.

- (2) The monitor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the supervisor in providing such monitoring.
  - (3) Respondent shall be responsible for providing written monitor reports directly to the Department every quarter for the entire time of the probationary period. Such monitor reports shall include documentation of dates and durations of meetings with respondent, number and a general description of the patient records and patient medication orders and prescriptions reviewed, additional monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and safety.
5. Respondent shall pay all costs necessary to comply with this Decision.
  6. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, Nurse Consultant  
Department of Public Health  
Division of Health Systems Regulation  
410 Capitol Avenue, MS #12HSR  
P.O. Box 340308  
Hartford, CT 06134-0308

Ms. Pinkerton may also be contacted at the following email address:  
bonnie.pinkerton@ct.gov.

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7.

Respondent shall inform the Department in writing of his current address and any change thereto during the period of probation. All notices provided to respondent will be sent to the most current address of respondent on file with the Department.

12/18/07  
5/8/09  
8.

This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Medical Examining Board

12/18/07  
Date

David M. Goldenberg  
By: David M. Goldenberg, MD

**ATTACHMENT A**

On October 13, 2005, a Notice of Hearing was sent via certified mail and first class mail to the respondent, scheduling a hearing for December 1, 2005. Board Exh. 2.

On January 23, 2006, respondent filed an Answer along with four special defenses to the First Count and five special defenses to the Second Count of the Charges. Board Exh. 1A.

On January 26, 2006, the Department filed an answer to the respondent's special defenses. Board Exh. 1B.

On January 27, 2006, the Department filed a Motion to Strike the Special Defenses. Board Exh. 4.

On February 8, 2006, respondent filed a memorandum in opposition to the Department's Motion to Strike Special Defense. Board Exh. 4

On February 9, 2006, the Department filed an objection to respondent's Motion for Permission to Take the Deposition of Dr. Eugene Shapiro. Board Exh. 4.

On February 16, 2006, the Department filed a Request for Production, Board Exh. 4.

On February 17, 2006, respondent filed a response. Board Exh. 4.

On February 17, 2006, the Department filed a memorandum in opposition to respondent's Motion for Permission to Take the Deposition of Dr. Eugene Shapiro. Board Exh. 4. On February 17, 2006, respondent filed a response to the Department's memorandum. Board Exh. 4.

On February 27, 2006, respondent filed a Request for an Immediate Hearing, and the Department joined in the Request. Board Exh. 4.

On March 13, 2006, the Board issued three rulings: it denied the parties' Request for an Immediate Hearing; it denied respondent's Motion for Permission to Take the Deposition of Dr. Eugene Shapiro; and, it granted the Department's Request for Production. Board Exh. 4.

On March 15, 2006, respondent filed a Motion to Defer the Cross-examination of the Department's Expert Witness, Dr. Eugene Shapiro. Board Exh. 6.

On March 17, 2006, the Department filed a response to the Motion. Board Exh. 7.

On March 23, 2006, the Board granted the Department's Motion to Strike the Fifth Special defense to the Second Count . Tr. 03/23/06, pp. 32-33.

On June 8, 2006, the Department filed a Motion for Delayed Cross-examination or to Compel Disclosure of Experts. Specifically, seeking the disclosure of the following information: the name of the expert witnesses; a summary of each opinion the witness would offer; and any research upon which the witnesses would rely. Board Exh. 10.

On June 19, 2006, respondent filed two Motions to Obtain Expert Witness Testimony Via Telephone Conference: one motion pertained to the testimony of Dr. Nick Harris, while the other pertained to the testimony of Dr. Raphael Stricker. Board Exh. 11. On June 20, 2006, the Department filed an objection to respondent's Motions. Board Exh. 12.

On August 11, 2006, respondent filed a Motion to dismiss specific Counts in the Charge along with supporting memorandum. Board Exh. 15.

On August 18, 2006, the Department filed its objection to the Motion to Dismiss.

On September 1, 2006, the Board denied respondent's Motion. Board Exh. 15.

On September 5, 2006, respondent filed a response to the Department's Subpoena Duces Tecum dated August 28, 2006. Board Exh. 16

On September 6, 2006, respondent filed an answer to the Charges. Board Exh. 17.

On September 20, 2006, the Department filed a Motion to Preclude Testimony of Nick Harris. Board Exh. 20.

On September 21, 2006, a Notice of Hearing was sent scheduling a hearing for November 16, 2006. Board Exh. 18.

On September 27, 2006, respondent filed an objection to the Department's Motion to Preclude Testimony of Nick Harris. Board Exh. 21.

On October 5, 2006, the Department filed a response to respondent's objection to the Motion to Preclude Testimony of Nick Harris. Board Exh. 22. The Department also filed a request to take the rebuttal testimony of Dr. Robert Kimmel, Dr. Michelle Kielty, and possibly Dr. Jane Hadley-Smith and Nancy McBride by telephone. Board Exh. 25.

On October 10, 2006, respondent filed a response to the Department's request to take the rebuttal testimony of Dr. Robert Kimmel. Respondent did not object to the testimony of Dr. Nancy McBride but requested that such testimony be conducted by

telephone conference at a time convenient to his witness, Robin Sparks-Hayes, and that she also be allowed to testify by telephone. Board Exh. 25.

On October 20, 2006, the respondent filed a request to present oral argument on his opposition to the Department's motion to preclude testimony of Mr. Harris. Board Exh. 23.

On October 23, 2006, the Department filed a response to respondent's request to present oral argument on his opposition to its motion to preclude testimony of Mr. Harris. Board Exh. 23.

On November 1, 2006, the Board issued a ruling granting the respondent's request to present oral argument on his opposition to the Department's Motion to Preclude Testimony of Nick Harris. Board Exh. 23.

On November 13, 2006, the Board issued several rulings: granted the Department's Motion to Preclude the Testimony of Nick Harris (Board Exh. 24); it granted the Department's request to offer testimony of Drs. Kimmel, Kietly, and Hadley-Smith and that of Nancy McBride (Board. Exh. 25), it granted respondent's request to allow testimony of Robin Sparks-Hayes by telephone; and, it denied respondent's request to schedule the testimony at a time convenient to Ms. Sparks-Hayes (Board Exh. 25).

On November 15, 2006, the Department presented the Board with an additional Statement of Charges in Petition Nos. 2006-0111-001-010, 2006-0401-001-069, and 2006-0407-001-068 ("the Second Charges"). Alleging that respondent violated Conn. Gen. Stat. §20-13c(4). Board Exh. 30. The Department also filed a Motion to Consolidate Petitions for Hearing, which would consolidate hearings for the Second Charges with the hearing on Charges dated August 29, 2005, being heard by the Board. Board Exh. 29.

On December 4, 2006, respondent filed an objection to the Department's Motion to Consolidate Petitions for Hearing and filed a Motion for a Mistrial. Board Exh. 29.

On December 7, 2006, the Department filed a response to respondent's objection and an objection to respondent's Motion for a Mistrial. Board Exh. 29.

On December 12, 2006, respondent filed a reply to the Department's response and a response its objection to the Motion for a Mistrial. Board Exh. 29.

On December 28, 2006, the Board issued two rulings: it granted the Department's Motion to Consolidate the Petitions for Hearing and denied respondent's Motion for a Mistrial. Board Exh. 29.



On January 9, 2007, respondent filed a Motion to Sever the Consolidated Statement of Charges. Board Exh. 31.

On January 10, 2007, the Department filed a response to respondent's Motion to Sever. Board Exh. 31.

On January 12, 2007, the Department filed a request for a scheduling order, a request for permission to present rebuttal witnesses, and a request for telephonic testimony of Mr. Jeffrey Sparks. Board Exh. 32.

On January 16, 2007, respondent filed a response to the Department's requests. Board Exh. 32.

Respondent filed a Motion In Limine. Board Exh. 33.

On January 17, 2007, respondent filed a request for advice, asking the Board to indicate whether it or any Board member had formed a belief as to whether R.S. suffered from Munchausen's by Proxy. Board Exh. 34.

On February 1, 2007, respondent filed a Motion for Reconsideration, requesting the Board reconsider its December 19, 2006 decision consolidating the two Statements of Charges. Board Exh. 37.

On February 5, 2007, the Department filed an objection to respondent's Motion for Reconsideration. Board Exh. 37.

On February 7, 2007, respondent filed a Motion for Continuance, asking that hearings scheduled for March 8, 2007 and April 5, 2007 be continued because his lead counsel would be unavailable on those dates. Board Exh. 38.

On February 16, 2007, the Department filed an objection to respondent's Motion for Continuance. Board Exh. 38.

On February 20, 2007, the Board rescinded its ruling consolidating the statement of charges in Petition Nos. 2004-0917-001-221, 2006-0111-001-010; 2006-0401-011-069 and 2006-0407-001-068. Board Exh. 37.

On March 1, 2007, the Board issued a ruling granting respondent's Motion for Continuance. The Board also ordered the parties to respond as to their availability on five dates for the rescheduling of the hearing. Board Exh. 38.

On March 9, 2007, respondent filed a "Motion for the Disqualification/Permission to Submit Interrogatories to Connecticut Medical Examining Board ("the Board") Members & Statutory Members and Recusal." and filed a request for the appointment of an independent hearing officer. Board Exh. 41.

On March 12, 2007, the Department filed an objection to the Motion and the request. Board Exh. 41.

On March 13, 2007, respondent filed a response to the Department's objections. Board Exh. 41.

On March 14, 2007, the Department filed a reply to respondent's response. Board Exh. 41.

On March 16, 2007, respondent filed another request for the appointment of an independent hearing officer, as well as a Motion to Dismiss. Board Exh. 41.

On March 22, 2007, the Department filed an objection to the Motion to Dismiss. Board Exh. 41.

On April 23, 2007, the Department filed an objection to the telephonic testimony of Robin Sparks. Board Exh. 41

On April 25, 2007, respondent filed a response to the Department's objection to the telephonic testimony of Robin Sparks. Board Exh. 41.

On April 30, 2007, respondent filed a Motion to Dismiss Specific Counts in the Statement of Charges. Board Exh. 41

On May 3, 2007, the Department filed an objection to respondent's Motion to Dismiss Specific Counts in the Statement of Charges. Board Exh. 41

On May 7, 2007, the Board issued an order to respondent compelling him to provide counsel to the Board with a copy of the journal article that was the subject of the respondents "Motion for the Disqualification/Permission to Submit Interrogatories to Connecticut Medical Examining Board ("the Board") Members & Statutory Members and Recusal.". Board Exh. 41.

On May 9, 2007, the Board overruled the Department's objection to the planned telephonic testimony of Robin Sparks. Board Exh. 41

On May 25, 2007, the Board denied respondent's March 9, 2007 request for an independent hearing officer, respondent's Motion to Submit Interrogatories to Board members & Statutory Members and Recusal, respondent's March 16, 2007 request for appointment of an independent hearing officer and Motion to Dismiss, and respondent's Motion to Dismiss Specific Counts of the Statement of Charges. Board Exh. 41  
Respondent's Motion for Disqualification was rendered moot because Board Chairman, Dennis G. O'Neill, M.D. recused himself at the Board meeting held on May 15, 2007. Board Exh. 41