

11/13/2002: BOARD ORDER - DOCTOR REPRIMANDED BASED ON PRIOR ACTION TAKEN BY COLORADO'S MEDICAL BOARD (LETTER OF ADMONITION) FOLLOWING FINDINGS THAT DOCTOR'S FAILURE TO COMPLY WITH A PROVISION OF ITS 5/99 ORDER REQUIRING TIMELY SUBMISSION OF REPORTS BY A PRACTICE MONITOR CONSTITUTED UNPROFESSIONAL CONDUCT. ORDER MAILED 11/19/02; ORDER EFFECTIVE 11/19/02.

06/12/2002: CITATION - BASED ON PRIOR ACTION BY COLORADO BOARD (LETTER OF ADMONITION) FOLLOWING FINDINGS THAT DOCTOR'S FAILURE TO COMPLY WITH A PROVISION OF ITS 5/99 ORDER REQUIRING TIMELY SUBMISSION OF REPORTS BY A PRACTICE MONITOR CONSTITUTED UNPROFESSIONAL CONDUCT. NOTICE OF OPPORTUNITY FOR HEARING MAILED 6/13/02.

07/12/2000: BOARD ORDER - PERMANENT REVOCATION OF MEDICAL LICENSE STAYED SUBJECT TO THIRTY DAY SUSPENSION; TERMS OF 3/16/90 BOARD ORDER REMAIN IN EFFECT. BASED ON PRIOR ACTION AGAINST DOCTOR'S COLORADO LICENSE BY THAT STATE'S MEDICAL BOARD FOLLOWING ITS CONCLUSION THAT DOCTOR MAINTAINED INADEQUATE MEDICAL RECORD DOCUMENTATION AND DIAGNOSED OR TREATED PATIENTS WITHOUT PROPER EVALUATION OR JUSTIFICATION. ORDER MAILED 7/26/00; ORDER EFFECTIVE 7/26/00; SUSPENSION EFFECTIVE 7/26/00 THROUGH 8/24/00.

07/14/1999: CITATION - BASED ON PRIOR ACTION AGAINST DOCTOR'S COLORADO LICENSE BY THAT STATE'S MEDICAL BOARD FOLLOWING ITS CONCLUSION THAT DOCTOR MAINTAINED INADEQUATE MEDICAL RECORD DOCUMENTATION AND DIAGNOSED OR TREATED PATIENTS WITHOUT PROPER EVALUATION OR JUSTIFICATION. NOTICE OF OPPORTUNITY FOR HEARING MAILED 7/15/99.

01/12/1994: REINSTATEMENT - DOCTOR'S REQUEST FOR REINSTATEMENT GRANTED BY VOTE OF THE BOARD ON 1/12/94. DOCTOR PRESENTLY RESIDING OUT OF STATE. UPON RESUMPTION OF PRACTICE IN OHIO, LICENSE SUBJECT TO PROBATIONARY TERMS SET FORTH IN 3/14/90 ORDER.

02/26/1992: COURT ACTION - OHIO SUPREME COURT REFUSED JURISDICTION OF APPEAL.

10/28/1991: COURT ACTION - NOTICE OF APPEAL TO THE OHIO SUPREME COURT FILED ON OR ABOUT 10/28/91.

10/03/1991: COURT ACTION - BY OPINION RENDERED 9/26/91 AND JUDGMENT ENTRY FILED ON OR ABOUT 10/3/91, THE 10TH DISTRICT COURT OF APPEALS AFFIRMED THE DECISION OF THE FRANKLIN COUNTY COURT OF COMMON PLEAS.

10/17/1990: COURT ACTION - NOTICE OF APPEAL TO THE 10TH DISTRICT COURT OF APPEALS FILED BY DOCTOR 10/17/90.

09/17/1990: COURT ACTION - BY DECISION AND ENTRY FILED 9/17/90, THE FRANKLIN COUNTY COURT OF COMMON PLEAS AFFIRMED THE BOARD'S 3/14/90 ORDER.

03/28/1990: COURT ACTION - NOTICE OF APPEAL FILED BY DOCTOR TO THE FRANKLIN COUNTY COURT OF COMMON PLEAS ON 3/28/90.

03/14/1990: BOARD ORDER - REVOCATION, STAYED; INDEFINITE SUSPENSION, MINIMUM 1 YEAR; CONDITIONS FOR REINSTATEMENT; SUBSEQUENT 5 YEAR PROBATION. BASED ON COMMISSION OF FRAUD, MISREPRESENTATION OR DECEPTION IN APPLYING FOR RENEWAL OF OHIO LICENSE; DISCIPLINARY ACTION AGAINST CLINICAL PRIVILEGES BY THE DEPARTMENT OF THE AIR FORCE. ORDER MAILED 3/19/90; ORDER EFFECTIVE 3/19/90.

09/13/1989: CITATION - BASED ON ALLEGED COMMISSION OF FRAUD, MISREPRESENTATION OR DECEPTION IN APPLYING FOR RENEWAL OF OHIO LICENSURE; DISCIPLINARY ACTION AGAINST CLINICAL PRIVILEGES BY THE DEPARTMENT OF THE AIR FORCE. NOTICE OF OPPORTUNITY FOR HEARING MAILED 9/14/89. SECOND NOTICE OF OPPORTUNITY FOR HEARING MAILED 9/29/89.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

November 13, 2002

Jonathan W. Singer, D.O.
6197 S. Locust Street
Englewood, CO 80111-4407

Dear Doctor Singer:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 2002, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 2379
RETURN RECEIPT REQUESTED

Cc: Jeffrey J. Jurca, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 2362
RETURN RECEIPT REQUESTED

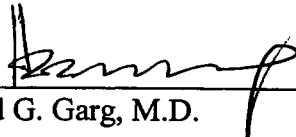
Mailed 11-19-02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 2002, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Jonathan W. Singer, D.O. as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Anand G. Garg, M.D.
Secretary

November 13, 2002

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JONATHAN W. SINGER, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 13, 2002.

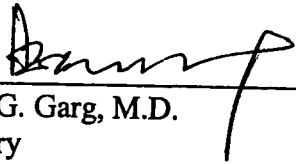
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. The motion of Jonathan W. Singer, D.O., to dismiss the allegations set forth in the notice of opportunity for hearing is DENIED.
2. Dr. Singer is REPRIMANDED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Anand G. Garg, M.D.
Secretary

November 13, 2002

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF JONATHAN W. SINGER, D.O.**

The Matter of Jonathan W. Singer, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on August 23, 2002.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated June 12, 2002, the State Medical Board of Ohio [Board] notified Jonathan W. Singer, D.O., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on a prior action against Dr. Singer by the Colorado State Board of Medical Examiners [Colorado Board].

The Board further alleged that the action of the Colorado Board constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.”

Accordingly, the Board advised Dr. Singer of his right to request a hearing in this matter. (State’s Exhibit 1A).

- B. On July 10, 2002, Jeffrey J. Jurca, Esq., submitted a written hearing request on behalf of Dr. Singer. (State’s Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Jeffrey J. Jurca, Esq.

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EVIDENCE EXAMINED

I. Testimony Heard

Jonathan W. Singer, D.O.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1I: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents regarding Dr. Singer maintained by the Colorado State Board of Medical Examiners [Colorado Board]. (Note: pages numbered by the Attorney Hearing Examiner post-hearing).
3. State's Exhibit 3: Certified copies of documents regarding Dr. Singer maintained by the Board. (Note: pages numbered by the Attorney Hearing Examiner post-hearing).
4. State's Exhibit 4: Copy of a March 18, 2002, letter from Dr. Singer to the Board.

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of Section 12-36-118, Colorado Revised Statutes, Disciplinary Action by Board – Immunity; with annotations.
2. Respondent's Exhibits B, D, E, and H: Copies of correspondence between Dr. Singer and the Colorado Board.
3. Respondent's Exhibits C, F, G, and I: Copies of correspondence regarding Dr. Singer between the Colorado Board and Dave Garland, D.O.

PROCEDURAL MATTERS

The Respondent participated in the administrative hearing in this matter by telephone. His counsel appeared at hearing in person.

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SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. Jonathan W. Singer, D.O., received his degree in osteopathic medicine in 1983 from the College of Osteopathic Medicine and Surgery in Des Moines, Iowa. Thereafter, Dr. Singer completed a one year general rotating residency at Sandusky Memorial Hospital in Sandusky, Ohio. In 1984, Dr. Singer entered the United States Air Force [Air Force]. Dr. Singer was later separated from the Air Force after the Air Force initiated disciplinary action and found that Dr. Singer's care and treatment of ten patients had been below the minimal standard of care. In 1987, Dr. Singer started a solo family practice in Cheyenne, Wyoming. Dr. Singer is currently practicing in Colorado. (State's Exhibit [St. Ex.] 3 at 9-12).

Dr. Singer practices both traditional and alternative medicine. Dr. Singer testified that he is board certified in family practice. Moreover, two years ago, he was certified by the American College of Holistic Medicine. He stated that he was one of the first 150 physicians in the country to sit for that board and become certified. Dr. Singer further testified that he has recently completed a one-year course of study in medical acupuncture. (Hearing Transcript [Tr.] at 34-35; St. Ex. 3 at 9-12).

2. On March 14, 1990, the State Medical Board of Ohio [Board] entered an Order revoking Dr. Singer's certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and Dr. Singer's certificate was indefinitely suspended for a minimum of one year. The Order was based upon Dr. Singer's fraud, misrepresentation or deception in applying for renewal of his Ohio license in 1986 and 1988, and upon the disciplinary action taken against his clinical privileges by the Air Force in 1986. (St. Ex. 3 at 2-17).

On January 12, 1994, the Board granted Dr. Singer's request for reinstatement. Dr. Singer has not practiced in Ohio since his reinstatement. Nevertheless, should he commence practice in Ohio, Dr. Singer's certificate will be subject to the probationary terms set forth in the March 14, 1990, Board Order. (St. Ex. 3 at 2-4, 18-19).

3. The Colorado State Board of Medical Examiners [Colorado Board] issued a Final Board Order on April 22, 1999, and an Amended Final Board Order on May 24, 1999. In its Orders, the Colorado Board concluded that Dr. Singer had failed to meet generally accepted standards of medical practice. The Colorado Board's conclusion was based on findings that Dr. Singer had maintained inadequate medical records and had diagnosed or treated patients without proper evaluation or justification. (St. Ex. 2 at 6, 12-37).

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The Colorado Board suspended Dr. Singer's certificate for thirty days, and placed Dr. Singer on probation for a period of five years. The probationary terms required, among other things, that Dr. Singer's practice be monitored by a practice monitor. (St. Ex. 2 at 3-39). Paragraph 6 of the Colorado Final Board Order provides as follows:

Upon approval by the monitoring panel, the practice monitor shall perform the following:

- a) Each month, the practice monitor shall visit all the offices at which Respondent practices medicine, and review at least five charts maintained by Respondent. * * *
- b) Each month, the practice monitor shall review at least five hospital charts of patients who Respondent has admitted to hospitals. If Respondent has admitted fewer than five patients, the practice monitor shall review all the patients so admitted, if any. * * *
- c) The practice monitor shall submit quarterly written reports to the monitoring panel.
- d) The practice monitor's reports shall include the following:
 - i. a description of each of the cases reviewed; and
 - ii. as to each case reviewed, the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice.

(St. Ex. 2 at 8).

Paragraph 8 of the Colorado Final Board Order provides as follows:

It is the responsibility of the Respondent to assure that the practice monitor's reports are timely and complete. Failure of the practice monitor to perform the duties set forth above may result in a notice from the Board staff requiring the nomination of a new practice monitor. * * *

(St. Ex. 2 at 9).

4. Dr. Singer nominated, and the Colorado Board accepted, Dave Garland, D.O., as Dr. Singer's practice monitor. (Resp. Ex. I).

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5. As a result of the Colorado Board action, the Ohio Board initiated disciplinary action against Dr. Singer. On July 12, 2000, the Board entered an Order permanently revoking Dr. Singer's certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and Dr. Singer's certificate was suspended for thirty days. Furthermore, except for the stayed permanent revocation and the suspension, the March 16, 1990, Board Order remained in effect. (St. Ex. 3 at 20).
6. On September 20, 2000, Inquiry Panel A of the Colorado Board notified Dr. Garland that the Panel had received his September 5, 2000, quarterly practice monitoring report pertaining to Dr. Singer. The Panel further advised that Dr. Garland's monitoring report for the months of July, August and September 2000 would be due on October 1, 2000. (Resp. Ex. I).

On December 12, 2000, Inquiry Panel A notified Dr. Singer that Dr. Garland had not submitted the quarterly report due on October 1st had not been received. (Resp. Ex. B).

On February 2, 2001, Inquiry Panel A again notified Dr. Singer that the Colorado Board had not received monitoring reports as required by the Colorado Final Board Order. The Colorado Board advised as follows:

Paragraph 6 of your April 22, 1999, Final Board Order requires that your practice monitor shall submit quarterly written reports to the monitoring panel. The most recent monitoring report provide by your practice monitor, Dr. Dave Garland, was for the months of April, May and June of 2000. You were notified on December 12, 2000, that the quarterly report due from Dr. Garland on October 1st had not been received. As of this date, a monitoring report has still not been received.

(Resp. Ex. B).

On February 13, 2001, Dr. Garland wrote a letter to the Colorado Board in which he apologized for his failure to submit monitoring reports in a timely fashion. Dr. Garland explained that he had believed that the monitoring reports were to have been submitted on an annual basis. Dr. Garland further explained that, since discovering his error, he had been to Dr. Singer's office and had reviewed the appropriate number of charts for each of the months he had missed. Dr. Garland submitted documentation for the review of the first three months missed, and promised to send documentation for the subsequent three months shortly thereafter. (Resp. Ex. C).

On February 21, 2001, Dr. Singer responded to the Inquiry Panel A's February 2, 2001, letter to him. Dr. Singer stated, in part, as follows:

I want to assure the [Colorado Board] that I in no way meant any disrespect for the Board's wishes and I understand the seriousness of the probationary

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order you have imposed on me. I am trying to sincerely keep my practice monitor current on his reports and will continue to be vigilant and more closely ensure his timely participation. I understand that he dictates his findings and has also had some delay in getting those transcribed in a timely way. He said that he would prefer to continue to transcribe rather than write out his findings. Although Dr. Garland is a wonderful physician and has been a good and effective monitor, I will have to find another to take his place if I can not ensure timely submission of his reports. Thank you for your kind consideration of this matter and this regretful delay.

(Resp. Ex. D).

On May 16, 2001, Inquiry Panel A advised Dr. Singer that the Panel had decided to dismiss Dr. Garland as Dr. Singer's monitoring physician. The Panel further requested that Dr. Singer submit names of alternative monitoring physicians for the Panel's consideration. (Resp. Ex. E).

On July 20, 2001, Dr. Garland submitted monitoring reports for the months of October 2000 through March 2001. (Resp. Ex. F). On July 26, 2001, Inquiry Panel A advised Dr. Garland that the Panel would no longer accept Dr. Garland as Dr. Singer's monitoring physician. (Resp. Ex. G).

7. By letter dated September 6, 2001, Inquiry Panel A advised Dr. Singer that it had decided to administer disciplinary action to Dr. Singer in the form of a letter of admonition. The letter advised, in part, as follows:

Inquiry Panel A of the Colorado Board of Medical Examiners has concluded its inquiry regarding your failure to provide practice monitoring reports as required by the April 22, 1999, Final Board Order ("Order"). It was the Panel's decision not to commence with formal proceedings against your license to practice medicine. However, the Panel did vote to administer disciplinary action to you in the form of this letter of admonition.

After considering all of the available information, the Panel found that you have failed to comply with paragraph 8 of the Order which requires that all reports by your practice monitor must be submitted to the Panel on time. Failure to comply with the Board's Order constitutes unprofessional conduct. Because your practice monitoring reports were in arrears from October of 2000 through July 2001, your probationary period shall be tolled for the ten months that you were not in compliance with this Order.

By this letter, the Panel hereby admonishes you and cautions that complaints disclosing any repetition of such practice may lead to the commencement of

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formal disciplinary proceedings against your license to practice medicine, wherein this letter of admonition may be entered into evidence as aggravation.

(St. Ex. 2 at 2).

8. Dr. Singer testified in the present matter via telephone. Dr. Singer testified that one of the terms of probation imposed by the Colorado Board is practice monitoring. Dr. Singer explained that a monitoring physician reviews his records in order to assure that his medical records are legible and appropriate. Dr. Singer testified that the monitoring physician is also responsible to ensure that Dr. Singer follows the guidelines of the Colorado Board.
(Tr. at 18).

Dr. Singer testified that his original monitoring physician was Dr. Garland. Dr. Singer testified that Dr. Garland was a busy practitioner who had suffered from pneumonia during the time he was monitoring Dr. Singer's practice. Dr. Singer explained that, due to his illness, Dr. Garland had been unable to fulfill his monitoring responsibilities.
(Tr. at 18, 30-31).

Dr. Singer testified that Dr. Garland had been relieved of his duties by the Colorado Board, and Dr. Singer had been asked to find a new monitor. Dr. Singer has since found a new monitor. He testified that he has had no problems with the Colorado Board since the new monitor assumed the monitoring responsibilities. Finally, Dr. Singer testified that neither of his monitoring physicians has ever suggested to the Colorado Board that Dr. Singer's care and treatment of patients is substandard. (Tr. at 28-30, 36-37).

FINDINGS OF FACT

1. On March 14, 1990, the State Medical Board of Ohio [Board] entered an Order in the matter of Jonathan W. Singer, D.O., revoking Dr. Singer's certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and Dr. Singer's certificate was indefinitely suspended for a minimum of one year. The Board's Order was based upon Dr. Singer's fraud, misrepresentation or deception in applying for renewal of his Ohio license in 1986 and 1988, and upon disciplinary action taken against his clinical privileges by the Department of the Air Force in 1986.

On January 12, 1994, the Board granted Dr. Singer's request for reinstatement. Upon commencement of practice in Ohio, however, Dr. Singer's certificate will be subject to probationary terms set forth in the March 14, 1990, Board Order.

2. On July 12, 2000, the Board entered an Order permanently revoking Dr. Singer's certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was

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stayed, and Dr. Singer's certificate was suspended for thirty days. Furthermore, except for the stayed permanent revocation and the suspension, the March 16, 1990, Board Order remained in effect.

The July 12, 2000, Board Order was based upon prior action against Dr. Singer's Colorado license by the Colorado State Board of Medical Examiners [Colorado Board]. The Colorado Board had issued an April 22, 1999, Final Board Order and a May 24, 1999, Amended Final Board Order, in which it concluded that Dr. Singer had failed to meet generally accepted standards of medical practice. The conclusion was based on findings that Dr. Singer had maintained inadequate medical records and had diagnosed or treated patients without proper evaluation or justification.

3. On September 6, 2001, the Colorado Board voted to administer disciplinary action to Dr. Singer in the form of a letter of admonition. The Colorado Board found that Dr. Singer had failed to comply with the provision in the May 24, 1999, Amended Final Board Order of the Colorado Board which requires that all reports by Dr. Singer's practice monitor must be submitted to the Colorado Board Panel on time. The Colorado Board further found that such failure constituted unprofessional conduct. Finally, in addition to issuing the letter of admonition, the Colorado Board tolled Dr. Singer's probationary period for the ten months that he was out of compliance with his probationary terms and conditions.

LEGAL ANALYSIS

Provisions regarding the functioning of the Colorado Board are set forth in Section 12-36-118, Colorado Revised Statutes, Disciplinary Action by Board – Immunity. That statute sets up a board which is divided into two panels of six members each. Each panel functions as an inquiry panel and a hearing panel. Matters referred to one panel for investigation will be heard, if referred for hearing, by the other panel. Alternatively, however, either inquiry panel can refer a matter to an administrative law judge for hearing. (Resp. Ex. A [Section 12-36-118 (1)(a)-(c)]).

Once an inquiry panel has completed an investigation, the inquiry panel must make one of the following findings:

- (I) The complaint is without merit and no further action need be taken with reference thereto;
- (II) There is no reasonable cause to warrant further action with reference thereto;
- (II.5) The investigation discloses an instance of conduct that does not warrant formal action by the board and should be dismissed but in which the inquiry panel has noticed indications of possible errant conduct by the licensee that could lead to

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serious consequences if not corrected. In such a case, a confidential letter of concern shall be sent to the licensee against whom the complaint was made.

- (III) The investigation discloses an instance of unprofessional conduct that, in the opinion of the inquiry panel, does not warrant formal action by the board but should not be dismissed as being without merit; in such case, a certified letter, return receipt requested, of admonition shall be sent to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by the inquiry panel to a licensee complained against, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated against him or her to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings; or
- (IV) The investigation discloses facts which warrant further proceedings by formal complaint, as provided in subsection (5) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint.

[Section 12-36-118 (4)(c)] (emphasis added).

The statute further provides that, once an inquiry panel has referred a matter for formal complaint and hearing, the hearing shall be held before the hearings panel or before an administrative law judge on behalf of the hearings panel. The hearings panel must issue a report of its findings and conclusions, and once a majority of the hearings panel approves that report, the report becomes the action of the Colorado Board. [Section 12-36-118(5)(e)-(g). See also Section 12-36-118(1)(c) and (d).]

At hearing, Dr. Singer moved to dismiss the allegations set forth in the June 12, 2002, notice of opportunity for hearing. As basis for the motion, Dr. Singer noted that the Board had cited him for a violation of Section 4731.22(B)(22), Ohio Revised Code, which provides that the Board may take disciplinary action based on specific actions by another state. Dr. Singer alleged that the only provision in that statute which is applicable in the present matter is the provision which states that the Board may take action based on another state's "issuance of an order of censure or other reprimand." Dr. Singer noted that the Colorado Board had issued a letter of admonition. He argued that, pursuant to Section 12-36-118 (4)(c)(III), Colorado Revised Statutes, a letter of admonition is not a "formal action" and, as such, is not "an order of censure or other reprimand." Dr. Singer further argued that, without "an order of censure or other reprimand," the Board is without jurisdiction to act against Dr. Singer's license in this state. (Tr. at 10-13).

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Moreover, Dr. Singer noted that the letter of admonition had been issued by Inquiry Panel A, rather than by the full Colorado Board. Dr. Singer compared Section 12-36-118 (4)(c)(III), Colorado Revised Statutes, to Section 12-36-118 (5)(g)(III), Colorado Revised Statutes, which provides that the hearings panel [as opposed to an inquiry panel] can issue orders of discipline which become the action of the full Colorado Board. Accordingly, Dr. Singer suggested that an action by an Inquiry Panel does not constitute an action by the Colorado Board. (Tr. at 10-13).

The State responded that the Colorado Board issuance of a letter of admonition was a disciplinary action similar to "a letter of censure or other reprimand" as set forth in Section 4731.22(B)(22), Ohio Revised Code. The State reasoned that the legislature can not possibly list in the statute every conceivable phraseology for disciplinary actions which another state may impose, and that it is for that reason that the legislature used the language "a letter of censure or other reprimand." Moreover, the State argued that the Colorado Board not only issued a letter of admonition, but also extended Dr. Singer's probationary period for ten months. Therefore, the State concluded that the actions of the Colorado Board were actions for which disciplinary action can be taken in this state pursuant to Section 4731.22(B)(22), Ohio Revised Code. (Tr. at 45-46).

The State's argument is persuasive in that the letter of admonition and extension of probation are actions by the another board which are contemplated by the language of Section 4731.22(B)(22), Ohio Revised Code. Furthermore, Dr. Singer's suggestion that the actions of Inquiry Panel A of the Colorado Board do not constitute actions of the Colorado Board itself is not well taken. The force and effect of the actions of Inquiry Panel A is to Dr. Singer an action of the Colorado Board itself. Moreover, Inquiry Panel A is the arm of the Colorado Board which is responsible to act in circumstances such as this and administered "disciplinary action" to Dr. Singer in the form of the letter of admonition. Accordingly, the Hearing Examiner will recommend that the Board deny Dr. Singer's motion to dismiss the allegations set forth in the notice of opportunity for hearing. (See Proposed Order.)

CONCLUSIONS OF LAW

The Colorado State Board of Medical Examiners' Letter of Admonition in the matter of Jonathan W. Singer, D.O., as set forth in Findings of Fact 3, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

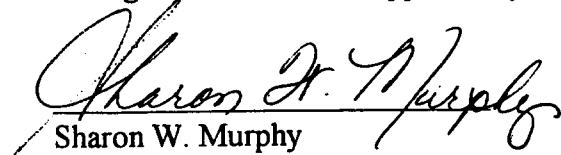
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PROPOSED ORDER

It is hereby ORDERED that:

1. The motion of Jonathan W. Singer, D.O., to dismiss the allegations set forth in the notice of opportunity for hearing is DENIED.
2. Dr. Singer is REPRIMANDED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 13, 2002

REPORTS AND RECOMMENDATIONS

Dr. Somani announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: John R. Aubrecht, M.T.; Nicholas M. Pachuda, D.P.M.; and Jonathan W. Singer, D.O. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

Dr. Somani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye

Dr. Garg - aye
Dr. Steinbergh - aye
Dr. Somani - aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Somani stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

JONATHAN W. SINGER, D.O.

.....
MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JONATHAN W. SINGER, D.O. DR. STEINBERGH SECONDED THE MOTION.

.....
A vote was taken on Mr. Browning's motion to approve and confirm:

Vote: Mr. Albert - abstain
Dr. Egner - aye
Dr. Talmage - aye
Dr. Buchan - aye
Mr. Browning - aye
Ms. Sloan - aye
Dr. Davidson - aye
Dr. Agresta - aye
Dr. Garg - abstain
Dr. Steinbergh - aye
Dr. Somani - aye

The motion carried.

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JONATHAN W. SINGER, DD
 Street, Apt. No., or PO Box No.
6197 S. LOCUST ST.
 City, State, ZIP+4
ENGLEWOOD CO 80111-4407

PS Form 3800, February 2001 See Reverse for Instructions

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JONATHAN W. SINGER, DD
6197 S. LOCUST STREET
ENGLEWOOD CO 80111-4407

COMPLETE THIS SECTION ON DELIVERY

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C. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail	<input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.
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Recipient's Name (Please Print Clearly) (to be completed by mailer)
JEFFREY J. JURCA, ESQ.
 Street, Apt. No., or PO Box No.
175 S. THIRD ST.
 City, State, ZIP+4
COLUMBUS OH 43215

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JEFFREY J. JURCA, ESQ.
LANE, ALTON + HORST
175 SOUTH THIRD STREET
COLUMBUS, OH 43215

COMPLETE THIS SECTION ON DELIVERY

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C. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail	<input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee)	<input type="checkbox"/> Yes

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State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

June 12, 2002

Jonathan W. Singer, D.O.
6197 South Locust Street
Englewood, Colorado 80111-4407

Dear Doctor Singer:

In accordance with R. C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about March 14, 1990, the State Medical Board of Ohio (hereinafter the "Ohio Board") entered an Order revoking your certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and your certificate was indefinitely suspended for a minimum of one (1) year.

The Ohio Board Order was based upon fraud, misrepresentation or deception in applying for renewal of your Ohio license in 1986 and 1988, and upon disciplinary action taken against your clinical privileges by the Department of the Air Force in 1986.

On or about January 12, 1994, the Ohio Board granted your request for reinstatement. Upon resuming practice in Ohio, your certificate was subject to probationary terms set forth in the March 14, 1990 Ohio Board Order. Copies of the March 14, 1990 Ohio Board Order and the minutes of the Ohio Board's January 12, 1994 reinstatement approval are attached hereto and fully incorporated herein.

- (2) On or about July 12, 2000, the Ohio Board entered an Order permanently revoking your certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and your certificate was suspended for thirty (30) days and, except for the above, the March 16, 1990 Order of the State Medical Board of Ohio *In the Matter of Jonathan W. Singer, D.O.*, remained in effect.

That Ohio Board Order was based upon prior action against your Colorado license by the Colorado State Board of Medical Examiners (hereinafter the "Colorado Board") April 22, 1999 Final Board Order [the Colorado Board subsequently issued Amended Final Board Order dated May 24, 1999]

Mailed 6-13-02

following its conclusions that you failed to meet generally accepted standards of medical practice based upon your inadequate medical record documentation and that you diagnosed or treated patients without proper evaluation or justification.

This Ohio Board suspension was effective July 26, 2000, through August 24, 2000; your Ohio Board permanent revocation remains stayed as of this date. A copy of the July 12, 2000 Ohio Board Order is attached hereto and incorporated herein.

- (3) On or about September 6, 2001, the Colorado Board voted to administer disciplinary action to you in the form of a letter of admonition. The Colorado Board found that your failure to comply with the Colorado Board Order (paragraph two (2) above) provision that all reports by your practice monitor must be submitted to the Panel on time, constituted unprofessional conduct and tolled your probationary period for the ten (10) months you were out of compliance. A copy of the Colorado Board Letter of Admonition is attached hereto and fully incorporated herein.

The Colorado Board Letter of Admonition, as alleged in paragraph three (3) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R. C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R. C. 4731.22(L), effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5139 9705
RETURN RECEIPT REQUESTED

8000 East Prentice Avenue, Suite D-3
Greenwood Village, Colorado 80111

CERTIFIED MAIL # 7000 0600 0024 5139 9699
RETURN RECEIPT REQUESTED

Jeffrey J. Jurca, Esq.
Lane, Alton & Horst
175 South Third Street, Suite 700
Columbus, Ohio 43215-5100

CERTIFIED MAIL # 7000 0600 0024 5139 9644
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State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

July 12, 2000

Jonathan W. Singer, D.O.
6197 South Locust Street
Englewood, CO 80111-4407

Dear Doctor Singer:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 14 and July 12, 2000, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 281 981 350
RETURN RECEIPT REQUESTED

cc: Jeffrey J. Jurca, Esq.
CERTIFIED MAIL RECEIPT NO. Z 281 981 351
RETURN RECEIPT REQUESTED

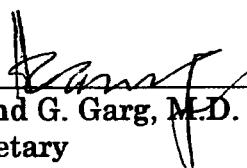
Mailed 7/26/00

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 14 and July 12, 2000, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Jonathan W. Singer, D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Anand G. Garg, M.D.
Secretary

JULY 12, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JONATHAN W. SINGER, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 14 and July 12, 2000.


Upon the Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. The certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Singer's certificate is SUSPENDED for 30 days.
2. Except as provided for in paragraph 1 of this order, the March 16, 1990, Order of the State Medical Board of Ohio *In the Matter of Jonathan W. Singer, D.O.*, remains in effect.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Anand G. Garg, M.D.
Secretary

JULY 12, 2000
Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF JONATHAN W. SINGER, D.O.**

The Matter of Jonathan W. Singer, D.O., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on February 29, 2000.

INTRODUCTION

I. Basis for Hearing

A. By letter dated July 14, 1999, the State Medical Board of Ohio [Board] notified Jonathan W. Singer, D.O., that it had proposed to determine whether to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

1. On or about March 14, 1990, the Board entered an Order revoking Dr. Singer's certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and his certificate was indefinitely suspended for a minimum of one year.

The Board Order was based upon fraud, misrepresentation or deception in applying for renewal of his Ohio license in 1986 and 1988, and upon disciplinary action taken against Dr. Singer's clinical privileges by the United States Department of the Air Force in 1986.

On or about January 12, 1994, the Board granted Dr. Singer's request for reinstatement. Upon resuming practice in Ohio, Dr. Singer's certificate will be subject to the probationary terms set forth in the March 14, 1990, Board Order.

2. On or about April 22, 1999, the Colorado State Board of Medical Examiners [Colorado Board] issued a Final Board Order suspending Dr. Singer's Colorado license for 30 days and placing him on 5 years probation following the suspension. The probationary terms include, but are not limited to: a restriction from providing any type of hormone replacement therapy to patients, monitored practice, and completion of educational activities.

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OF OHIO
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The Colorado Board ordered this sanction after concluding that Dr. Singer had failed to meet generally accepted standards of medical practice based upon his inadequate medical record documentation and his diagnosis and treatment of patients without proper evaluation or justification.

The Board alleged that the Colorado Board Order constitutes “[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason, other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license; refusal to renew or reinstate a license; imposition or probation or issuance of an order of censure or other reprimand”; as that language is used in Section 4731.22(B)(22), Ohio Revised Code.”

Accordingly, the Board advised Dr. Singer of his right to request a hearing in this matter. (State’s Exhibit 1)

- B. On August 3, 1999, Alan D. Avery, Esq., filed a written hearing request on behalf of Dr. Singer. (State’s Exhibit 2)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Anne Berry Strait, Assistant Attorney General.
- B. On behalf of the Respondent: Jeffrey J. Jurca, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Jonathan W. Singer, D.O.

II. Exhibits Examined

- A. Presented by the State:
 - 1. State’s Exhibits 1-10, 12-25, 30-31: Procedural exhibits.

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OF COLORADO

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2. State's Exhibit 11: Certified copy of the April 22, 1999, Final Board Order; *In the matter of the disciplinary proceeding regarding the license to practice medicine in the State of Colorado, of Jonathan W. Singer, D.O., License Number 29309*, before the Colorado State Board of Medical Examiners [Colorado action]. [Note: Exhibit pages renumbered by the Attorney Hearing Examiner post-hearing.]
3. State's Exhibit 26: Certified copy of the March 16, 1990, Entry of Order, Report and Recommendation, and Board minutes *In the matter of Jonathan W. Singer, D.O.*
4. State's Exhibit 27: Opinion of the Court of Appeals of Ohio, Tenth Appellate District, Franklin County in *Jonathan W. Singer, D.O. v. State Medical Board of Ohio*, 1991, Ohio App. LEXIS 4583.
5. State's Exhibit 28: Certified copy of the October 26, 1999, Colorado Personalized Education for Physicians [CPEP] plan and the July 22, 1999, CPEP assessment for Dr. Singer.
6. State's Exhibit 29: Certified copy of the May 14, 1999, Amended Final Board Order of the Colorado Board in the Colorado action.

B. Presented by the Respondent:

1. Respondent's Exhibit A: Copy of August 26, 1996, News Release from the Colorado Department of Public Health and Environment.
2. Respondent's Exhibit B: Copy of February 6, 1997, CDC Fact Sheet About Mycobacterium Abscesses.
3. Respondent's Exhibit C: February 1, 2000 letter from Blain D. Myhrc, Esq., to the Board.
4. Respondent's Exhibit D: Transcript of September 17, 1997, testimony of Dr. Singer in the Colorado action.
5. Respondent's Exhibit E: Transcript of October 24, 1997, testimony of Dr. Singer in the Colorado action.

6. Respondent's Exhibit F: Transcript of November 18, 1997, testimony of Dr. Singer in the Colorado action.
7. Respondent's Exhibit G: Transcript of November 19, 1997, testimony of Dr. Singer in the Colorado action.
8. Respondent's Exhibit H: Transcript of February 5, 1998, testimony of Dr. Singer in the Colorado action.
9. Respondent's Exhibit L: Respondent's Post Hearing Brief.

PROFFERED EXHIBITS

- I. The following exhibits were proffered by the respondent but were not admitted into evidence:
 - A. Respondent's Exhibit I: Curriculum vitae of Richard J. Wallace, Jr. M.D.
 - B. Respondent's Exhibit J: Undated transcript of testimony of Dr. Wallace in the Colorado action.
 - C. Respondent's Exhibit K: Copy of Respondent-Appellant's [Dr. Singer's] February 2000, Reply Brief before the Colorado Court of Appeals in *Colorado State Board of Medical Examiners v. Jonathan W. Singer, D.O.*

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

- I. On or about March 14, 1990, the Board entered an Order revoking the certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and his certificate was indefinitely suspended for a minimum of one year. (State's Exhibits [St. Exs.] 26 and 27)

The Board Order was based upon fraud, misrepresentation or deception on Dr. Singer's part in applying for renewal of his Ohio license in 1986 and 1988, and upon disciplinary

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action taken against Dr. Singer's clinical privileges by the United States Department of the Air Force in 1986. (St. Exs. 26 and 27)

On or about January 12, 1994, the Board granted Dr. Singer's request for reinstatement. Upon resuming practice in Ohio, Dr. Singer's certificate will be subject to the probationary terms set forth in the March 14, 1990, Board Order. (St. Exs. 26 and 27)

- 2 On or about April 22, 1999, the Colorado State Board of Medical Examiners [Colorado Board] issued a Final Board Order suspending Dr. Singer's Colorado license for 30 days and placing him on 5 years probation following the suspension. The probationary terms include, but are not limited to: a restriction from providing some types of hormone replacement therapy to patients, monitored practice, and completion of educational activities. (St. Exs. 11, 29)

The Colorado Board ordered these sanction after concluding that Dr. Singer had failed to meet generally accepted standards of medical practice based upon his inadequate medical record documentation and his diagnosis and treatment of patients without proper evaluation or justification. (St. Exs. 11, 29)

Specifically, the Colorado Board found that the conduct of Dr. Singer had failed to meet generally accepted standards of medical practice in the following instances:

- Dr. Singer diagnosed a magnesium deficiency in Patient SS-2 in the absence of clinical signs and laboratory values suggesting a magnesium deficiency in that patient.
- The treatment of Patient LTM with hormonal replacement therapy fell below the standard of care.
- Dr. Singer made diagnoses of medical conditions of Patient JB-1 which were not charted, were not supported by his records for this patient, and which were not reflected in the patient chart as having been evaluated or treated.
- Dr. Singer repeatedly failed to make essential entries on patient records for the treatment of abscesses. Dr. Singer made only general notations of his treatment and in many cases failed to note the size and location of abscesses, the patient's subjective complaints, whether an abscess was drained, how an abscess was drained, what material was drained from the abscess, other treatment steps performed, and any follow-up plan.
- Dr. Singer administered thyroid hormone without adequate justification and without adequate monitoring of thyroid function
- Dr. Singer's administrated adrenal cortex injections without medical justification.

(St. Ex. 11)

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On May 24, 1999, the Colorado Board filed an Amended Final Board Order which clarified some of the restrictions which had been placed on Dr. Singer's Colorado license. However, this order did not change the Colorado Conclusions of Law or Findings of Fact. (St. Ex. 29)

Pursuant to the Colorado Board Order, the Colorado Personal Education for Physicians [CPEP] program evaluated Dr. Singer and established an education plan for Dr. Singer. This education plan is incorporated by reference as a requirement of the Colorado Board Final Order. Specifically, CPEP requires [or has required] Dr. Singer to:

- forward three current patient charts per month for evaluation by CPEP's Medical Education Director [MED].
- participate in discussions of these charts with the MED.
- develop a database to track patient outcomes.
- provide CPEP with regular reports of the data distilled from the database.
- complete an evaluation by the Colorado Physicians Health Program [CPHP].
- comply with the recommendations, if any, of the CPHP.
- meet with the MED monthly to discuss interpersonal skills.
- have another physician review any EKG's performed in Dr. Singer's office.

(St. Exs. 11, 28)

3. Dr. Singer testified that he had obtained undergraduate and graduate degrees in food chemistry from the University of Wisconsin and had worked as a food chemist before entering medical school. Dr. Singer further testified that he attended medical school at the College of Osteopathic Medicine and Surgery in Des Moines, Iowa and completed a two year rotating residency in Sandusky Ohio before entering practice in Cheyenne, Wyoming. (Transcript [Tr.] at 59; Respondent's Exhibits [Resp. Exs.] D at 3 and F at 3)

Dr. Singer testified at hearing in Ohio that he is licensed to practice osteopathic medicine and surgery in Ohio, Wyoming, and Colorado and that he is currently practicing in both Colorado and Wyoming. Dr. Singer explained that he had started his practice in Wyoming and had practiced there for about ten years when he purchased a Colorado practice. Dr. Singer further explained that he and his wife wished to raise their children in a religious environment which was available in Denver but not in Wyoming. Dr. Singer and his family moved to Denver in about 1998 and he has maintained both practices since that time. Dr. Singer testified that he has been board certified in family practice for about 10 years. He also testified that his Wyoming practice is a general family practice. However, his Colorado practice almost exclusively concerns the treatment of eating disorders and obesity (Tr. 58-59, 87-89, 97-98; Resp. Exs. D at 4-5, 6-7 and F at 3-4, 10-13)

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Dr. Singer testified that he practices both traditional and alternative medicine. He explained that he chooses from a variety of different treatment modalities depending on what is needed in a specific case. He noted that he completes continuing medical education in both traditional and alternative methods. Dr. Singer testified that prior to the initiation of the Colorado action he had been active in a number of professional organizations in both traditional and alternative medicine. However, he had allowed some of these memberships to lapse due to financial constraints. (Tr. 59-61; Resp. Exs. D at 7-9 and F at 4-10)

4. Dr. Singer testified that he has treated patients who suffer from hypothyroidism. He explained that hypothyroidism is a lack of thyroid hormone in the blood. Dr. Singer further explained that hypothyroidism generally results in a slowing down of metabolism. He noted that the specific symptoms vary from patient to patient. Dr. Singer testified that the "TSH" test is the standard test for diagnosing hypothyroidism and is an indirect method of estimating the thyroid hormone level in the blood stream. However, Dr. Singer also testified that more accurate tests have supplanted the TSH test in research circles. Dr. Singer described the "Free T-3" test as more direct and accurate than the TSH test. Dr. Singer testified that he administers both the TSH and the Free T-3 tests in his practice. (Tr. 61-64; Resp. Exs. D at 9, 15-17, 35-43; E at 16-19; and G at 3-6, 21-23)

Dr. Singer testified that utilizing desiccated thyroid is the original hormone replacement therapy and has been in use for about eighty years. He explained that it is a natural substance derived from an extract of a gland of a pig, sheep, or cow. Dr. Singer further explained that it has advantages over synthetic hormone because it more closely resembles natural human hormones. (Tr. 64-65; Resp. Exs. D at 9-11 and G at 23-27)

Dr. Singer testified that his standard practice in treating his hypothyroid patients is to take a good history and perform a good physical examination. He noted that he balances the information obtained with that obtained from laboratory testing. Dr. Singer also testified that he monitor's patients in the same way. (Tr. 65-67; Resp. Exs. D at 13-17, 25-29; F at 31-42; and G at 8-22)

5. Dr. Singer testified that he has treated patients who suffer from hypoadrenocorticism. He explained that it can be evaluated in a fashion similar to hypothyroidism and that both the quality and the quantity of adrenal hormones is relevant in evaluating the condition. (Tr. 67)

Dr. Singer testified that adrenal cortex extract is a substance which contains the same components as contained in mammalian adrenal extract from the adrenal cortex. He noted

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that it has been in use since 1940 and is currently used primarily by alternative practitioners. (Tr. 68; Resp. Ex. D at 11-13)

Dr. Singer testified that he had obtained adrenal cortex extract from Phyne Pharmaceutical. He further testified that he would administer adrenal cortex extract in small doses, usually 0.1 to 0.2 milligrams once a month if indicated. Dr. Singer noted that there are no good tests to evaluate quantity or quality of adrenal hormones in the blood and thus evaluation by history and physical examination is key to evaluating appropriate use of the injections. (Tr. 68-70; Resp. Ex. F at 19-21)

Dr. Singer testified that in March 1996 he received a shipment of adrenal cortex extract from Dr. Critchlow at Phyne Pharmaceutical. This shipment was contaminated with mycobacterium. Dr. Singer explained that there were no signs of tampering or contamination. Dr. Singer used this shipment during March and April 1996. He administered it to about 90 patients for a variety of problems, including weakness, fatigue, salt craving and other complaints. In May 1996 Dr. Singer began to see patients who had developed a boil at the point of injection. About 60 patients developed this boil or abscess. Dr. Singer explained that the boils were superficial in nature and did not cause other problems for the patients. Most patients developed symptoms four to twelve weeks after injection. (Tr. 70-71, 73, 96-97; Resp. Exs. E at 26-37, 39-41 and F at 13-19)

Believing that there was something wrong with the adrenal cortex extract, Dr. Singer began an investigation by contacting the manufacturer. The manufacturer denied there was any problem with the product or that any other customers had complained. Nevertheless, Dr. Singer immediately stopped using the suspect product. Dr. Singer also contacted the Federal Centers for Disease Control [CDC], the Federal Food and Drug Administration [FDA], and state health departments in Colorado and Wyoming. Dr. Singer testified that he has since learned that there was in fact a nationwide outbreak of mycobacterium traceable to Phyne Pharmaceutical. He also testified that it is his understanding that Dr. Critchlow is no longer practicing medicine and has plead guilty to a number of felonies in federal court. (Tr. 71-74; Resp. Exs. A, B, and E at 41-42, 44-50)

The standard treatment for mycobacterium at that time was the administration of two potent antibiotics through a catheter port in the chest over a 3 to 6 month period of time. Dr. Singer explained that severe side effects accompanied the antibiotics. He further explained that he had felt this treatment extreme in light of the fact that the boils were isolated and there was no evidence of disseminated disease. Dr. Singer chose to treat these patients with local therapies. He explained that 47 of the infected patients remained under his care while the balance were treated by other physicians. Dr. Singer testified that these 47 patients suffered no serious complications. Some required no treatment, others

STATE MEDICAL BOARD
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were treated by incision and drainage while others were given Biaxin in addition to incision and drainage. Dr. Singer commented that the 13 patients treated elsewhere suffered complications from the severe nature of the treatment not because of the infection itself. (Tr. 74-77; Resp. Exs. A and B, D at 11, and E at 37-39)

Dr. Singer testified that the existing standard treatment for mycobacterium recommended by the CDC has been revised for non-disseminated disease. He explained that the CDC now recommends the treatment plan he had used. (Tr. 77-78; Resp. Ex. B)

6. Dr. Singer explained that he has always been subject to criticism for brevity and terseness in his medical records. At hearing, Dr. Singer expressed concern over the privacy of patient records and his opinion that lengthy records place the patient's privacy at greater risk. Dr. Singer acknowledged that his view is in the minority on this issue. He explained that he has increased the length of his records in response to this criticism. Dr. Singer also explained that the CPEP program evaluation recommended more expansive records and that he is complying with that recommendation. (Tr. 78, 89-95; Resp. Exs. E at 7-8 and F at 21-31)

Dr. Singer testified that he had been aware of the need for electronic records for more than a decade. He explained that he had utilized electronic records but abandoned them because he felt that their use interfered with physician/patient interaction and hindered the delivery of good care. However, Dr. Singer also testified that in spite of this belief, he has resumed the use of electronic records at the behest of the Colorado Board. (Tr. 78-80, 89-95; Resp. Ex. F at 47-50)

Dr. Singer testified that when a new patient enters his practice a full history is obtained by means of a written history form which takes about 30 minutes for the patient to complete. Once it is complete Dr. Singer reviews it with the patient line by line and expands on its content based on his discussion with the patient. (Tr. 86-88)

At hearing in Ohio Dr. Singer testified concerning patient care issues raised by the Colorado Board. One of the issues raised in the Colorado action involved Dr. Singer's treatment of Patient SS-2 for magnesium deficiency. Dr. Singer explained that the Colorado Board had determined that his use of over the counter magnesium supplements in the treatment of weight loss had been below the standard of care and dangerous. The Colorado Board concluded that Dr. Singer's practice had fallen below the generally accepted standards of medical practice. Dr. Singer stated that he still believes his use of magnesium to have been safe, effective, and supported by appropriate literature. At hearing Dr. Singer complained that his evidence on this issue was excluded from the Colorado hearing (Tr. 98-99, 103-109; St. Ex. 11 at 2, 30)

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Patient LTM was treated by Dr. Singer with hormone therapy to replace hormones absent due to hypogonadism. Dr. Singer explained that he administered the same hormone that should have been created naturally by the patient. Dr. Singer acknowledged that the Colorado Board had found this treatment to be inappropriate. Dr. Singer testified that he had not performed a gynecological examination of Patient L.T.M. because he had a verbal report from the patient about her gynecological treatment. Dr. Singer's records did not contain any records from the treating gynecologist. The Colorado Board concluded that Dr. Singer's conduct had fallen below the generally accepted standards of medical practice. (Tr. 100-103; St. Ex. 11 at 23-24, 31)

7. The CPEP program provided an assessment of Dr. Singer and a recommended education plan. The Colorado Board required compliance with this plan in its Final Board Order. This assessment of Dr. Singer concluded that he is very capable of providing high quality traditional medical care. However, the CPEP evaluators expressed concern about Dr. Singer's attitude and sarcasm. The CPEP evaluators opined that Dr. Singer believes that he is being attacked for his alternative medicine views and that this interferes with his ability to interact with fellow professionals. The evaluators further expressed concern that Dr. Singer's attitude might interfere with his judgment and cause him to fail to make appropriate use of his "excellent" fund of medical knowledge. The evaluators also expressed concern that Dr. Singer would fail to cooperate with recommended changes in his practice. However, the CPEP evaluators also noted improvements in Dr. Singer's attitude during the course of his three day evaluation and his efforts to seek out assistance from fellow professionals in improving his ability to communicate effectively. (St. Exs. 11, 28; Resp. Ex. L)

FINDINGS OF FACT

1. On or about March 14, 1990, the State Medical Board of Ohio entered an Order revoking the certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and his certificate was indefinitely suspended for a minimum of one year.

The Board Order was based upon fraud, misrepresentation, or deception in applying for renewal of his Ohio license in 1986 and 1988, and upon disciplinary action taken against Dr. Singer's clinical privileges by the United States Department of the Air Force in 1986.

On or about January 12, 1994, the Board granted Dr. Singer's request for reinstatement. Upon resuming practice in Ohio, Dr. Singer's certificate will be subject to the probationary terms set forth in the March 14, 1990, Board Order.

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- 2 On or about April 22, 1999, the Colorado State Board of Medical Examiners [Colorado Board] issued a Final Board Order suspending Dr. Singer's Colorado license for 30 days and placing him on 5 years probation following the suspension. The probationary terms include, but are not limited to: a restriction from providing some types of hormone replacement therapy to patients, monitored practice, and completion of educational activities.

The Colorado Board ordered this sanction after concluding that Dr. Singer failed to meet generally accepted standards of medical practice based upon his inadequate medical record documentation and his diagnosis and treatment of patients without proper evaluation or justification.

CONCLUSIONS OF LAW

The Final Board Order of the Colorado Board of Medical Examiners, concerning the certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in that state, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason, other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license; refusal to renew or reinstate a license; imposition or probation or issuance of an order of censure or other reprimand;" as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

Dr. Singer's attitude, as demonstrated during his testimony in Ohio, is consistent with the CPEP assessment. Dr. Singer demonstrated a continued confidence that he was right and the Colorado Board was wrong on some issues. However, he also conceded that the Colorado Board had been right on some issues. Dr. Singer expressed a willingness to further study those issues on which he differs with the Colorado Board, and to comply with the requirements of the Colorado and Ohio Boards even in cases where he disagrees with a board decision. Dr. Singer's attitude during the Ohio hearing demonstrated that he continues to address, in a positive way, the attitude and communications issues that caused significant concern to the CPEP evaluators.

STATE MEDICAL BOARD
OF OHIO

PROPOSED ORDER 2000 APR 18 P 3:47

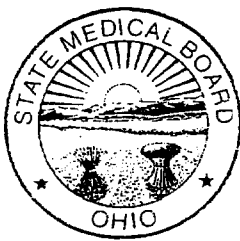
It is hereby ORDERED that:

1. The certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Singer's certificate is SUSPENDED for 30 days.
2. Except as provided for in paragraph 1 of this order, the March 16, 1990, Order of the State Medical Board of Ohio *In the Matter of Jonathan W. Singer, D.O.*, remains in effect.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

July 14, 1999

Jonathan W. Singer, D.O.
1810 Pioneer
Cheyenne, Wyoming 82001-4407

Dear Doctor Singer:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about March 14, 1990, the State Medical Board of Ohio (hereinafter the "Ohio Board") entered an Order revoking your certificate to practice osteopathic medicine and surgery in the State of Ohio. The revocation was stayed, and your certificate was indefinitely suspended for a minimum of one (1) year.

The Ohio Board Order was based upon fraud, misrepresentation or deception in applying for renewal of your Ohio license in 1986 and 1988, and upon disciplinary action taken against your clinical privileges by the Department of the Air Force in 1986.

On or about January 12, 1994, the Ohio Board granted your request for reinstatement. Upon resuming practice in Ohio, your certificate will be subject to probationary terms set forth in the March 14, 1990 Ohio Board Order. Copies of the March 14, 1990 Ohio Board Order and the minutes of the Ohio Board's January 12, 1994 reinstatement approval are attached hereto and fully incorporated herein.

- (2) On or about April 22, 1999, the Colorado State Board of Medical Examiners (hereinafter the "Colorado Board") issued a final Order suspending your license to practice for a period of thirty (30) days and placing your license on probation for five (5) years following the term of suspension. The probationary terms include, but are not limited to: a restriction from providing any type of hormone replacement therapy to patients, monitored practice and completion of educational activities.

The Colorado Board ordered this sanction after concluding that you failed to meet generally accepted standards of medical practice based upon your inadequate medical record documentation and your diagnosis or treatment of patients without proper evaluation or justification. A copy of the Colorado Final Board Order is attached hereto and fully incorporated herein.

The Colorado Final Board Order as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine

Mailed 7/15/99

Jonathan W. Singer, D.O.

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and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice ; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation ; or issuance of an order of censure or other reprimand;" as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

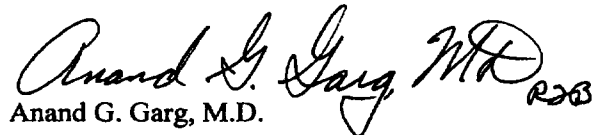
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # Z 233 896 418
RETURN RECEIPT REQUESTED

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

ME 96-30

FINAL BOARD ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF JONATHAN W. SINGER, D.O., LICENSE NO. 29309,

Respondent.

This matter came before Hearing Panel B of the Colorado Board of Medical Examiners ("the Hearing Panel") for review of the Initial Decision of Administrative Law Judge Marshall A. Snider ("the ALJ") issued in the above referenced case on March 31, 1998. That decision is incorporated by reference as though fully set forth herein.

On April 20, 1998, Petitioner Inquiry Panel A filed a Designation of Record and Transcripts and a Request for Oral Argument.

On April 30, 1998, Respondent filed a Designation of Record and Transcripts.

On May 11, 1998, Petitioner Inquiry Panel A filed a Response to Respondent's Designation of Record and Transcripts.

On November 23, 1998, Petitioner Inquiry Panel A filed Exceptions to the Initial Decision of the ALJ.

On January 6, 1999, Respondent filed Exceptions to the Initial Decision of the ALJ and a Response to the Exceptions of Inquiry Panel A.

On January 15, 1999, Petitioner Inquiry Panel A filed a Response to Respondent's Exceptions.

Pursuant to the Colorado Board of Medical Examiners' Rules and Regulations regarding Exceptions to Initial Decisions and Related Matters, Petitioner Inquiry Panel A's request for Oral Argument was granted.

On March 25, 1999, the Hearing Panel considered the Initial Decision of the ALJ, the subsequent pleadings filed by the parties as noted above, and the designated portions of the hearing record. The Hearing Panel also heard oral argument by the parties. Present during oral argument and deliberation was Conflicts Counsel from the Office of the Attorney General.

After due consideration of the record, including mitigating factors, and otherwise being fully advised in the premises, the Hearing Panel pursuant to Sections 12-36-118(5)(g)(III) and 24-4-105, C.R.S., makes the following FINDINGS AND CONCLUSIONS:

1. The ALJ's Findings of Fact are supported by the record and are affirmed and adopted by the Hearing Panel.

2. Respondent's Exceptions to the Initial Decision are not supported by the record and are rejected by the Hearing Panel.

3. The Hearing Panel reviewed Petitioner Inquiry Panel A's Exceptions to the Initial Decision of the ALJ and finds as follows:

a) Respondent's diagnosis and treatment of thyroid disease in numerous patients constituted conduct which fell below generally accepted standards of medical practice because Respondent administered a thyroid hormone without adequate justification and without adequate monitoring of thyroid function.

b) Respondent's use of desiccated thyroid for thyroid replacement therapy did not constitute conduct which fell below generally accepted standards of medical practice. The Hearing Panel's findings regarding the use of desiccated thyroid are specifically limited to the facts set forth in this case.

c) Respondent's administration of an adrenal cortex injection fell below generally accepted standards of medical practice because he administered that substance without medical justification.

4. The Hearing Panel found the ALJ's Conclusions of Law, paragraphs 1, 2, 3, 4B, 4E, 4F, 4G, 4H, 4I, 4J, and 5 were supported by the record and are affirmed and adopted by the Hearing Panel.

5. The Hearing Panel rejects the ALJ's Conclusions of Law as set forth in paragraph 4A, 4C, and 4D.

Respondent argues that the ALJ did not believe the violations proved at hearing warranted revocation or suspension of his license. Further, Respondent argues that his continued practice is not incompatible with public protection. Respondent expressed his remorse for the harm he caused to patients and pointed out to the Hearing Panel that he did self-report these incidents to the proper authorities. Finally, Respondent argued that the prior disciplinary actions taken by the Air Force and the Ohio Medical Board were thirteen years ago and resulted from isolated incidents. Thus, Respondent believes the sanction recommended by the ALJ is more than adequate to ensure public protection.

Petitioner Inquiry Panel A argues that Respondent has demonstrated a continued and disturbing pattern of substandard medical practice in his career as evidenced by the past disciplinary actions taken by the Ohio Medical Board and the United States Air Force. Further, Petitioner Inquiry Panel A argues that Respondent's

unprofessional conduct is long-standing and pervades many areas of his medical practice. Finally, Petitioner Inquiry Panel A argues that Respondent has shown no remorse or contrition for his actions; thus, the current findings of the ALJ, aggravated by past disciplinary actions, warrant revocation by the Hearing Panel.

The Hearing Panel was not entirely persuaded by either the Inquiry Panel's or the Respondent's arguments. The Hearing Panel has considered the sanction recommended by the ALJ and his rationale for it. However, the Hearing Panel rejects the ALJ's recommended sanction as insufficient to protect the public welfare and safety.

THEREFORE, IT IS ORDERED that the license to practice medicine in the State of Colorado of Jonathan W. Singer, D.O., shall be subject to the terms and restrictions set forth below.

SUSPENSION OF PRACTICE

1. Respondent's license to practice medicine in Colorado is hereby suspended for a period of 30 days. Said suspension shall commence on May 3, 1999. During the period of suspension, Respondent shall perform no act defined as the practice of medicine in Section 12-36-106, C.R.S. This prohibition from practicing medicine shall apply irrespective of Respondent's location. Respondent may not practice medicine under the authority of his license issued by any other medical licensing board during the period of suspension.

PROBATIONARY TERMS

2. Following the 30 day suspension, Respondent's license to practice medicine is hereby placed on probation for five years. During the probationary period, Respondent will be bound by the terms and restrictions set forth below.

PRACTICE RESTRICTION

3. Respondent is permanently restricted from providing any type of hormone replacement therapy to patients. Respondent may petition the monitoring panel to rescind this restriction. The decision to rescind the practice restriction shall be at the sole discretion of the monitoring panel. The monitoring panel may only rescind the restriction if Respondent first establishes to the satisfaction of the monitoring panel that he is fully educated and proficient in evaluating and treating conditions requiring hormone replacement therapy and in administration of hormone replacement medications.

PRACTICE MONITORING

4. During the probationary period, Respondent's medical practice shall be monitored by a "practice monitor." Within 30 days of the date of this Order, the Respondent shall nominate, in writing, a proposed practice monitor for the monitoring panel's approval. The nominee shall be a physician licensed by the Board and currently practicing medicine in Colorado. The nominee shall have no financial interest in Respondent's practice of medicine. The nominee must be knowledgeable in Respondent's area of practice. If Respondent is board certified in an area of practice, it is preferred, but not required, that the nominee be board certified by that same

board. If the Respondent has privileges at hospitals, it is preferred, but not required, that the nominee have privileges at as many of those same hospitals as possible. The nominee shall not have been disciplined by the Board.

5. Respondent's nomination for practice monitor shall set forth how the nominee meets the above criteria. With the written nomination, Respondent shall submit a letter signed by the nominee as well as a current curriculum vitae of the nominee. The letter from the nominee shall contain a statement from the nominee indicating that the nominee has read this Order and understands and agrees to perform the obligations set forth herein. The nominee must also state that the nominee can be fair and impartial in the review of the Respondent's practice.

6. Upon approval by the monitoring panel, the practice monitor shall perform the following:

- a) Each month, the practice monitor shall visit all the offices at which Respondent practices medicine, and review at least five charts maintained by Respondent. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Respondent as the practice monitor deems appropriate.
- b) Each month, the practice monitor shall review at least five hospital charts of patients whom Respondent has admitted to hospitals. If Respondent has admitted fewer than five patients, the practice monitor shall review all the patients so admitted, if any. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other hospital charts as the practice monitor deems appropriate.
- c) The practice monitor shall submit quarterly written reports to the monitoring panel.
- d) The practice monitor's reports shall include the following:
 - i. a description of each of the cases reviewed; and
 - ii. as to each case reviewed, the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice.

7. If at any time the practice monitor believes Respondent is not in compliance with this Order, is unable to practice with skill and with safety to patients or has otherwise committed unprofessional conduct as defined in 12-36-117(1), C.R.S., the practice monitor shall immediately inform the monitoring panel.

8. It is the responsibility of the Respondent to assure that the practice monitor's reports are timely and complete. Failure of the practice monitor to perform the duties set forth above may result in a notice from the Board staff requiring the nomination of a new practice monitor. Upon such notification, Respondent shall nominate a new practice monitor according to the procedure set forth above. Respondent shall nominate the new monitor within 30 days of such notice. Failure to nominate a new monitor within 30 days of such notification shall constitute a violation of this Order.

CPEP LEARNING PLAN

9. Within 30 days of the date of this Order, Respondent shall contact Colorado Personalized Education for Physicians ("CPEP") for the purposes of an assessment. Respondent shall complete and sign the written assessment within 90 days of the effective date of this Order. Respondent shall fully cooperate with CPEP in the completion of a written learning plan and shall sign the written learning plan within 180 days of the effective date of this Order. Respondent shall cause CPEP to send a copy of the signed, written learning plan to the monitoring panel. Respondent shall successfully complete the educational activities set out in the learning plan, including any final evaluation, within the time set out by CPEP, but in no event more than two years from the effective date of this Order. All instructions made by CPEP shall constitute terms of this Order, and shall be complied with within the time periods set out by CPEP.

10. Upon successful completion of the learning plan, including any final assessment, Respondent shall provide the Panel with written proof from CPEP of such successful completion.

OUT OF STATE PRACTICE

11. Respondent may wish to leave Colorado and practice in another state. At any time, whether to practice out of state, or for any other reason, Respondent may request that the Board place Respondent's license on inactive status as set forth in 12-36-137, C.R.S. Upon the approval of such request, Respondent may cease to comply with practice monitoring only. Failure to comply with practice monitoring while inactive shall not constitute a violation of this Order. While inactive, Respondent must comply with all other provisions of this Order. Unless Respondent's license is inactive, Respondent must comply with the practice monitoring provision, irrespective of Respondent's location. The probationary period will be tolled for any period of time Respondent's license is inactive.

12. Respondent may resume the active practice of medicine at any time as set forth in 12-36-137(5), C.R.S. With such request, Respondent shall nominate a practice monitor as provided above. Respondent shall be permitted to resume the active practice of medicine only after approval of the practice monitor.

TERMINATION OF PROBATION

13. Upon the expiration of the probationary period, Respondent may request restoration of Respondent's license to unrestricted status. If Respondent has complied with the terms of probation, and if Respondent's probationary period has not been

tolled, such release shall be granted by the monitoring panel in the form of written notice.

OTHER TERMS

14. All costs and expenses incurred by Respondent to comply with this Order shall be the sole responsibility of Respondent, and shall in no way be the obligation of the Board or Panel.

15. Respondent shall obey all state and federal laws during the probationary period.

16. So that the Board may notify hospitals of this agreement pursuant to 12-36-118(13), C.R.S., Respondent shall report to the Board in writing within 20 days of the date of this Order any hospitals where he presently holds privileges.


17. This Order shall be admissible as evidence at any future hearing before the Board.

18. During the pendency of any action arising out of this Order, the obligations of the parties shall be deemed to be in full force and effect and shall not be tolled.

The decision becomes final upon mailing. Any party adversely affected or aggrieved by any agency action may commence an action for judicial review before the Court of Appeals within 45 days after such action becomes effective. Reference Section 24-4-106(11) and 12-36-119, C.R.S.

Dated and signed this 22nd day of April, 1999.

FOR THE COLORADO STATE BOARD OF MEDICAL EXAMINERS
HEARING PANEL B



Member



Member



Member



Member



Member

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

APR 1 1998

CASE NO. ME 96-30

STATE OF COLORADO

INITIAL DECISION

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF JONATHAN W. SINGER, D.O., LICENSE NO. 29309,

Respondent.

Hearing in this matter was held before Administrative Law Judge Marshall A. Snider on September 15-19, 1997, October 24, 1997, November 17-19, 1997, and February 4-6, 1998. Inquiry Panel A of the Colorado State Board of Medical Examiners ("the Panel") was represented by Matthew E. Norwood, First Assistant Attorney General. The Respondent was present at the hearing and was represented by Gary Lozow, Esq. and Donald R. Zelkind, M.D., Esq.

The issues to be determined are as follows:

1. Whether the Respondent's diagnosis and treatment of thyroid disease in numerous patients constituted conduct which fell below generally accepted standards of medical practice because the Respondent administered thyroid hormone without adequate justification and without adequate monitoring of thyroid function?
2. Whether the Respondent's use of desiccated thyroid for thyroid replacement therapy constituted conduct which fell below generally accepted standards of medical practice?
3. With regard to Patient J.B.-1, whether the Respondent formed diagnoses which were unjustified by clinical data or were not properly evaluated and treated, in violation of generally accepted standards of medical practice?
4. With regard to Patient J.B.-1, whether the Respondent dispensed thyroid medication in a container which did not reflect the strength of the medication or an expiration date, in violation of generally accepted standards of medical practice?
5. Whether the Respondent failed to meet generally accepted standards of medical practice by dispensing medications beyond their expiration date and by

repackaging expired medications in new containers which did not reveal the expiration date?

6. Whether the Respondent's administration of an adrenal cortex injection fell below generally accepted standards of medical practice because he administered that substance without medical justification?²

7. Whether the Respondent failed to meet generally accepted standards of medical practice by administering adrenal cortex injections which lacked adequate guarantees of safety such as lot numbers, date of manufacture and distribution through a reputable supplier?

8. In the treatment of several patients for abscesses caused by a contaminated lot of adrenal cortex injection, whether the Respondent failed to meet generally accepted standards of medical practice by failing to perform one or more standard treatment steps, by failing to treat the abscesses with two antibiotics, and by failing to refer the patients to another practitioner for appropriate antibiotic therapy?

9. Whether the Respondent failed to meet generally accepted standards of medical practice in the treatment of patient S.S.-2 by diagnosing a magnesium deficiency without clinical justification?

10. Whether the Respondent failed to meet generally accepted standards of medical practice in the treatment of patient L.T.M. by prescribing hormone medication for the patient's lack of libido without clinical justification and without an adequate physical examination and evaluation?

The record of this case was held open for the submission of legal memoranda, which were received by February 26, 1998. The Administrative Law Judge issues this Initial Decision pursuant to Section 24-4-105 (14)(a), C.R.S. (1997) and Section 12-36-118(1)(c), C.R.S. (1997).

FINDINGS OF FACT

1. The Respondent was licensed to practice medicine in Colorado on January 19, 1989, and has been continuously licensed since that date.

2. The Respondent is a family practice physician and maintains offices in Greenwood Village, Colorado, and Cheyenne, Wyoming. The vast majority of the Respondent's patients at the Greenwood Village office (90% or more) were treated by the Respondent for obesity. Although the Respondent treated some patients in this office for other conditions, all of the patients involved in the present proceeding are patients who came to the Respondent for the purpose of losing weight.

3. The Respondent has a general family practice which emphasizes alternative methods of treatment which are not commonly utilized in mainstream or conventional family practice. These methods include a heavy reliance on nutrition, exercise, dietary changes, glandular therapies and other modalities. The Respondent also utilizes traditional methods of treatment commonly utilized by family practitioners, and picks and chooses between the available traditional and alternative methods of treatment as he considers appropriate to each case.

4. The Respondent considers himself to be a practitioner of alternative medicine. Alternative medicine involves the use of treatment modalities not commonly utilized or taught in medical schools but which can be effective and risk free. Alternative medicine is not a separate school, field, specialty or subspecialty of the practice of medicine.

DIAGNOSIS OF HYPOTHYROIDISM

5. The human body requires a sufficient amount of thyroid hormone for the body to function normally. Thyroid hormone is produced by the thyroid gland. Hypothyroidism is a condition in which the thyroid gland produces an amount of thyroid hormone which is not sufficient to meet the usual needs of the body.

6. One laboratory test which is used as an indicator of whether a patient suffers from hypothyroidism is a test of the level of thyroid stimulating hormone ("TSH") in the blood. TSH is produced by the pituitary gland. If the thyroid gland is not producing sufficient amounts of thyroid hormone to meet the needs of the body, the brain sends a signal to the pituitary gland which communicates to the pituitary gland the body's need for more thyroid hormone. The pituitary gland will produce an increased amount of TSH in response to this signal, and the thyroid gland produces more thyroid hormone in response to the increased level of TSH. Thus, if the thyroid gland is not producing sufficient amounts of thyroid hormone (hypothyroidism), the level of TSH in the blood will be elevated.

7. The majority of family physicians consider the TSH test to be the definitive factor in diagnosing hypothyroidism. These physicians consider the patient's clinical presentation (signs and symptoms of hypothyroidism) as an indicator of the need to run the TSH test. The TSH test, however, establishes the diagnosis. If the TSH level is elevated beyond the statistically established laboratory values of a "normal" range, most physicians will diagnose hypothyroidism.³ If the TSH level is within the normal range established by the laboratory, the majority of physicians will not diagnosis hypothyroidism.

8. The TSH test is recognized in the literature of internal medicine as the most useful measurement of hypothyroidism.

9. Practitioners of alternative medicine such as the Respondent take into account the results of the TSH test in diagnosing hypothyroidism, but do not consider that test to be definitive. The Respondent and other practitioners adhering to this view consider the patient's clinical picture to be more important and more reliable than the TSH test and consider the exercise of their clinical judgment and experience to be the most important tool in making a diagnosis. If a patient exhibits signs and symptoms of hypothyroidism practitioners of this school of thought will use a trial of thyroid medication to treat the signs and symptoms, regardless of the results of the TSH test. These practitioners clinically assess the results of the trial of thyroid medication to determine whether the patient is responding to that trial. If the trial of thyroid medication does not relieve the signs and symptoms of hypothyroidism the use of thyroid medication will be discontinued.

10. The Respondent and some other physicians believe that a patient may exhibit signs and symptoms of hypothyroidism for reasons which may not accurately be reflected by a TSH test. For example, one hypothesis is that although an appropriate amount of thyroid hormone is produced by the thyroid gland (resulting in a normal TSH level), the thyroid hormone for some reason fails to act properly on cells and tissues. Thus, a patient could have a normal TSH level but still be hypothyroid. There is no scientific proof that this or similar hypothetical scenarios occur in the human body. However, the Respondent and other physicians believe that such possibilities may explain why patients with signs and symptoms of hypothyroidism will respond positively to a trial of thyroid hormone even if their TSH level is normal.

11. The signs and symptoms of hypothyroidism which are considered by the Respondent and other practitioners who choose to treat these symptoms include fatigue, depression, dry skin, constipation, cold hands and feet, hair loss, high cholesterol, menstrual disorder, low body temperature and a delayed Achilles tendon reflex.

12. The above signs and symptoms can be indicative of other conditions. Patients may exhibit some of these signs and symptoms and not be hypothyroid.

13. There is limited support in the literature for the Respondent's approach to diagnosing hypothyroidism. The literature which does support the Respondent's approach is outside of the medical mainstream and most physicians disagree with this view. However, some mainstream physicians agree that the TSH test is not the definitive test to diagnose hypothyroidism.

14. The expert witnesses for the Panel testified that diagnosing hypothyroidism and providing thyroid replacement medication to patients on the basis of a history and physical examination, but in the face of a low or normal TSH test result, was conduct which fell below generally accepted standards of medical practice. The Respondent's experts disagreed and testified that diagnosing

hypothyroidism on the basis of clinical judgment, despite a low or normal TSH test, is an approach which is reasonable, safe and frequently effective. The Administrative Law Judge finds that the diagnosis of the need for thyroid replacement therapy on the basis of clinical judgment is in fact an approach which is reasonable, safe and frequently effective.

15. The evidence did not establish that diagnosing hypothyroidism on the basis of the Respondent's clinical judgment, as opposed to reliance on the results of a TSH test, was unsafe or ineffective as to any of the patients at issue in this case, and the Administrative Law Judge so finds.

16. With the exception of patient S.S.-1 there was no evidence that any of the Respondent's patients who received thyroid replacement medication experienced signs or symptoms indicative of excessive thyroid hormone. None of the Respondent's patients demonstrated irregular pulses. Two patients had increased pulse rates on specific patient visits. However, this finding did not constitute the consistent elevation of the pulse which would indicate a need to adjust the thyroid dose or take a patient off of thyroid medication.

17. Patient S.S.-1 was the only patient of the Respondent's who exhibited physical signs of excessive thyroid ("hyperthyroidism"). This patient had an elevated pulse rate of 108 on April 12, 1996. The patient took an asthma medication on that day, and that medication can elevate the pulse rate. On August 26, 1996, this patient had a pulse of 126. The patient's pulse was much lower on her two visits between April and August.

18. Patient S.S.-1 had a long history of receipt of thyroid replacement medication from the Respondent's predecessor physicians in this practice, Drs. Starks and Ewing. The Respondent continued this patient on thyroid and reduced the dosage from 6 grains to 5 grains of desiccated thyroid on August 25, 1996 (the patient's prior physicians had her on 8 to 12 grains).

19. The high pulse readings for Patient S.S.-1 were the only readings of any patient of the Respondent's in excess of 100 at any time.⁴

20. There was no evidence that any of the Respondent's patients suffered harm as a result of the Respondent's diagnosis or treatment related to thyroid administration.⁵

21. The dispensing of thyroid medication to an obese patient who exhibits no other indications of hypothyroidism falls below generally accepted standards of medical practice.

22. One result of treating patients with thyroid medication on the basis of a finding that the patients have symptoms reflective of a low thyroid level is that the

patients may be able to lose weight. However, the Respondent did not treat patients with thyroid medication solely for the purpose of weight loss. Rather, the Respondent treated an underlying condition, and one consequence of that treatment might be weight loss.

23. The Respondent dispensed thyroid hormone replacement medication to thirteen patients, even though they initially presented to the Respondent with normal or low TSH test results. These patients are identified by their initials as patients C.T., J.B.-2, S.C., S.Y.G., S.T.G., S.K., S.S.-1, S.P., M.S., S.S.-2, L.T.M., J.B.-1, and F.G. Each of these patients demonstrated or complained of multiple signs and symptoms of hypothyroidism.

24. The Respondent performed a complete physical examination on every new patient involved in this case. He did not do so for patients who were already placed on thyroid medication by Dr. Ewing, the former owner of the Greenwood Village practice.

25. The Respondent's conduct in diagnosing the need for thyroid replacement therapy on the basis of a history and physical examination, despite the existence of a TSH test within the low or normal ranges, does not fail to meet generally accepted standards of medical practice. See Discussion, Part I, *infra* at pages 21-23.

TREATMENT OF HYPOTHYROIDISM

26. The thyroid gland produces hormones known as T-4 hormone and T-3 hormone. Levothyroxin is a generic product containing synthetic T-4 hormone. Synthroid is a frequently used brand name levothyroxin product.

27. The vast majority of physicians treat hypothyroidism by prescribing levothyroxin. A few practitioners use desiccated thyroid products for thyroid hormone replacement, rather than synthetic products such as Synthroid. Desiccated thyroid is manufactured from the thyroid glands of animals. Desiccated thyroid contains T-3, T-4 and other components.

28. The use of desiccated thyroid by physicians has declined substantially over the past thirty years. Nevertheless, desiccated thyroid is still on the market, is used by physicians, and is approved by the United States Food and Drug Administration ("FDA").

29. The majority of the medical literature identifies synthetic thyroid hormone as preferable to desiccated thyroid hormone. The major criticism of desiccated thyroid hormone is that it is too variable and unreliable in its delivery of T-3 hormone. The unstable blood levels of T-3 associated with this product have been shown to cause side effects, including periods of hyperthyroidism. In addition, the absorption

level of desiccated thyroid is more variable from one dose to the next than is the case with levothyroxin. Because of this variability and absence of reliability, synthetic products are generally considered to be safer than desiccated thyroid preparations.

30. The medical literature in evidence varies in its recommendations regarding desiccated thyroid. One manual states that desiccated animal thyroid preparations are too variable in potency to be reliable and should be avoided. The authors of another text, which also is recognized as an authoritative text on internal medicine, prefer synthetic preparations because of their uniform potency. However, these authors do not recommend avoiding desiccated thyroid except in the cases of elderly patients or those with heart disease.

31. The Respondent and some other physicians prefer desiccated thyroid to synthetic thyroid. These physicians believe it is better to use a natural product than a synthetic product. Anecdotal evidence among these physicians, including the Respondent and other physicians who have used desiccated thyroid products extensively, is that a substantial number of patients obtain a better result using desiccated thyroid.

32. The Respondent uses Synthroid with a limited number of patients and considers desiccated thyroid to be one choice among many for patients who exhibit symptoms of hypothyroidism or similar problems. If a patient does not respond to desiccated thyroid products the Respondent will reevaluate whether to use desiccated thyroid, whether to adjust the dose, whether a different treatment is needed or whether there is some other medical problem present. The Respondent believes that desiccated thyroid is safe when used in this fashion.

33. Excessive use of desiccated thyroid can result in a risk of heart arrhythmias, particularly atrial fibrillation (which is indicated by an irregular heartbeat, palpitations or a fluttering in the chest). Cardiac arrhythmias are not a significant risk if correct doses of thyroid medication are administered. In the event that a patient experiences atrial fibrillation, the dose of thyroid medication can be adjusted.

34. There is no documentation or evidence that any of the Respondent's patients experienced atrial fibrillation. Although the Respondent did not document heart examinations after the initial patient visit, whether a patient has atrial fibrillation can be determined by taking the pulse. The Respondent routinely measured pulse rates in follow-up visits.

35. There was no evidence that any patient involved in this case was harmed by the use of desiccated thyroid, and the Administrative Law Judge so finds.

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36. The Panel's evidence was that the use of desiccated thyroid product was in and of itself below generally accepted standards of medical practice. There was no evidence that the Respondent's use of this preparation was below generally accepted standards of medical practice as applied to any specific patient.

37. The evidence did not establish that the Respondent's use of desiccated thyroid products for the patients involved in this case was unreasonable. The Respondent's conduct in treating these patients with desiccated thyroid therefore did not fail to meet generally accepted standards of medical practice. See Discussion, Part II, *infra* at pages 23-24.

38. The vast majority of physicians who provide hormone replacement therapy administer levothyroxin for 6-8 weeks, then remeasure the TSH level and adjust the T-4 dosage. This process is repeated each 6-8 weeks until the TSH level is stable and within normal limits. The TSH level would then be rechecked every 3-4 months and, if no problems are seen, rechecked every one to two years thereafter.

39. The Respondent routinely saw patients on thyroid replacement therapy on a monthly basis. Some patient visits were less frequent, with gaps of between two and four months between visits. The Respondent checked the TSH levels of these patients on an annual basis.

40. At each visit the Respondent had patients fill out a form in which the patients could identify any problems they had had since the last visit, including problems with medications. In addition, the Respondent discussed with his patients their status since the last visit and whether they had experienced any problems. During these discussions the Respondent specifically inquired about whether a patient had experienced any side effects of thyroid replacement therapy such as anxiety, chest pain, palpitations, insomnia, sweats and diarrhea. The Respondent used this process to monitor patients for the risks and benefits of his use of thyroid medication and would adjust the dose of thyroid medication or discontinue its use as warranted. The Respondent submitted blood for laboratory tests annually, but did not take interim blood tests unless a patient exhibited signs and symptoms related to thyroid medication.

41. The Respondent's monitoring of his patients on thyroid replacement medication did not fall below generally accepted standards of medical practice. The Panel's evidence that the Respondent failed to monitor thyroid levels was based on the premise that the TSH test is the only proper method of monitoring. The Administrative Law Judge has found, however, that the Respondent may assess the need for thyroid medication on the basis of clinical judgment as well as the TSH test. See Findings of Fact, Paragraph 25. The Respondent monitored his patients regularly for side effects of thyroid medication and was in a position to adjust dosages as needed. The Administrative Law Judge therefore finds that the Respondent has met generally accepted standards of medical practice in this regard.

ADRENAL CORTEX INJECTIONS

42. The Respondent gave numerous weight loss patients regular injections of a substance which the Respondent believed to be Adrenal Cortex Extract ("ACE"). ACE is an extract of the adrenal cortex of animals. ACE is a natural product containing animal hormones which are identical to human hormones.

43. The Respondent gave these injections to assist patients in their weight loss program. In the Respondent's experience, patients who are on a diet have a salt craving and if they eat salty foods they will have difficulty losing weight. Adrenal cortex hormones can reduce salt craving and also treat the low blood pressure which some of these patients experience. The Respondent also used adrenal cortex for depression, weakness and fatigue.

44. The Respondent did not run diagnostic tests to determine if the patients to whom he gave adrenal cortex suffered from adrenal cortex insufficiency. Adrenal cortex insufficiency involves a major failure of adrenal functions. The Respondent used adrenal cortex injections to treat weak, as opposed to pronounced, insufficiencies in adrenal function.

45. The Respondent used a trial of adrenal cortex injectable to determine if that substance would have any effect on salt craving, weakness, low blood pressure, fatigue or other conditions for which he used adrenal cortex. If no effect was noted the Respondent would discontinue the use of adrenal cortex injections. In this fashion the Respondent allowed the outcome to determine the treatment.

46. Several patients developed abscesses at the site of the adrenal cortex injections. These abscesses were caused by a contaminated lot of the injected substance. The Respondent was unaware of and had no way of knowing of the contamination.

47. During the investigation of the cause of the abscesses a determination was made that the substance the Respondent injected was not the ACE the Respondent thought he was giving, but was hydrocortisone in water. Hydrocortisone is identical to the natural product of cortisol which is contained in ACE. However, the product used by the Respondent did not contain the additional natural ingredients which are contained in ACE. There is little difference between ACE and the hydrocortisone injection the Respondent actually used.

48. Adrenal cortex extract is available for purchase over the counter as a dietary supplement. This substance can be marketed without regulation by the United States Food and Drug Administration ("the FDA"), as long as the manufacturer does not make claims on the product label that the substance can be used for the treatment of disease. E-100 UAM

49. Hydrocortisone is used by some conventional medical practitioners and by a larger number of alternative medicine practitioners. At the low doses used by the Respondent (an average of 1 cc per injection), injecting hydrocortisone does not pose a risk to the patient unless, as in this case, the product is contaminated. Such contamination is a very rare occurrence.⁶

50. The Respondent's use of adrenal cortex injectable did not fail to meet generally accepted standards of medical practice. The Respondent's use of this substance was objectively reasonable.⁷ The Panel's experts were critical of the Respondent's use of adrenal cortex because the Respondent failed to conduct diagnostic tests to determine the existence of adrenal cortex insufficiency, and because the amount of adrenal cortex injectable used by the Respondent was not adequate to treat adrenal insufficiency. However, the Respondent was not attempting to identify or treat adrenal insufficiency. Rather, he used a trial of very small amounts of a safe and readily available product to determine if some improvement would occur in conditions which may have related to a mild weakness in adrenal function. This trial was based upon the Respondent's experience that such benefits might result. Considering the possible benefits and the low risk of harm from this treatment, the Respondent's use of adrenal cortex preparations was reasonable and did not fail to meet generally accepted standards of medical practice.

51. The contaminated batch of adrenal cortex injectable used by the Respondent was contained in vials which did not have labels reflecting the lot numbers or expiration dates of the contents. Prior to receipt of these contaminated vials, the containers of this substance provided to the Respondent by his supplier were properly labeled.

52. The Respondent generally did not administer injections of adrenal cortex. Rather, his staff usually gave patients these injections. The Respondent did not inspect the contaminated vials until after the abscesses arose and the Respondent investigated the cause of the abscesses. There was no evidence that generally accepted standards of medical practice required the Respondent to personally inspect the vials prior to his staff's administration of the substance to patients.

53. The evidence did not establish that the supplier of the adrenal cortex injectable, Phyne Pharmaceuticals, was not a reputable supplier. Further, the evidence did not establish that the Respondent should have known prior to this incident that Phyne was not reputable. The Respondent had no problems with Phyne products prior to the incidents in this case. In addition, the Panel's evidence that the Respondent had previously been notified by his staff of negative information regarding Phyne is not credible. Judy Lenius, a former staff member, testified that while employed by the Respondent she advised the Respondent of a report made to her by Chris Jones, a pharmaceutical company representative, that Phyne was not a reputable supplier. However, Lenius left the Respondent's employ under

unpleasant circumstances and admits that she does not like the Respondent. In addition, Jones testified that he made no disparaging comments to Lenius regarding Phyne and, in fact, that he never discussed Phyne with Lenius until after she had left the Respondent's employ. The Administrative Law Judge finds that Lenius' testimony in this regard is not credible.

54. The Respondent did not fail to meet generally accepted standards of medical practice by administering adrenal cortex injectables which lacked adequate guarantees of safety. The Panel's expert witness testified that the Respondent failed to meet generally accepted standards of medical practice in this regard because the adrenal cortex injectable was not approved by the FDA and the vials failed to contain lot numbers or expirations dates.⁹ However, the FDA does not regulate this substance (Findings of Fact, Paragraph 48). Further, although the Respondent acknowledges that these vials did not have lot numbers or expiration dates, the Panel presented no evidence that the Respondent was under a duty to personally inspect the vials prior to his staff's administration of the substance to patients.

55. The Respondent's patients who received injections of adrenal cortex began presenting with abscesses in late April and early May, 1996. The Respondent did not immediately associate the abscesses with the injections, but he did so by July, 1996.

56. On July 29, 1996, the Respondent reported to the FDA and the Colorado Department of Public Health and Environment the fact that he had seen numerous patients with abscesses which he associated with the injection of an adrenal cortex product. The Colorado Department of Public Health and Environment began an investigation which eventually also involved the FDA and the United States Centers for Disease Control and Prevention ("CDC").

57. The investigation disclosed that the adrenal cortex product injected by the Respondent was contaminated with an organism identified as *Mycobacterium abscessus*.

58. On August 23, 1996, the CDC issued its weekly report known as the Morbidity and Mortality Weekly Report ("MMWR"), which included a discussion of the circumstances of the infections experienced by the Respondent's patients and an advisement of the means of treating the *Mycobacterium abscessus* infections.

59. The MMWR advised physicians that *Mycobacterium abscessus* was susceptible to treatment with various antibiotics, including clarithromycin (Biaxin).

60. The MMWR advised physicians that because treatment of *Mycobacterium abscessus* with one antibiotic had been shown to contribute to the development of resistance of the organism to the antibiotic utilized, at least two

antibiotics should be used in the treatment. The Respondent saw a draft of the MMWR containing this information prior to its issuance and was aware of this advice once the MMWR was issued.

61. The Respondent had been treating some patients for *Mycobacterium abscessus* infections with a single antibiotic, clarithromycin (Biaxin), before the MMWR was prepared. Once the MMWR was released the Respondent did not follow the advisement in the MMWR to use two antibiotics in the treatment of these infections. The Respondent treated his patients with this single antibiotic even after he knew of the CDC advisement.

62. The abscesses involved in this case were all mild in their presentation. The abscesses were localized, the tissue surrounding the injury was not hard or red, the size of the abscesses (dime to quarter sized) was not alarming, and the patients were not ill apart from tenderness at the site of the abscess. The Respondent therefore decided to treat the abscesses conservatively. In many cases the Respondent monitored the patient without actively treating the abscess and the abscesses healed spontaneously. If he determined it was necessary the Respondent would incise or drain the abscesses and treat the patients with Biaxin. The Respondent was aware that Biaxin had tested in the laboratory as a drug which was effective against *Mycobacterium abscessus*. The Respondent conferred with infectious disease specialists in developing his treatment plan.

63. On February 6, 1997, the CDC issued a revised fact sheet regarding treatment of *Mycobacterium abscessus*. In this fact sheet the CDC recommended the use of two antibiotics only in cases in which the infection is disseminated or when the patient is mycobacteremic. An infection is disseminated when it has spread to other organs or other parts of the body. A patient is mycobacteremic if the organism is found in the bloodstream. According to the revised fact sheet, clarithromycin used as a single agent is recommended if the infection is localized.

64. None of the patients involved in this case were mycobacteremic and the infection was not disseminated in any of these patients. In all cases the infections were localized.⁹

65. The Respondent's treatment of the abscesses in this case was not conduct which fell below generally accepted standards of medical practice. The Administrative Law Judge bases this finding on the following considerations, among others:

A. The testimony of Dr. Richard Wallace that the Respondent's treatment of the abscesses was reasonable and within generally accepted standards of medical practice was credible and persuasive. Dr. Wallace is recognized as one of the nation's most knowledgeable experts in the treatment of *Mycobacterium*

abscessus. The single antibiotic treatment utilized by the Respondent is consistent with both Dr. Wallace's opinion of the appropriate and reasonable treatment and with the revised CDC recommendation.¹⁰

B. Abscesses caused by *Mycobacterium abscessus* do not involve a significant health risk to an otherwise healthy patient. The infection will often resolve over time without any treatment. In addition, Biaxin is the only oral antibiotic available to treat this infection. All of the other antibiotics must be administered intravenously. Intravenous administration of antibiotics is costly and involves risks and side effects not associated with the administration of an oral medication. It is therefore reasonable when considering the risks and benefits of a particular method of treating the mild infections present in the instant case for a practitioner to utilize a conservative approach, including the use of only an oral antibiotic.

C. The Panel's expert witnesses testified that the Respondent acted below the standard of care because he did not follow the CDC's original recommendation, contained in the MMWR, to treat these abscesses with dual antibiotic therapy. The MMWR did not by itself establish a standard of care. The Respondent did not arbitrarily ignore the MMWR, but engaged in a reasoned analysis of the extent of the abscesses and the risks and benefits of available methods of treating the infections. As it turned out, the Respondent was correct in his approach. The Respondent's treatment of these abscesses was objectively reasonable, and thus within generally accepted standards of medical practice.¹¹

66. The Respondent did not refer patients with these abscesses to an infectious disease specialist. Generally accepted standards of medical practice did not require referral to a specialist. The testimony of Dr. Wallace in this regard is credible and persuasive. Even though a *Mycobacterium abscessus* infection is rare, a family physician may treat that infection without referral to a specialist when, as here, the infection is not disseminated, the patient is otherwise healthy and the extent of the disease is limited.

67. The Respondent's patient charts contain inadequate documentation of his treatment of the abscesses. The Respondent made only general notations of his treatment. For example, the Respondent's notes were in several cases limited to a notation of only the following matters: the existence of an abscess; that he drained an abscess; that a patient was on Biaxin; or that an abscess was "healing well" (without any details of the healing process). The Respondent's documentation in many cases failed to note the size and location of the abscesses, the patients' subjective complaints, whether an abscess was drained, how an abscess was drained, what material was drained from the abscess, other treatment steps performed, and any follow-up plan.

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68. The Respondent's documentation as described in Paragraph 67 of the Findings of Fact constituted a failure to meet generally accepted standards of medical practice.

69. In making entries in patient records in the manner described in Paragraph 67 of the Findings of Fact the Respondent repeatedly failed to make essential entries on patient records.

70. The Respondent failed to document numerous steps in the treatment of the abscesses. Nevertheless, the evidence did not establish that the Respondent failed to take any treatment steps required by generally accepted standards of medical practice. The Panel has not proven that the Respondent violated generally accepted standards of medical practice with regard to any specific patient by not incising or draining an abscess when required by the standard of care, by not administering antibiotics in a timely fashion, by not taking cultures, or otherwise. The Administrative Law Judge finds that the Respondent did not fail to meet generally accepted standards of medical practice in these respects.

REPACKAGING AND DISPENSING EXPIRED MEDICATIONS

71. The Respondent purchased his Greenwood Village practice from Dr. Ewing, who had succeeded Dr. Starks in that practice. Drs. Ewing and Starks left quantities of expired medications in the office, which medications were present after the Respondent acquired the practice.

72. Judy Lenius was employed by Dr. Starks and then by Dr. Ewing. She continued to work for the Respondent until October, 1995, at which time she left the Respondent's employment.

73. Sherri Talkington worked for Dr. Ewing and then worked for the Respondent. She left the Respondent's employ in October, 1995.

74. Lenius and Talkington both sought unemployment compensation benefits after leaving the Respondent's office. In contested unemployment compensation hearings Lenius and Talkington maintained that they had been terminated and the Respondent claimed that they had voluntarily quit their jobs. The unemployment compensation referee ruled against both Lenius and Talkington and they were denied unemployment benefits.

75. After losing their unemployment insurance cases Lenius, Talkington and a third former employee of the Respondent reported to various authorities that prior to their leaving the Respondent's office the Respondent had dispensed medications

beyond the medications' expiration dates and had repackaged expired medications in new containers which did not reveal the expiration dates.

76. Talkington and Lenius testified that the Respondent had dispensed thyroid and phenobarbital from the stocks left over by Drs. Starks and Ewing beyond the medications' expiration dates and had repackaged expired medications in new containers which did not reveal the expiration dates. Their testimony was that the Respondent personally dispensed or repackaged these expired medications, or had instructed his staff to do so and was aware of the practice.

77. The Respondent acknowledges that on rare occasions he has authorized the dispensing of a recently expired medication in a container which did not reflect the expiration date, after the Respondent had determined that in each specific case the medication was still safe and effective. The Respondent denied the allegations of Talkington and Lenius that he authorized the repackaging and dispensing of expired medications on the routine basis described by these witnesses.¹²

78. The testimony of Talkington and Lenius regarding the Respondent's alleged misconduct in dispensing and repackaging expired medications was not corroborated by any other testimony or evidence. The Administrative Law Judge does not find the testimony of Lenius and Talkington to be credible and therefore finds that the Panel has not established that the Respondent routinely dispensed medications beyond the medications' expiration dates or repackaged expired medications in new containers which did not reveal the expiration dates. In making this finding regarding the credibility of the Panel's witnesses the Administrative Law Judge has considered the extensive evidence of the bias of these witnesses, including the following matters:

A. Lenius and Talkington have acknowledged that they do not like the Respondent. Lenius testified that she did not like the Respondent early on in her association with the Respondent. These witnesses also admit that they left the Respondent's employ on bad terms, in an acrimonious separation. Talkington admits to being angry at the Respondent over the loss of her employment.

B. Lenius and Talkington did not report the Respondent's allegedly improper activities to any authorities while working for the Respondent. They did not report this alleged misconduct of the Respondent until after they had lost their unemployment compensation cases. The timing of the disclosure of these facts by Lenius and Talkington, along with their admitted dislike of the Respondent and anger at losing their employment, support a finding that the testimony of these witnesses constitutes a recent fabrication designed to retaliate against the Respondent.

C. Talkington told an investigator for the Panel that she had been fired for refusing the Respondent's direction to repackage expired medications. At the unemployment compensation hearing (at which she claimed to have been fired)

Talkington never raised the issue that the Respondent repackaged expired medications. This fact is consistent with the conclusion that Talkington's testimony is a recent fabrication.

D. At the hearing in this case, Talkington denied having told the Panel's investigator that she had been fired for refusing the Respondent's direction to repackage expired medications. This inconsistency provides additional cause to question Talkington's veracity.

E. After her separation from employment Lenius sent a facsimile letter to the Respondent's office threatening to report misconduct by the Respondent to the media. This fact underscores Lenius' animosity toward and bias against the Respondent.

F. The Administrative Law Judge has found Lenius to be not credible on another factual issue in this case in which she accused the Respondent of serious misconduct (Findings of Fact, Paragraph 53). In that situation, Lenius' testimony was specifically contradicted by a disinterested witness.

79. The dispensing of expired medications under the occasional and limited circumstances described in Paragraph 77 of the Findings of Fact is not conduct which falls below generally accepted standards of medical practice.

PATIENT S.S.-2: DIAGNOSIS OF MAGNESIUM DEFICIENCY

80. The Respondent first saw Patient S.S.-2 on April 10, 1996. At that time the Respondent's staff entered a diagnosis of "hypomag" on the patient's chart for billing purposes. "Hypomag" refers to a magnesium deficiency of some sort. This term could refer to either hypomagnesemia (a low blood level of magnesium) or hypomagnesia (a low body level of magnesium).

81. The Respondent did not personally enter a diagnosis on this patient's chart regarding a magnesium deficiency. The Respondent is unable to state whether he diagnosed hypomagnesemia or whether his diagnosis was hypomagnesia.

82. A blood test run on Patient S.S.-2 on April 10 indicated that the patient's level of magnesium was within the normal range.

83. The history and physical for Patient S.S.-2 demonstrated none of the signs or symptoms of a magnesium deficiency such as fatigue, weakness, muscle cramps, depression or anxiety.

84. The Respondent diagnosed a magnesium deficiency because he believed that the level of magnesium revealed in the blood test was low, despite the fact that it was within the laboratory's normal reference range. Reference ranges are based upon a statistical average of the patients tested by a particular laboratory and the Respondent sometimes disagrees with a laboratory reference range based upon his experience.

85. The Respondent dispensed a small dose of an over-the-counter magnesium product to Patient S.S.-2. Diarrhea is a potential side effect of taking magnesium. However, at the small dose dispensed by the Respondent it is unlikely that the magnesium would harm the patient.

86. Neither clinical signs nor laboratory values suggested a magnesium deficiency in this patient. Accordingly, the Respondent's diagnosis of a magnesium deficiency in Patient S.S.-2 constituted conduct below generally accepted standards of medical practice. The fact that the magnesium product he dispensed may have been safe for the patient does not alter this finding. There are still potential side effects of providing such a product to the patient and the dispensing of magnesium in the absence of any indication was below standard.

**PATIENT L.T.M.
PRESCRIPTION OF HORMONE MEDICATION**

87. Patient L.T.M. was 32 years old in January, 1996, when she began treatment by the Respondent for weight loss. The patient had previously had one ovary removed and was in menopause. L.T.M. had hot flashes and erratic periods. It is likely that the removal of the one ovary caused premature menopause in this patient.

88. Patient L.T.M. complained of low libido (low sex drive) and advised the Respondent that she was menopausal. The Respondent treated this patient for low libido with hormonal replacement therapy consisting of a topical cream containing three hormones: triest, progesterone and testosterone.

89. The Respondent did not perform a gynecological examination on L.T.M. or any lab tests relative to her complaint of low libido.

90. Patient L.T.M. responded well to the Respondent's hormone treatment and has continued to use this hormonal replacement cream.

91. The Respondent treated the complaint of low libido on the assumption that the patient was menopausal. The Respondent determined that the patient was in menopause solely on the basis of the patient's report. The Administrative Law Judge finds credible and persuasive the testimony of the Panel's expert witness that

generally accepted standards of medical practice require that a physician have available the results of laboratory tests, the result of a physical examination or other evidence before diagnosing and treating a symptom of menopause. The Respondent's conclusory statement that no physical examination was necessary is unpersuasive. The Administrative Law Judge therefore finds that the treatment of Patient L.T.M. with hormonal replacement therapy was conduct which fell below generally accepted standards of medical practice.

**PATIENT J.B.-1
LABELING OF THYROID CONTAINER**

92. Patient J.B.-1 was involuntarily admitted to the psychiatric unit of a hospital on June 19, 1995. The patient was distraught because she believed that her husband had been unfaithful. The patient had written a note indicative of suicidal intent and was found sitting in a field with a loaded pistol. Patient J.B.-1 was hospitalized on a mental health hold from the local sheriff's department.

93. At the time of her hospitalization Patient J.B.-1 had in her possession a medication bottle labeled with the Respondent's name and address and containing desiccated thyroid pills. The label contained the word "thyroid" but reflected no expiration date and did not note either the strength or the dosage of the contents.

94. The packaging of the thyroid medication in the possession of Patient J.B.-1 on June 19, 1995, was not the same as the packaging dispensed by the Respondent. The Respondent distributed thyroid medication to Patient J.B.-1 in separate plastic packets. The patient's practice was to empty the packets into a bottle on her own, along with the labels from the plastic bags.

95. The Respondent did not dispense thyroid medication to this patient in an improperly labeled container. The evidence failed to establish that the individual plastic packages distributed to patient J.B.-1 were not marked with the strength or expiration date of the thyroid medication. These packages were not introduced into evidence. The physician who treated this patient in the hospital testified that there was no writing on the plastic bags found in the bottle. However, this physician saw the packaging only one time, more than two years prior to the hearing. Contrary to this physician's testimony, Patient J.B.-1 testified that the packages she received from the Respondent consistently were printed with the medication's strength and expiration date. In addition, the Respondent's staff testified that at some point in time prior to October, 1995, thyroid medication was dispensed to patients in packages containing the strength and expiration dates of the medication. Considering all of these facts the Administrative Law Judge finds that the Panel has failed to prove that the Respondent dispensed thyroid medication to J.B. in packages which did not reflect the strength of the medication or the expiration date.

96. The Respondent did not fail to meet generally accepted standards of medical practice by dispensing medication in a container which did not reflect the strength of the medication or the expiration date.

**PATIENT J.B.-1:
ADDITIONAL DIAGNOSES**

97. In response to a letter from the State Board of Medical Examiners regarding Patient J.B.-1 the Respondent stated that his primary diagnosis of this patient was obesity, possibly secondary to hypothyroidism. The Respondent added that "other diagnoses" included hypomagnesemia, edema, malabsorption and amenorrhea, among others.

98. In this letter to the Board the Respondent stated that the "other diagnoses" also included hair loss, leg cramps, constipation, insomnia, migraine headaches, fatigue and other conditions. These conditions were all reported to the Respondent by the patient.

99. The Respondent's chart of Patient J.B.-1 does not contain a record of the diagnoses set forth in Paragraphs 97 and 98 of the Findings of Fact, except as checked off by the patient on a list provided by the Respondent.

100. The Respondent's chart of Patient J.B.-1 does not reflect that the Respondent evaluated or treated any of these conditions (with the exception that the Respondent provided magnesium supplements to the patient).

101. Despite the Respondent's use of the word "diagnosis", the Respondent's references to matters such as hair loss, leg cramps, constipation, edema, insomnia, migraines and fatigue were not considered by the Respondent to be diagnoses of separate medical conditions. Rather, these matters were problems complained of by the patient which the Respondent was communicating to the Board as the reasons he dispensed thyroid medication to this patient.

102. The Respondent's reference in his letter to the Board to hypomagnesemia, edema, malabsorption and amenorrhea constituted diagnoses of medical conditions which were not charted, were not supported by the Respondent's records for this patient, and which were not reflected in the patient chart as having been evaluated or treated. This conduct by the Respondent fell below generally accepted standards of medical practice.

PRIOR DISCIPLINE AGAINST THE RESPONDENT

103. On March 16, 1990, the State Medical Board of Ohio ("the Ohio Board") imposed discipline on the Respondent's right to practice medicine in that

state. The Ohio Board revoked the Respondent's license to practice osteopathic medicine and surgery, but stayed the revocation and suspended his license for an indefinite period of time, the suspension to be no less than one year. The Respondent was permitted to reapply for reinstatement of his license after one year, provided that in the interim he passed an examination which assessed his clinical competency. Upon reinstatement, the Respondent was to be placed on probation for a period of five years.

104. The action of the Ohio Board was based upon evidence of substandard care and also upon statements made by the Respondent in completing two applications for renewal of his Ohio license. In his renewal application for 1987-88 the Respondent answered "no" to a question which asked if he had had any hospital privileges suspended or revoked since his last renewal. In the renewal application for 1989-90 the Respondent answered "no" to a question which asked if he had had any clinical privileges revoked or suspended since his last renewal, for reasons other than failure to maintain records or attend staff meetings.

105. The Respondent had entered the United States Air Force in 1984 and was granted provisional privileges to practice medicine at F.E. Warren Air Force Base in Cheyenne, Wyoming. On May 16, 1986, the credentials committee at Warren Air Force Base indefinitely suspended the Respondent's privileges on the grounds of substandard medical practice. The Respondent unsuccessfully challenged this action through several levels of appeal, culminating with a decision of the Air Force Surgeon General not to grant clinical privileges to the Respondent.

106. Of the ten cases reviewed in the Air Force proceedings only one involved issues similar to the allegations in the present case. In that case the Respondent diagnosed low thyroid and prescribed Synthroid for a patient without any physical or laboratory justification for doing so.

107. As reported by the Ohio Board's hearing examiner the Air Force determined that the Respondent had engaged in misconduct in nine of the ten cases, in the following respects:

- A. Making a false statement in a medical record;
- B. Improperly ordering unjustified mammograms in two cases;
- C. Diagnosis of low thyroid and prescription of Synthroid without physical or laboratory justifications.
- D. Inadequate documentation in two cases.
- E. Failure to obtain an EKG for a 54 year old male with shortness of breath and chest tightness, failing to provide nitroglycerine tablets for

this patient once the patient left the Respondent's office, and failure to expeditiously refer the patient to the internal medicine service.

F. Missed diagnosis of a pulmonary embolus in an emergency room patient. The Respondent failed to take an EKG and arterial blood gasses in a timely manner.

G. Excessive prescribing of Indocin for a patient with gout.

108. The Ohio Board's hearing examiner summarized the Air Force's findings as being that the Respondent was deficient in the performance and documentation of his clinical duties. According to the hearing examiner the Air Force concluded that the Respondent needed additional training, particularly in light of his reluctance to seek consultations and to follow given advice.

109. The Respondent argued before the Ohio Board that he did not falsely answer the questions on his renewal application because the Air Force had never granted him defined privileges at Warren Air Force Base, and therefore the Air Force could not have revoked any privileges. The Respondent argued that the Air Force merely declined to extend his provisional privileges to defined privileges.

110. The Ohio Board rejected the Respondent's argument, finding that the Air Force's action was the equivalent to suspension or revocation of the Respondent's existing provisional privileges. The Ohio Board concluded that the Respondent had engaged in fraud, misrepresentation or deception in applying for renewal of his Ohio license and had published a false, fraudulent, deceptive or misleading statement.¹³ The Ohio Board also concluded that the Respondent had his Air Force privileges revoked due to the Respondent's departure from minimal standards of care.

DISCUSSION

I. DIAGNOSIS OF HYPOTHYROID CONDITION

The Panel argues that the Respondent provided thyroid medication to patients solely for the purpose of weight loss. It is undisputed that such a use of thyroid medication is conduct which falls below generally accepted standards of medical practice. However, the Administrative Law Judge has found credible the Respondent's evidence that this medication was utilized to treat a diagnosed condition based upon the existence of signs and symptoms of hypothyroidism. The fact that the Respondent's medical practice at his Greenwood Village office was primarily directed to patients who consulted the Respondent for the purpose of weight loss does not compel a conclusion that every action taken by the Respondent was designed solely for the purpose of having his patients lose weight. There was no evidence that generally accepted standards of medical practice prohibit the

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Respondent from assessing and treating legitimately diagnosed medical conditions which may contribute to an inability to lose weight.

The identification of generally accepted standards of medical practice requires a determination of whether the conduct in question constitutes an objectively reasonable method of practice. *State Board of Medical Examiners v. McCroskey*, 880 P.2d 1188 (Colo. 1994). The evidence has established, and the Administrative Law Judge has found, that the Respondent's method of identifying patients who may benefit from a trial of thyroid replacement therapy is a reasonable, safe and frequently effective approach to the patients' presentations. There is no evidence that diagnosing hypothyroidism on this basis was unsafe or ineffective as to any of the patients at issue in this case or that any patient has been harmed by this approach.

The majority of family physicians base a diagnosis of a hypothyroid condition almost exclusively on the results of the TSH test. This approach is supported by the literature of conventional internal medicine. However, the fact that most physicians utilize a particular method of practice does not mean that all other methods of practice fall below the standard of care. A determination of what conduct falls within the standard of care can not be based solely upon a consideration of the number of practitioners who adhere to a particular method of practice. *State Board of Medical Examiners v. McCroskey, supra; United Blood Services v. Quintana*, 827 P.2d 509 (Colo. 1992). If the standard of care were established solely by the numbers of physicians who utilize a particular method, there would be no room in the practice of medicine for the exercise of a physician's independent analysis and clinical judgment.

If the practice of a majority of physicians established the only acceptable determiner of generally accepted standards of medical practice, only one approach (the majority approach) to every medical problem would be deemed acceptable. However, on the basis of *State Board of Medical Examiners v. McCroskey, supra*, and *United Blood Services v. Quintana, supra*, the Administrative Law Judge concludes that generally accepted standards of medical practice may encompass more than one method of practice. The test is whether the method of practice in question meets the standard of being objectively reasonable. *State Board of Medical Examiners v. McCroskey, supra*. Although the Respondent's method of diagnosing hypothyroid conditions is outside of the mainstream of conventional medicine, the evidence established that it is a reasonable method which has been found to be safe and effective by practitioners who utilize that method.

The Panel presented evidence that the failure to use the TSH test as the determinative test for hypothyroidism was in and of itself substandard. However, other than the fact that the Respondent diagnosed this condition on the basis of factors other than the TSH test, there was no specific evidence that the Respondent's approach was unreasonable as to the patients at issue in this case. To the contrary,

the evidence does not reflect that any patient experienced any harmful effects as a result of the Respondent's diagnosis of hypothyroidism and subsequent treatment.¹⁴ This evidence supports a conclusion that the Respondent's approach is objectively reasonable, and thus within the standard of care.

The Respondent's expert witnesses did not always use the terms "standard of care" or "generally accepted standards of medical practice" in rendering their opinions. Nevertheless, whether one group of experts or other phrased their opinions in terms of the statutory standard is not a determinative factor. The ultimate question to be determined is whether the Respondent's treatment was objectively reasonable, and the Administrative Law Judge has found that the Respondent's treatment met that standard.

The Administrative Law Judge therefore concludes that in the thirteen cases presented by the evidence the Respondent's conduct in diagnosing the need for thyroid replacement therapy on the basis of a history and physical examination, despite the existence of a TSH test within a normal or low range, did not fail to meet generally accepted standards of medical practice.

II. USE OF DESICCATED THYROID PRODUCTS

The Formal Complaint of the Attorney General does not charge the Respondent with a violation of the Medical Practice Act because of his use of desiccated thyroid products. However, at the hearing the Panel presented substantial expert testimony on this issue, and the Respondent did not object to the introduction of this evidence. In his case the Respondent presented substantial expert testimony rebutting the Panel's evidence on this subject. The Administrative Law Judge concludes that despite the absence of this charge in the Formal Complaint, the parties have tried this issue by consent and have presented to the Administrative Law Judge the question of whether the Respondent's use of desiccated thyroid fell below generally accepted standards of medical practice. See *Hoff v. Amalgamated Transit Union, Division 662*, 758 P.2d 674 (Colo. App. 1987).

As discussed above, the fact that the majority of physicians use synthetic thyroid preparations does not lead to a conclusion that the use of that product constitutes conduct which falls below generally accepted standards of medical practice. *State Board of Medical Examiners v. McCroskey, supra*. Rather, the issue to be determined is whether the use of a desiccated thyroid product is objectively reasonable despite the scientific evidence that synthetic products provide a more uniform and reliable dose of thyroid products. *Id.*

Desiccated thyroid is legally available to physicians and is thus within the range of choices available to a physician in treating hypothyroidism. While some literature states that desiccated thyroid preparations are to be avoided across the

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board, other literature recommends against the use of this product only in specific cases, such as with elderly patients or patients with heart disease. Thus, the literature does not unanimously condemn the use of this product in all cases.

The Panel maintains that the use of this product in any case falls below generally accepted standards of medical practice. The Panel's evidence did not establish that the Respondent's use of desiccated thyroid in any specific case was dangerous to the patient because of some particular circumstance of that patient. No patient was shown to have suffered harm by the use of desiccated thyroid. As mentioned above, while harm to a patient is not necessary to a finding that a physician failed to meet the standard of care, it is some evidence that the Respondent's treatment did not unreasonably expose these patients to a risk of harm.

It is not *per se* unreasonable for a practitioner to choose a product which is legally on the market when the physician has experience establishing appropriate results with that product in some patients and when the patients in question have not been adversely affected by the use of that product. The Respondent regularly monitors his patients who are taking thyroid preparations and can identify adverse effects, adjust dosages, or discontinue the use of the product as appropriate (see Findings of Fact, Paragraphs 32, 40-41).

Based upon the above considerations the Administrative Law Judge concludes that the Respondent's use of desiccated thyroid is objectively reasonable. Accordingly, the Respondent did not violate generally accepted standards of medical practice by using desiccated thyroid for the patients involved in this case.

CONCLUSIONS OF LAW

1. The Colorado State Board of Medical Examiners has jurisdiction over the Respondent and over his license to practice medicine in Colorado.

2. The Respondent is subject to discipline pursuant to Section 12-36-117(1)(p), C.R.S., for failing to meet generally accepted standards of medical practice in the following respects:

A. The Respondent's patient charts contained inadequate documentation of his treatment of the abscesses. This charting constituted a failure to meet generally accepted standards of medical practice.

B. The Respondent diagnosed a magnesium deficiency in Patient S.S.-2 in the absence of clinical signs and laboratory values suggesting a magnesium deficiency in this patient. This conduct fell below generally accepted standards of medical practice.

C. The treatment of Patient L.T.M. with hormonal replacement therapy was conduct which fell below generally accepted standards of medical practice.

D. The Respondent made diagnoses of medical conditions of Patient J.B.-1 which were not charted, were not supported by the Respondent's records for this patient, and which were not reflected in the patient chart as having been evaluated or treated. This conduct by the Respondent fell below generally accepted standards of medical practice.

3. The Respondent is subject to discipline pursuant to Section 12-36-117(1)(cc), C.R.S. by repeatedly failing to make essential entries on patient records, in the manner described in Paragraph 67 of the Findings of Fact.

4. The Respondent did not fail to meet generally accepted standards of medical practice, and is not in violation of the Medical Practice Act, in the following respects:

A. With regard to patients C.T., J.B.-2, S.C., S.Y.G., S.T.G., S.K., S.S.-1, S.P., M.S., S.S.-2, L.T.M., J.B.-1, and F.G. the Respondent's conduct in diagnosing the need for thyroid replacement therapy on the basis of a history and physical examination, despite the existence of a TSH test within the low or normal range, did not fail to meet generally accepted standards of medical practice.

B. The Respondent's use of desiccated thyroid products did not fail to meet generally accepted standards of medical practice.

C. The Respondent's method of monitoring his patients who were on thyroid hormone replacement therapy did not fail to meet generally accepted standards of medical practice.

D. The Respondent's use of adrenal cortex injectable was justified and did not fail to meet generally accepted standards of medical practice.

E. The Respondent did not administer adrenal cortex injectables which lacked adequate guarantees of safety.

F. The Respondent's treatment of the abscesses in this case with a single antibiotic was not conduct which fell below generally accepted standards of medical practice.

G. The Respondent did not act below generally accepted standards of medical practice by not referring patients with these abscesses to an infectious disease specialist.

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H. The Respondent did not violate generally accepted standards of medical practice with regard to any specific patient by failing to incise or drain an abscess when required by the standard of care, by failing to administer antibiotics in a timely fashion, by failing to take cultures, or otherwise.

I. The Respondent did not dispense medications beyond their expiration dates and did not repackage expired medications in new containers which did not reveal the expiration dates.

J. The Respondent did not dispense thyroid medication to Patient J.B.-1 in a container which failed to reflect the strength or the expiration date of the medication.

5. The allegation of the Formal Complaint that the Respondent administered adrenal cortex extract without adequate informed consent is dismissed (see Footnote 2).¹⁵

INITIAL DECISION

When charges are proven against a physician in a case before the State Board of Medical Examiners the discipline which may be imposed may take the form of a letter of admonition, suspension or revocation of a license, or probation under such conditions which will assure that the physician is qualified to practice medicine in accordance with generally accepted standards of medical practice. Section 12-36-118(5)(g)(III), C.R.S. (1997). In determining the appropriate discipline sanctions must be considered which are necessary to protect the public. *Id.*

The Administrative Law Judge has concluded that the Respondent did not fail to meet generally accepted standards of medical practice in several major respects charged by the Panel. Nevertheless, the disciplinary violations which have been established represent patterns of substandard practice by the Respondent which must be addressed by the State Board of Medical Examiners in order to assure the protection of the public.

The violations established in this case fall into two categories: inadequate documentation; and diagnosis or treatment without proper evaluation or justification. The inadequate documentation occurred in numerous cases in which the Respondent treated abscesses and also in his diagnoses regarding Patient J.B.-1. These violations are particularly disturbing in light of the fact that the Respondent was criticized for inadequate documentation while in the Air Force over 10 years ago. The Respondent suffered adverse consequences at the hands of both the Air Force and the Ohio Board as a result, in part, of inadequate documentation. Despite this history, the Respondent has continued to practice in a substandard fashion in this respect.


The other violations in this case also fall into a pattern. The Respondent diagnosed or treated Patients J.B.-1, S.S.-2 and L.T.M. despite inadequate evaluations or justifications. Although only three patients are involved, this pattern is disturbing. These violations suggest that the Respondent may place excessive reliance on his clinical judgment, even when unsupported by any evidence or appropriate evaluation.

The Administrative Law Judge does not believe that the violations proven warrant revocation or suspension of the Respondent's license to practice medicine. However, because of the patterns exhibited, and the Respondent's inability to correct documentation deficiencies despite prior discipline on the subject, the Administrative Law Judge concludes that in order to protect the public it is necessary for the Respondent to undergo continuing education and to have his practice monitored for a significant period of time.

It is therefore the Initial Decision of the Administrative Law Judge as follows:

1. The Respondent shall be placed on probation for a period of three years. A condition of probation shall be the Respondent's compliance with generally accepted standards of medical practice and with documentation requirements pursuant to Section 12-36-117(1)(cc), C.R.S. (1997). Violation of these standards or requirements may lead to further disciplinary proceedings.
2. During the three year probationary period the Respondent shall complete courses of training and education as identified by the Hearings Panel in the areas of documentation and techniques of diagnosis. Section 12-36-118(5)(g)(III)(B), C.R.S. (1997).
3. The Respondent's practice shall be monitored during the period of probation to ensure compliance with generally accepted standards of medical practice and with documentation requirements pursuant to Section 12-36-117(1)(cc), C.R.S. (1997). The practice monitoring will consist of a review of the Respondent's charts on a randomly selected basis by a physician approved by the Hearings Panel, at the Respondent's expense. The monitoring physician shall review the Respondent's patient charts in a number and with a frequency established by the Hearings Panel and shall report findings to the State Board of Medical Examiners at least quarterly. Section 12-36-118(5)(g)(III)(C), C.R.S. (1997).

DONE AND SIGNED this 31st day of March, 1998.


MARSHALL A. SNIDER
Administrative Law Judge

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FOOTNOTES

1. Patients will be referred to by their initials in this Initial Decision in order to protect their privacy and the confidentiality of their medical records.
2. The Formal Complaint also alleged that the Respondent administered adrenal cortex extract without adequate informed consent. At closing argument counsel for the Panel acknowledged that there had been no evidence on the issue of informed consent. That allegation is therefore dismissed.
3. A laboratory reference range establishes a range of "normal" levels based upon a statistical average of the patients tested by the particular laboratory.
4. Patient J.B.-1 was admitted to a hospital with a pulse rate of 100. That fact is consistent with the severe emotional stress this patient was under as a result of the events which led to her hospitalization (the patient was found sitting in a field with a loaded pistol after having written a note which indicated suicidal intent). Considering the patient's situation, a pulse rate of 100 is not surprising and not considered elevated. See Findings of Fact, Paragraph 92.
5. The Administrative Law Judge finds that the emotional state of Patient J.B.-1, as described in Findings of Fact, Paragraph 92 and in Footnote 4, was not related to the Respondent's treatment of this patient with thyroid medication.
6. The Panel argues that risks always exist when a patient receives an injection. However, there was no expert testimony regarding the nature or extent of such risk.
7. See *State Board of Medical Examiners v. McCroskey*, 880 P.2d 1188 (Colo. 1994) and Discussion, Part 1, at pp. 21-23.
8. This witness testified that the source of supply was not significant to the expert's opinion. In any event, the Administrative Law Judge has found that the evidence failed to establish that Phyne was not reputable, or that the Respondent should have known that Phyne was not reputable.
9. A physician could readily determine whether the infections involved in the present case were disseminated or localized, or whether the patients were mycobacteremic. These determinations can generally be made by clinical observation, without the need for laboratory tests.
10. The fact that Dr. Wallace did not review the charts of individual patients does not render his opinion less credible. Dr. Wallace was made aware of all of the relevant facts regarding the abscesses.
11. See *State Board of Medical Examiners v. McCroskey*, *supra*, and Discussion, Part 1, at pp. 21-23.

12. The Panel also presented evidence that the Respondent had repackaged *unexpired* medication in new containers which did not contain an expiration date, and that doing so failed to meet generally accepted standards of medical practice. The Formal Complaint in this case did not allege any misconduct relating to unexpired medications and the Respondent did not present evidence on that issue. Therefore, this issue was neither charged nor tried by consent and will not be considered in this Initial Decision.

13. Although the Ohio hearing examiner entered conclusions of law reflective of fraud and misrepresentation, her written report to the Ohio Board also stated that the Respondent was negligent in failing to answer the renewal application questions in the affirmative.

14. Although the absence of harm does not by itself establish that a physician's conduct fell within generally accepted standards of medical practice, this fact is some evidence that the Respondent appropriately diagnosed the need for thyroid hormone treatment in these patients.

15. In the course of this hearing other issues regarding the propriety of the Respondent's care of patients were referenced in a collateral manner. These issues were not pleaded in the Formal Complaint of the Attorney General and were not tried by consent of the parties. Therefore, the Administrative Law Judge makes no determinations regarding any of these matters.

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HEALTH & HUMAN
SERVICES SECTION

The Supreme Court of Ohio

1992 TERM

To wit: February 26, 1992

Jonathan W. Singer, D.O.,
Appellant,

v.

Ohio State Medical Board,
Appellee.

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Case No. 91-2362

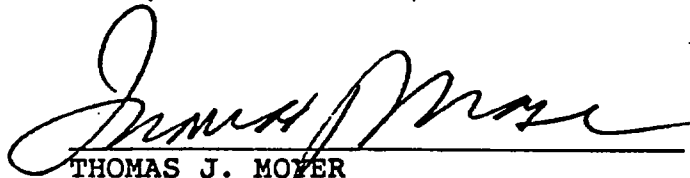
E N T R Y

Upon consideration of the motion for an order directing the Court of Appeals for Franklin County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, \$40.00, paid by Lane, Alton & Horst.

(Court of Appeals No. 90AP1204)

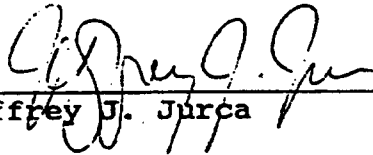


THOMAS J. MOYER
Chief Justice

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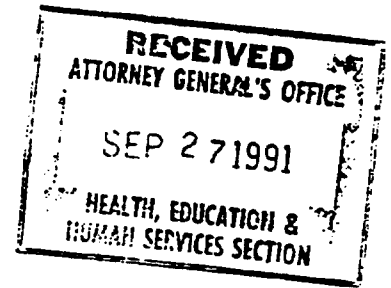
CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Notice of Appeal has been served upon John C. Dowling and Susan C. Walker, Assistant Attorneys General, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410, by regular U.S. mail, postage prepaid, this 28th day of October, 1991.



Jeffrey J. Jurca

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT



Jonathan W. Singer, D.O., :
Appellant-Appellant, :
v. : No. 90AP-1204
State Medical Board of Ohio, : (REGULAR CALENDAR)
Appellee-Appellee. :

O P I N I O N

Rendered on September 26, 1991

LANE, ALTON & HORST, MR. JEFFREY J. JURCA and MR. WILLIAM SCOTT LAVELLE, for appellant.

MR. LEE FISHER, Attorney General, MR. JOHN C. DOWLING and MS. SUSAN C. WALKER, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

HARSHA, J.

Appellant, Jonathan W. Singer, D.O., appeals a September 1990 decision of the Franklin County Court of Common Pleas affirming an order by appellee, the Ohio State Medical Board ("board"), which suspended his certificate to practice osteopathic medicine and surgery in Ohio.

Singer is an osteopathic physician currently licensed to practice in Colorado and Wyoming, his place of residence. A 1983 graduate of the College of

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Osteopathic Medicine and Surgery in Des Moines, Iowa, Singer interned for one year at Sandusky Memorial Hospital in Sandusky, Ohio, prior to entering the Air Force and being assigned to duty at the F.E. Warren Air Force Base in Cheyenne, Wyoming, with provisional privileges as a general medical officer at the Family Practice Clinic.

Singer's education and training were investigated during his provisional privilege term by the Credential Committee affiliated with the base hospital. Based upon information gathered by the committee regarding Singer's abilities and training, as well as his practice techniques, in December 1985, the committee decided not to grant Singer defined privileges upon expiration of the initial one-hundred-eighty-day provisional privilege term. However, the committee did extend the term, limiting his practice to routine adult medical problems and further monitoring Singer's practice.

In May 1986, the committee notified Singer that his clinical privileges at the hospital were indefinitely suspended due to substandard practice, alleging several incidents in which Singer had inappropriately prescribed drugs, failed to do complete patient histories and examinations, improperly used laboratory and other diagnostic aids, improperly altered patient records, and dishonestly dealt with patients and other physicians.

After a hearing on these allegations, the committee recommended that defined privileges be denied, that Singer no longer be proctored, and that he be administratively separated from the Air Force. The recommendation was approved by the Medical Facilities Commander and Singer appealed up to the Surgeon General

of the Air Force with the decision being affirmed at each level. Since his separation from the Air Force in March 1987, neither Singer's Wyoming license nor his subsequently obtained Colorado license has been affected by the Air Force's decision.

In December 1986, Singer's Ohio license came up for biennial renewal and Singer completed and sent in his license renewal application. The application asked whether:

"AT ANY TIME SINCE THE LAST RENEWAL OF YOUR CERTIFICATE HAVE YOU:

"***

"4.) Had any hospital privileges suspended or revoked?"

Singer answered "no" to this question. At that time his Ohio license was renewed. In September 1988, Singer completed an identical application for the 1989-90 biennium, again answering "no" to the question asking whether any hospital privileges had been suspended or revoked.

Upon discovery of the decision of the Air Force suspending Singer's provisional privileges and denying defined privileges, the board, believing Singer had given incorrect information on his application for license renewal, on September 13, 1989, notified Singer that it was initiating disciplinary proceedings against him. The board's notice to Singer alleged the following:

(1) That, in December 1986, Singer had committed fraud on his license renewal application in violation of R.C. 4731.22(A) and (B)(5).

(2) That in March 1987, the Surgeon General of the Air Force sustained a decision of a Command Surgeon that Singer not be granted clinical privileges, which constituted "*** 'the

revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense *** for any act or acts that would also constitute a violation of this chapter, ' ***' as is designated a violation under R.C. 4731.22(B)(24), R.C. 4731.22(B)(5) and R.C. 4731.22(B)-(6).

(3) That in September 1988, Singer had committed fraud on his license renewal application in violation of R.C. 4731.22(A) and (B)(5).

The board's hearing examiner conducted a hearing on January 8, 1990. The board agreed with her findings of fact and conclusions of law and adopted her recommendation that Singer's certificate to practice in Ohio be revoked, that the revocation be stayed and Singer's license suspended for no less than one year, with reinstatement not to occur until Singer would apply for reinstatement, take and pass a competency exam, only practice in Ohio under supervision of another physician and, upon satisfaction of these requirements, be subject to a probationary period of five years.

Singer appealed the decision of the board to the court of common pleas, which addressed Singer's contention that he did not deliberately misrepresent his status with the Air Force Hospital on his Ohio license renewal applications and that the board failed to give him adequate notice of the allegations against him to allow him to defend his present standard of care. The trial court found that, although the question alleged to be falsely answered was ambiguous, Singer was not excused from notifying the board of the adverse proceedings taken against him by the Air Force. Additionally, the court found Singer had been given adequate notice of the disciplinary action against him since he knew from the board that the basis for the action was his false response on the applications and his loss

of privileges while at the Air Force hospital for reasons which also would have resulted in lost privileges under Ohio law, that is, failing to conform to minimal standards of care. The trial court thus concluded that determination of the board was supported by reliable, probative and substantial evidence, and affirmed the board.

Singer appeals from the decision of the trial court assigning the following as error:

"ASSIGNMENT OF ERROR NO. 1:

"The court below erred to the prejudice of Dr. Singer when it affirmed the order of the State Medical Board of Ohio revoking Dr. Singer's certificate to practice osteopathic medicine and surgery, as the Board failed to establish, by a preponderance of reliable, probative and substantial evidence, that Dr. Singer engaged in fraud, misrepresentation, or deceit as claimed in the Board's Allegation No. (1) against Dr. Singer.

"ASSIGNMENT OF ERROR NO. 2:

"The court below erred to the prejudice of Dr. Singer when it affirmed the order of the State Medical Board of Ohio revoking Dr. Singer's certificate to practice osteopathic medicine and surgery, as the Board failed to establish by a preponderance of reliable, probative and substantial evidence, that Dr. Singer engaged in fraud, misrepresentation, or deceit as claimed in the Board's Allegation No. (3) against Dr. Singer.

"ASSIGNMENT OF ERROR NO. 3:

"The court below erred to the prejudice of Dr. Singer when it affirmed the order of the State Medical Board of Ohio revoking Dr. Singer's certificate to practice osteopathic medicine and surgery, as the Board's notification letter lacked the specificity required by R.C. 119.07, such that the court below should have invalidated the Board's order.

"ASSIGNMENT OF ERROR NO. 4:

"The court below erred to the prejudice of Dr. Singer when it affirmed the order of the State Medical Board of Ohio revoking Dr. Singer's certificate to practice osteopathic medicine and surgery, as the Board's proceedings against Dr. Singer violated his rights to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution.

"ASSIGNMENT OF ERROR NO. 5:

"The court below erred to the prejudice of Dr. Singer when it affirmed the order of the State Medical Board of Ohio revoking Dr. Singer's certificate to practice osteopathic medicine and surgery, as the Board failed to establish, by a preponderance of reliable, probative, and substantial evidence, its Allegation No. (2) against Dr. Singer."

In reviewing a decision of an administrative agency, pursuant to R.C. 119.12, the court of common pleas must determine whether the decision is supported by reliable, probative and substantial evidence and is in accordance with law. Arlen v. State (1980), 61 Ohio St. 2d 168. In determining whether the board's order was supported by reliable, probative and substantial evidence, the trial court was required to give due deference to the decision of the board since that body was in the best position to review and weigh the evidence presented. Univ. of Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108. When reviewing an order of the court of common pleas which determined an appeal from an administrative agency based upon the manifest weight of the evidence, this court's scope of review is limited to determining whether the common pleas court abused its discretion. Lorain City Bd. of Edn. v. State Emp. Relations Bd. (1988), 40 Ohio St. 3d 257.

Singer's first and second assignments of error are related and will be addressed together. Singer's first assignment of error argues that the board's

first allegation against him, that he gave false information on his 1987-1988 application, was not supported by the evidence, since his privileges at the Air Force hospital were not revoked or suspended. Singer argues that the only basis for the board's finding that he had violated the statute was that his defined privileges were not granted, and that this cannot be a basis for the board's conclusion. Singer also asserts that, because the question regarding hospital privileges on the license renewal application was ambiguous, the question should have been interpreted in his favor. Additionally, Singer asserts that he had no intent to defraud, simply understanding the question differently than the board apparently intended it. Singer's second assignment of error similarly argues that the board's third allegation, that he gave false information on his 1989-1990 application, was not proved because the board failed to show Singer had intentionally attempted to defraud the board in answering the question as he did. Singer also urges that the board waived its ability to commence action against him because the board did not act in a timely manner.

The trial court addressed Singer's argument that he had not committed fraud in indicating on the form that his privileges had never been suspended or revoked by finding that the question put to Singer was essentially whether any adverse action against him had been taken by an administrative agency, thus giving rise to a duty to indicate his provisional privileges had been suspended and to explain why. We find this reasoning to be persuasive. At the very least, Singer misrepresented the suspension of his provisional privileges by failing to tell the whole truth. The designation of "any" suspended or revoked privileges

as being subject to disclosure should have clearly indicated to Singer that he was required to answer in the affirmative and to offer an explanation.

Nor do we agree with Singer that the board was required to prove Singer had intended to defraud the board. In Procter v. State Medical Bd. of Ohio (Feb. 21, 1989), Franklin App. No. 88AP-851, unreported (Memorandum Decision), this court found that the board did not need to establish intent in finding a person to have committed fraud, misrepresentation, or deception, under R.C. 4731.22(A). We stated that "*** [m]isrepresentation is an untrue statement of facts." Thus, any failure by the board to establish that Singer intended to misrepresent his status does not affect the ultimate conclusion that Singer had violated R.C. 4731.22. Nor was the board required to give greater weight than it did to Singer's testimony that he had not intended to commit fraud.

Singer's argument that the delay by the board in notifying Singer of the allegations against him constituted waiver of the board's ability to bring disciplinary action also fails. We find no statutory requirement that the board initiate disciplinary proceedings within a particular time limit. In addition, since any delay was in part due to Singer's concealment of the fact that, in May 1986, the Air Force had suspended his provisional privileges and later refused him defined privileges, the board cannot be faulted for failing to take action sooner.

Appellant's argument as to laches was specifically rejected by the Ohio Supreme Court in Ohio State Bd. of Pharmacy v. Frantz (1990), 51 Ohio St. 3d 143. The court held in paragraphs two and three of the syllabus:

"2. The government cannot be estopped from its duty to protect public welfare because public officials failed to act as expeditiously as possible.

"3. Laches is generally no defense to a suit by the government to enforce a public right or to protect a public interest."

The court further stated, at 146:

"The board cannot be estopped from its duty to protect the public welfare because it did not bring a disciplinary action as expeditiously as possible. *** If a government agency is not permitted to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of all citizens in obedience to the rule of law is undermined. *** To hold otherwise would be to grant defendants a right to violate the law. ***

"***

"It is well-settled that in the absence of a statute to the contrary, laches is generally no defense to a suit by the government to enforce a public right or protect a public interest. *** The principle that laches is not imputable to the government is based upon the public policy in enforcement of the law and protection of the public interest. *** To impute laches to the government would be to erroneously impede it in the exercise of its duty to enforce the law and protect the public interest. We therefore reject the defendants' arguments."

Based upon these considerations, we find the trial court did not abuse its discretion in finding there was reliable, probative and substantial evidence to support the board's finding that Singer had misrepresented his status on both license renewal applications and that laches was not a proper defense. We therefore overrule Singer's first and second assignments of error.

Singer's third and fourth assignments are also related and will be addressed together. Singer contends that the board was required under both

statutory and constitutional law to give him adequate notice of the charges and the particular law or rule he was alleged to have violated so that he could prepare a defense. Singer argues that, because the second allegation in the letter from the board merely stated that Singer's actions constituted a loss of clinical privileges by the department of defense as the basis for suspension or revocation under R.C. 4731.22(B)(24), and, also, in violation of R.C. 4731.22(B)-(5) and R.C. 4731.22(B)(6), Singer was unable to determine from the letter the exact charges against him and the evidence he would have to refute or be able to present in his defense. Singer asserts that, had he known that one of the allegations was that his current practice was below standard, or at least in question, he would have presented testimony by experts and patients that his current practice was satisfactory.

In State, ex rel. Finley, v. Dusty Drilling Co. (1981), 2 Ohio App. 3d 323, this court determined that both the Due Process Clause of the Fourteenth Amendment to the United States Constitution and R.C. 119.07¹ require that proper

¹ R.C. 119.07 provides, in part:

"*** [I]n all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Such notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for such proposed action, the law or rule directly involved, and a statement informing the party that he is entitled to a hearing if he requests it within thirty days of the time of mailing the notice. The notice shall also inform the party that at the hearing he may appear in person, by his attorney, or by such other representative as is permitted to practice before the agency, or may present his position, arguments, or contentions in writing and that at the hearing he may present evidence and examine witnesses appearing for and against him. ***"

notice be given in administrative proceedings. In Finley, we concluded that, because the relator in a workers' compensation action had been given notice of the time, place and location of the hearing but not notice of the subject matter of the hearing, due process requirements were not met. Finley indicated that due process involved not merely the right to notice that a hearing would be held but also the right to appear at the hearing prepared to present testimony, evidence or argument in support of one's case. In Finley, we recognized that the essential function of due process requirements is to ensure a fair hearing. Finley, supra, at 324.

In addition to the allegation of giving false information on his renewal application, the board also charged that Singer's privileges in the Air Force had been suspended or terminated for reasons that would also be a violation of Ohio law. Specifically, the board in its letter referred to R.C. 4731.22(B)-(5) and 4731.22(B)(6). R.C. 4731.22(B)(5) pertains in part to publishing false, fraudulent or misleading statements and R.C. 4731.22(B)(6) pertains to a failure to conform to minimal standards of care. In her report and recommendation, the hearing examiner stated that:

"Dr. Singer has been in solo private practice since leaving the Air Force. While that practice has likely provided Dr. Singer with additional experience, it is unclear whether it has afforded him the opportunity to broaden his knowledge and improve his clinical abilities. ***"

The hearing examiner concluded that, despite evidence that Singer had met requirements under other state licensing boards, "*** [i]t is incumbent upon this Board to determine whether Dr. Singer has rectified the deficiencies recognized

by the Air Force." The hearing examiner clearly considered Singer's current standard of practice to be relevant, although it was never directly addressed, Singer was not given notice that the issue would be raised, and no evidence was presented. Inasmuch as similar allegations led to Singer's separation from the Air Force, the trial court found that Singer should have been adequately apprised that his conduct and standard of care while in the Air Force would be the subject of the hearing. Moreover, the court determined that the record did not indicate that Singer was, in fact, required to defend his current standard of care. The court thus concluded that the board's letter of notice complied with R.C. 119.07 and met due process requirements.

We find the trial court did not abuse its discretion in upholding the board's decision. Any possible error on the part of the board with regard to the notice provided under allegation number two could have been found harmless in light of the fact that R.C. 4731.22(A) enabled the board to revoke Singer's certificate on the sole basis that he "*** committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board." In addition, the trial court did not abuse its discretion in finding the statutory notice requirements of R.C. 119.07 had been met. We therefore overrule Singer's third and fourth assignments of error.

Singer's fifth assignment of error charges that the board failed to consider his licensure in Colorado and Wyoming and the fact that Singer took and passed a competency exam relevant to his practice, as evidence of good, current standard of care. As we noted in our discussion above, the hearing examiner

stated that the current standard of care was relevant but refused to weigh and consider evidence presented by Singer on this point. While the decision of two state medical boards to grant Singer a license to practice is persuasive that his current practice meets acceptable standards in those states, those findings are not binding on appellee and the trial court did not abuse its discretion in finding that the board had relied on substantial evidence with regard to this allegation. We therefore overrule Singer's fifth assignment of error.

Based upon these considerations, we overrule Singer's assignments of error and affirm the judgment of the trial court.

Judgment affirmed.

BOWMAN, P.J., and YOUNG, J., concur.

HARSHA, J., of the Fourth Appellate District, sitting by
assignment in the Tenth Appellate District.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JONATHAN W. SINGER, D.O.,
Appellant,

Case No. 90 CVF03-2350

vs.

JUDGE WEST

STATE MEDICAL BOARD OF OHIO,
Appellee.

9:0AP1204

NOTICE OF APPEAL

Appellant, Jonathan W. Singer, D.O., hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from the final judgment entered in this action on the 17th day of September, 1990.

Respectfully submitted,

LANE, ALTON & HORST

By *Jeffrey J. Jurca*
Jeffrey J. Jurca

THE CORPORATE PAVILION
175 South Third Street
Columbus, OH 43215
614/228-6885

THOMAS J. HERRIGT
CLERK OF COURT

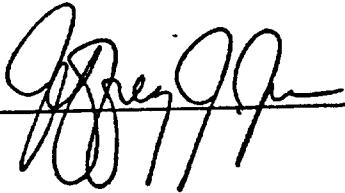
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FRANKLIN CO. OHIO

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ATTORNEY GENERAL'S OFFICE
OCT 22 1990
HEALTH, EDUCATION &
GENERAL SERVICES SECTION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was served upon John C. Dowling, Assistant Attorney General, 30 East Broad Street, 15th Floor, Columbus, OH 43266, Attorney for Appellee, by placing the same in the regular U.S. mail, postage prepaid, on this 17th day of October, 1990.



RECEIVED
COLUMBUS
OCT 17 1990

FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

RECEIVED
ATTORNEY GENERAL'S OFFICE
1990
HEALTH, EDUCATION &
HUMAN SERVICES SECTION

JONATHAN W. SINGER, D.O., :
Appellant, :
-vs- :
STATE MEDICAL BOARD OF OHIO, :
Appellee. :

CASE NO. 90CVF03-2350

JUDGE WEST

TERMINATION NO. 8
BY 24

DECISION AND ENTRY

Rendered this 17th day of September, 1990.

This matter is before the Court pursuant to an appeal brought under R.C. §119.12. The Appellant, Dr. Jonathon Singer, seeks review of an Order by the State Medical Board of Ohio (hereinafter "the Board") suspending his certificate to practice osteopathic medicine and surgery in Ohio.

The facts establish that Board's complaint was heard by a hearing examiner who found that Dr. Singer had (1) published "a false, fraudulent, deceptive, or misleading statement" in completing his renewal applications for the years 1987-1988 and 1989-1990 [R.C. §4731.22(B)(5)]; (2) that his minimum standard of care was a departure from or a failure to conform to that of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient was established [R.C. §4731.22(B)(6)]; and, (3) that the United States Air Force's suspension of Dr. Singer's provisional clinical privileges and the subsequent decision to not grant Dr. Singer defined clinical privileges were based on acts, conduct, and/or omissions that would constitute "the revocation, suspension, restriction, reduction or termination

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FRANKLIN COUNTY COURT

of clinical privileges by the department of defense, . . . , for any act or acts that would also constitute a violation . . . " under the statute [R.C. §4731.22(B)(24)]. The hearing examiner then recommended that Dr. Singer's license be revoked, that the revocation be stayed, and that Dr. Singer's certificate be suspended for an indefinite period of time, but not less than one year. The Board adopted the hearing examiner's findings of fact, conclusions of law and recommendations, and proposed order of suspension.

Dr. Singer raises several assignments of error pertaining to the proceedings of the Board leading to this suspension of his license. Initially, Dr. Singer contends that he did not deliberately falsely answer the question on his 1987-1988 and 1989-1990 renewal applications which asked whether he had had his hospital privileges suspended or revoked since the previous renewal of his certificate.

In determining whether Dr. Singer falsely answered the questionnaire, it is readily apparent to the Court that different interpretations of the scope of the question could have been made. However, a finding by the Court that the questions were ambiguous does not absolve Dr. Singer of his responsibility to inform the Board of the adverse proceedings by the Air Force. Clearly, Dr. Singer's provisional privileges were of more limited scope than defined clinical privileges would have been, and, further, the denial of an application for clinical privileges does not rise to the level of a suspension or revocation of currently held privileges. But, similarly, a question which essentially queries whether

any adverse action by an administrative agency had ever been taken, requires an affirmative answer where, as here, such adverse proceedings arose out of concerns regarding the physician's practice of medicine and resulted in an administrative separation from the military. Despite the fact that Dr. Singer could have answered the question affirmatively and provided a written explanation to the Board, Dr. Singer instead chose not to do so, and apparently relied on an amorphous belief that the Board would review the materials forwarded by the Air Force and concur in his interpretation of the Air Force proceedings. This belief is clearly without foundation. Thus, the Court concludes that Dr. Singer's responses to the questionnaires constituted a false, fraudulent, deceptive, or misleading statement as defined by R.C. §4731.22(B)(5). Further, despite Dr. Singer's strenuous contentions that he had no intention to conceal, mislead, or deceive the Board, absent any clear reason for contrary conclusions, the Court will accept the Board's resolution of conflicts between such assertions and the documentary evidence. Mofu v. State Medical Bd., (1984), 21 Ohio App. 3d 182. Cf. University of Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108, 111.

Similarly, the March 20, 1987, decision by the Air Force that Dr. Singer be administratively separated from the military for a consistent pattern of substandard medical practice clearly supports the application of R.C. §4731.22(B)(6) in finding a violation under R.C. §4731.22(B)(24).

Thus, Dr. Singer's answer to the fourth question on his 1989-1990 renewal application constituted the "publishing [of] a false, fraudulent, deceptive, or misleading statement" pursuant to R.C. §4731.22(B)(5). In so finding, the Court fully concurs with the Board that the intent of the question is to elicit just such information as that occurring as a consequence of the Air Force proceedings.

Dr. Singer next argues that he did not receive sufficient notice of the basis of the administrative hearing. Dr. Singer further claims that he was denied due process and a fair hearing. In light of the history of this case, that contention is without merit.

R.C. §119.07 sets forth the procedure an agency must follow in its initial notice to a person that it intends to issue an administrative order. The statute provides, in pertinent part, that: " * * * Such notice . . . shall include the charges or other reasons for such proposed action, the law or rule directly involved, and a statement informing the party that he is entitled to a hearing if he requests it within thirty days of the time of mailing the notice. * * * ."

Dr. Singer was initially notified by certified mail, return receipt requested, on September 13, 1989. A second mailing of the same letter, on September 29, 1989, informed Dr. Singer that the Board intended to decide whether to revoke his certificate. In the letter, the Board said that action was being taken, in part, because

"[o]n or about March 20, 1987, the Surgeon General of the Department of the Air Force sustained the decision of the Command Surgeon that you not be

granted clinical privileges, based on the credentialing proceedings conducted by the Department of the Air Force relative to your clinical privileges, which are incorporated by reference herein,"


and that the Board was taking the action pursuant to R.C. §2731.22(B)(24) subject to R.C. §§4731.22(B)(5) and 4731.22(B)(6). Dr. Singer was also informed that he was entitled to a hearing if he requested it within thirty days of the time of mailing of the notice and that he was also entitled to appear at the hearing in person or with his attorney. Dr. Singer argues that by incorporating by reference the voluminous materials related to the Air Force proceedings, he was denied the specificity of notice required by R.C. §119.07. Further, Dr. Singer charges that the letter of notice failed to inform him that his current standard of care of his patients was also at issue. This argument is without merit.

Herein, the facts clearly set out that Dr. Singer was well aware of the nature of the charges being brought by the Board. He readily admitted at hearing and in written correspondence to the Board that he knew the Air Force had on its own initiative informed the Board of its proceedings against him. Further, paragraph one of the notice received by Dr. Singer adequately identifies the conduct of which he is accused and the reason for the charge against him. The second paragraph of the notice further specifies the section of the code which Dr. Singer was accused of violating. While standing on its own, paragraph two may have been inadequate, when read in conjunction with paragraphs one and three,

paragraph two sufficiently apprises Dr. Singer of the specific nature of the wrongful conduct.

Further, Dr. Singer had already been required to explain himself to the State Medical Boards of Colorado and Wyoming before those states would license him. It is untenable that Dr. Singer should now claim to have been unaware of the basis for this Board's concern. Finally, there is nothing in the record to support Dr. Singer's allegations that he was required to defend his current standard of care except as to how his previous medical practice in the Air Force was reflective of his future practice in Ohio. Therefore, the Court finds that the letter of notice sent to Dr. Singer complied with R.C. §119.07 and, further, conformed with due process standards.

Thus, the Court, upon a review of the entire record, in finding no error prejudicial to Dr. Singer, further finds that the Board's Order suspending his certificate to practice osteopathic medicine and surgery is supported by reliable, probative, and substantial evidence, and is in accordance with law. For all the above-stated reasons, the Court hereby AFFIRMS the Order of the State Medical Board of Ohio. Costs to Appellant.



R. PATRICK WEST, JUDGE

COPIES TO:

William Scott Lavelle
Attorney for Appellant

John C. Dowling
Assistant Attorney General
Attorney for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

90CVF-1350

JONATHAN W. SINGER, D.O.,

Appellant,

-vs-

STATE MEDICAL BOARD OF OHIO,

Appellee

Case No. 90CVF

ASSIGNED TO JUDGE WEST

NOTICE OF APPEAL

Jonathan W. Singer, D.O., hereby gives Notice of his Appeal from the Order of the State Medical Board of Ohio, dated March 16, 1990 and mailed to him on March 19, 1990, which revoked his license to practice osteopathic medicine and surgery.

Dr. Singer states the Board's Order is not supported by reliable, probative and substantial evidence, and is not in accordance with law.

Respectfully submitted,

LANE, ALTON & HORST
175 South Third Street
Columbus, Ohio 43215
(614) 228-6885

By: Jeffrey J. Jurca (JUR02)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Notice of Appeal was sent this 28th day of March, 1990, via regular U.S. Mail, postage prepaid to John C. Dowling, Assistant Attorney General, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266.

By: Jeffrey J. Jurca

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STATE MEDICAL BOARD
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STATE OF OHIO
THE STATE MEDICAL BOARD
77 South High Street
17th Floor
Columbus, Ohio 43266-0315
(614)466-3934

March 16, 1990

Jonathan W. Singer, D.O.
1805 E. Nineteenth Street, Suite 202
Cheyenne, Wyoming 82001

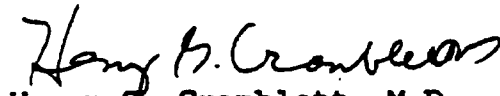
Dear Doctor Singer:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on March 14, 1990, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 746 514 706
RETURN RECEIPT REQUESTED

Mailed 3/19/90

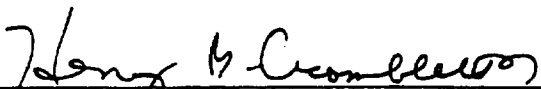
STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on March 14, 1990, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Jonathan W. Singer, D.O. as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Henry G. Gramblett, M.D.
Secretary

3/16/90

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JONATHAN W. SINGER, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of March, 1990.

Upon the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED:

1. That the certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in Ohio is hereby REVOKED. Such revocation shall be stayed, and Dr. Singer's certificate shall be SUSPENDED for an indefinite period of time, but not less than one (1) year.
2. The State Medical Board shall not consider reinstatement of Dr. Singer's certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Singer shall submit to the Board an application for reinstatement, accompanied by all appropriate fees. Dr. Singer shall not make such application for at least one (1) year from the effective date of this Order.
 - b. Dr. Singer shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
 - c. In the event that Dr. Singer has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Singer's fitness to resume practice.

Jonathan W. Singer, D.O.


- d. In the event that Dr. Singer wishes to practice in Ohio, he shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless otherwise determined by the Board, shall be limited to a supervised, structured environment in which Dr. Singer's activities will be overseen and supervised by another physician approved by the Board. The Board may require whatever monitoring provisions or practice restrictions it deems appropriate to ensure the safe practice of medicine by Dr. Singer.
3. Further, upon the reinstatement of his Ohio certificate and his commencement of practice in Ohio, the certificate of Jonathan W. Singer, D.O., shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Singer shall obey all federal, state, and local laws and all rules governing the practice of medicine in Ohio.
 - b. Dr. Singer shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.
 - c. Dr. Singer shall appear in person for interviews before the full Board or its designated representatives at six (6) month intervals, or as otherwise requested by the Board.
 - d. Dr. Singer shall not engage in the solo practice of medicine in Ohio without prior written approval by the Board. Dr. Singer shall receive the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to his commencement of practice in Ohio.
 - e. In the event that Dr. Singer should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Singer must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
4. If Dr. Singer violates probation in any respect, the Board, after giving Dr. Singer notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.

Page 3

Jonathan W. Singer, D.O.

5. Upon succesful completion of probation, Dr. Singer's certificate shall be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.



Henry G. Cramblett, M.D.
Secretary

(SEAL)

March 16, 1990

Date

REPORT AND RECOMMENDATION 90 FEB -6 PH12:41
IN THE MATTER OF JONATHAN W. SINGER, D.O.

The Matter of Jonathan W. Singer, D.O., came on for hearing before me, Joan Irwin Fisher, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 8, 1990.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated September 13, 1989 (State's Exhibit #1), the State Medical Board notified Jonathan W. Singer, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio for one or more of the following reasons:
1. On or about December 21, 1986, Dr. Singer completed and signed his application for biennial license renewal for the 1987-1988 biennium. On that application he answered "No" to the question which asked, "At any time since the last renewal of your certificate have you had any hospital privileges suspended or revoked?" The Board alleged that, in fact, on or about May 16, 1986, Dr. Singer's clinical privileges at USAF Hospital F. E. Warren had been suspended for an indefinite period of time. Further, on or about November 10, 1986, the acting Medical Facility Commander had directed that Dr. Singer not be granted defined privileges to practice medicine at USAF Hospital F. E. Warren;
 2. On or about March 20, 1987, the Surgeon General of the Department of the Air Force sustained the decision of the Command Surgeon that Dr. Singer not be granted clinical privileges, based on the credentialing proceedings conducted by the Department of the Air Force; and
 3. On or about September 26, 1988, Dr. Singer completed and signed his application for biennial license renewal to practice for the 1989-1990 biennium. On that application he answered "No" to the question which asked, "At any time since the last renewal of your certificate have you had any hospital privileges suspended or revoked?" (Sic) The Board alleged that, in fact, on or about March 20, 1987, the Surgeon General of the Department of the Air Force had sustained the decision of the Command Surgeon that Dr. Singer not be granted clinical privileges.

The Board alleged that Dr. Singer's acts, conduct, and/or omissions in answering his renewal application cards constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board," as that clause is used in Section 4731.22(A), Ohio Revised Code, and "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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Further, the Board alleged that the March 20, 1987, action of the Surgeon General of the Department of the Air Force sustaining the decision of the Command Surgeon that Dr. Singer not be granted clinical privileges constituted "the revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veterans administration of the United States, for any act or acts that would also constitute a violation of this Chapter," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: Sections 4731.22(B)(5), and 4731.22(B)(6), Ohio Revised Code.

- B. By letter received by the State Medical Board on October 23, 1989 (State's Exhibit #3), Dr. Singer requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by John C. Dowling, Assistant Attorney General.
- B. On behalf of the Respondent: Dr. Singer, having been duly advised of his right to counsel, appeared on his own behalf without counsel.

III. Testimony Heard

Dr. Singer was the only witness at hearing.

IV. Exhibits Examined

In addition to those listed above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #2: Certified mail return and receipt card showing service of State's Exhibit #1.
2. State's Exhibit #4: October 26, 1989 letter to Dr. Singer from the State Medical Board advising that a hearing initially set for November 6, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
3. State's Exhibit #5: November 7, 1989 letter to Dr. Singer from the State Medical Board scheduling the hearing for December 19, 1989.
4. State's Exhibit #6: Entry dated December 15, 1989 granting the State's Motion for Continuance and rescheduling Dr. Singer's hearing for January 8, 1990.
5. State's Exhibit #7: Copy of Dr. Singer's renewal application card for the 1987-1988 biennium, signed by him on December 31, 1986.

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6. State's Exhibit #8: Copy of Dr. Singer's renewal application card for the 1989-1990 biennium, signed by him on September 26, 1988.
 - * 7. State's Exhibit #9: Notice dated May 20, 1986, to Capt. Jonathan W. Singer, D.O., from Col. Nowlan K. Dean, Chairperson, Credentials Committee, USAF Hospital F. E. Warren, informing Dr. Singer that his clinical privileges had been suspended and that he had a right to request a hearing before the Credentials Committee.
 - * 8. State's Exhibit #10: Undated report of Credentials Hearing Committee regarding Capt. Jonathan W. Singer.
 - * 9. State's Exhibit #11: Letter dated November 10, 1986, to Jonathan W. Singer, D.O., from Howard L. Ritter, Jr., acting Medical Facility Commander, informing Dr. Singer that he had approved the recommendations of the Credentials Committee and was directing that Dr. Singer not be granted defined privileges to practice medicine at USAF Hospital F. E. Warren.
 - * 10. State's Exhibit #12: December 11, 1986 memorandum reporting the findings and recommendations of the SAC Appeals Committee regarding Dr. Singer.
 - * 11. State's Exhibit #13: Minutes of the Credentials Appeal Review Committee regarding Dr. Singer, dated March 2, 1987.
 - * 12. State's Exhibit #14: Letter dated March 20, 1987, to Dr. Singer from Murphy A. Chesney, Surgeon General of the United States Air Force, sustaining the decision of the Command Surgeon that Dr. Singer not be granted clinical privileges.
 - * 13. State's Exhibit #15: Packet of documents from the United States Air Force regarding Dr. Singer's privileges, including: certification of authenticity; transmittal letter dated September 19, 1986; letter to John W. Rohal of the State Medical Board from Col. Robert W. Poel; Index; May 20, 1986 Notice of Suspension of Clinical Privileges; May 29, 1986 letter to Col. Nowlan K. Dean from Ellen E. Stewart, Esq., Dr. Singer's civilian counsel for the Air Force hearing; Notification of Hearing Regarding Denial of Privileges, dated May 30, 1986; June 2, 1986 letter to Maj. Douglas Child, from Ms. Stewart; July 28, 1986 letter to Dr. Singer from Col. Dean; transcript of the clinical privileges committee hearing regarding Capt. Jonathan W. Singer, D.O., held on July 30-31, 1986; September 15, 1986 letter from Col. Dean to Capt. Singer; and September 15, 1986 letter from Col. Dean to the Surgeon General with enclosed report of the Credentials Hearing Committee regarding Dr. Singer.

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- * 14. State's Exhibit #16: Packet of documents from the Air Force regarding Dr. Singer's privileges, including: September 27, 1986 letter with enclosed exceptions of Dr. Singer to the hearing committee findings; and Exhibits 1 through 4, as presented at Dr. Singer's credentials committee hearing.
 - * 15. State's Exhibit #17: Packet of documents from the Air Force regarding Dr. Singer's privileges, including: Exhibits 5 through 7, as presented at Dr. Singer's credentials committee hearing.
 - * 16. State's Exhibit #18: Packet of documents from the Air Force regarding Dr. Singer's privileges, including: Exhibits 8 through 10, as presented at Dr. Singer's credentials committee hearing.
 - * 17. State's Exhibit #19: Packet of documents from the Air Force regarding Dr. Singer's privileges, including: Exhibits 11 through 53, as presented at Dr. Singer's credentials committee hearing; November 3, 1986 letter to Lt. Col. Ritter from Brig. Gen. Anderson; November 10, 1986 letter from Maj. LeRoy to the Command Surgeon; November 10, 1986 decision of Lt. Col. Ritter; Dr. Singer's November 17, 1986 exceptions to Lt. Col. Ritter's decision; December 11, 1986 findings and conclusions of the SAC Appeals Committee; December 19, 1986 decision of Brig. Gen. Anderson; documents from Dr. Singer in support of his appeal to the Surgeon General; March 20, 1987 decision of Murphy A. Chesney, Surgeon General of the Air Force.

NOTE: THE ABOVE EXHIBITS MARKED WITH AN ASTERISK (*) HAVE BEEN SEALED TO PROTECT PATIENT CONFIDENTIALITY AND PURSUANT TO FEDERAL REGULATIONS.

B. Presented by the Respondent

1. Respondent's Exhibit A: November 22, 1989 letter from Dr. Singer to John C. Dowling requesting a list of witnesses and exhibits.
2. Respondent's Exhibit B: Compilation of documents prepared by Dr. Singer for the investigations done by the Wyoming Board of Medical Examiners and the State Board of Medical Examiners of Colorado, including: chronology of credentialing activities; prejudice of the credentials committee; prejudice of the hearing committee; allegations, findings and recommendations and Dr. Singer's answers to same; expert medical witness; minority report from Dr. Richard Stahlman; memoranda; officer evaluation reports; letters of recommendation; letters of appeal; letter from USAF Surgeon General; and letters of appreciation from patients.
3. Respondent's Exhibit C: June 2, 1986 letter to Ms. Stewart from Col. Dean.

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4. Respondent's Exhibit D: November 10, 1986 letter to Dr. Singer from Lt. Col. Howard L. Ritter.
5. Respondent's Exhibit E: Copy of Dr. Singer's license to practice medicine in the State of Colorado, issued January 19, 1989.

FINDINGS OF FACT

1. Jonathan W. Singer, D.O., graduated from the College of Osteopathic Medicine and Surgery in Des Moines, Iowa in June 1983. He then participated in a one year general rotating internship at Sandusky Memorial Hospital in Sandusky, Ohio. In July 1984 he entered the Air Force and was assigned to the hospital at F. E. Warren Air Force Base in Cheyenne, Wyoming where he worked as a general medical officer (GMO) in the family practice clinic.

These facts are established by State's Exhibit #15 (Transcript of Air Force hearing, P. 11, 28) and State's Exhibit #19 (Dr. Singer's credentials file).

2. Upon arriving at F. E. Warren Hospital, Dr. Singer was given provisional privileges. Pursuant to Air Force regulation, provisional privileges are to expire after 180 days. During that time period, the Credentials Committee investigates the doctor's education and training in order to determine the extent of defined privileges to be granted. Dr. Singer's provisional privileges were extended beyond the 180 days because of concerns regarding his training and his clinical abilities. In December 1985, the Credentials Committee decided not to grant Dr. Singer defined privileges due to his apparent inability to recognize the boundaries of his expertise and his inability to appropriately utilize consults. The Committee's decision was to extend Dr. Singer's provisional privileges, with his admitting privileges limited to routine adult medical problems. All inpatient care was to be proctored, and outpatient privileges were limited to primary care with twenty-five percent of Dr. Singer's charts reviewed by Col. Nowlan Dean.

These facts are established by State's Exhibit #19 (Dr. Singer's credentials file).

3. In a letter dated May 20, 1986, Col. Nowlan Dean, Chairman of the Credentials Committee at F. E. Warren, notified Dr. Singer that his clinical privileges at the base hospital had been indefinitely suspended due to substandard medical practice, including: inappropriate use of drugs, incomplete history and physical examinations, inappropriate use of laboratory and other diagnostic aids, alterations of patients records, and dishonesty in dealing with patients and several physicians. This letter confirmed Dr. Dean's earlier verbal suspension of Dr. Singer's privileges on May 16, 1986. Dr. Singer was later provided with specific

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allegations of inappropriate or substandard care in ten patients. Dr. Singer requested a hearing before the Credentials Hearing Committee regarding these charges and it was held on July 30-31, 1986.

These facts are established by State's Exhibits #9 and #15.

4. The Credentials Hearing Committee issued findings regarding Dr. Singer's care of ten patients, his training and experience, his medical knowledge and abilities, his judgment, and his professionalism. Based on these findings, the Credentials Hearing Committee recommended that Dr. Singer not be granted defined privileges at USAF Hospital F. E. Warren. It further recommended that he no longer be proctored and that appropriate administrative action to separate Dr. Singer from the Air Force be considered. Dr. Singer submitted exceptions to the Committee's report. On November 10, 1986, Lt. Col. Howard L. Ritter, Jr., acting as the Medical Facility Commander, approved the recommendations of the Credentials Hearing Committee. Dr. Singer appealed to the Command Surgeon, Brig. General Edgar R. Anderson, Jr., who, in a letter dated December 19, 1986, informed Dr. Singer that he concurred in the December 11, 1986 findings and recommendations of the SAC Appeals Committee. The next appeal level was the Air Force Surgeon General. On March 20, 1987, the Surgeon General, Murphy A. Chesney, approved the March 2, 1987, findings and recommendations of the Credentials Appeal Review Committee. In a letter to Dr. Singer dated March 20, 1987, the Surgeon General informed Dr. Singer that he had decided to uphold the Command Surgeon's decision that Dr. Singer not be granted clinical privileges. The Air Force's findings set forth conduct of Dr. Singer, including:
 - a. Patient #1: Under objective findings in the record of this female patient, Dr. Singer wrote "zero breast masses". In fact, Dr. Singer had not conducted a breast examination on this patient. This constituted a false statement.
 - b. Patient #2: Dr. Singer added a type-written notation to the patient record indicating that he had informally consulted with another physician regarding this patient's care. This other physician could neither confirm nor deny that he had consulted with Dr. Singer, consequently, it could not be concluded that Dr. Singer made a false statement in the patient record. The incident did, however, document Dr. Singer's failure to follow instructions against using informal consults.
 - c. Patient #3: Dr. Singer inappropriately ordered a mammogram for this 22-year old patient. There were no indications in the record that the patient had been upset or overly anxious about the possibility of breast cancer.
 - d. Patient #4: Dr. Singer made a diagnosis of clinically low thyroid in this patient and prescribed Synthroid. This constituted unsound medical practice as there were no physical or laboratory justifications for this prescription. The results of a previous thyroid function test had been normal.

- e. Patient #5: The results of a November 12, 1985 barium enema on this patient indicated a 6 mm. polyp in the sigmoid colon. On November 14, 1985, Dr. Singer noted in the patient record, "referred to surgery clinic for colonoscopy." Dr. Singer failed to fill out the proper referral form. He apparently tried to telephone the patient to inform her of the results of the barium enema and to schedule the test, but was unable to reach her. He improperly transferred the responsibility for notifying the patient to the surgery clinic. The patient had a flexible sigmoidoscopy done on May 13, 1986. The lapse of several months between the barium enema and the sigmoidoscopy represented substandard medical care.
- f. Patient #6: Dr. Singer improperly dilated the eyes of this 73-year old patient with glaucoma without first measuring intraocular pressure. He obtained an informal consultation without properly documenting it in the record. The flexible sigmoidoscopy he performed on this patient was not inappropriate. Though not documented in his credentials file, Dr. Singer was authorized to perform unsupervised flexible sigmoidoscopies.
- g. Patient #7: Dr. Singer failed to obtain an EKG in a 54-year old male patient complaining of recent onset of shortness of breath. The patient's chest tightness was improved with the administration of two sublingual nitroglycerine tablets in Dr. Singer's office. However, Dr. Singer failed to provide that medication to the patient for subsequent use and failed to expeditiously refer him to the internal medicine service for consultation.
- h. Patient #8: Dr. Singer inappropriately ordered a mammogram for a 33-year old patient being seen for an arthritis checkup. The medical record showed no justification for the performance of a mammogram; there had been no discussion of pertinent history or risk factors. Furthermore, the mammogram was ordered even though Dr. Singer had not performed a breast examination on this patient.
- i. Patient #9: Dr. Singer's evaluation of this emergency room patient appeared to be inadequate. He missed the diagnosis of pulmonary embolus. An EKG and arterial blood gasses were not taken in a timely manner.
- j. Patient #10: Dr. Singer prescribed an excessive number of refills of Indocin for this patient's gout.

The Air Force concluded that, though Dr. Singer possessed a good foundation of basic medical knowledge, his application of that knowledge in the performance and documentation of his clinical practice had been deficient and had not consistently met acceptable standards. He had been reluctant to seek and accept the advice of consults. Dr. Singer had also been hindered by a significant credibility gap with his peers. He had chronic problems in dealing with other staff members. It was felt that further proctoring or training of Dr. Singer would not be in the best interests of the Air Force and that steps should be taken to administratively separate Dr. Singer from the Air Force.

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The Air Force's Findings and Conclusions, including those referred above, are fully incorporated herein by reference as findings of this Hearing Examiner.

These facts are established by State's Exhibits #10 through #19.

5. On December 31, 1986 Dr. Singer signed his renewal application card to practice osteopathic medicine in Ohio for the 1987-1988 biennium. On that application, Dr. Singer answered "No" to the question which asked "At any time since the last renewal of your certificate have you had any hospital privileges suspended or revoked?" Further, on his renewal application card for the 1989-1990 biennium, Dr. Singer answered "No" to the question which asked "At any time since signing your last application for renewal of your certification have you had any clinical privileges suspended or revoked for other than failure to maintain records or attend staff meetings?"

These facts are established by State's Exhibits #7 and #8.

6. Dr. Singer testified that he had not felt that he had answered the renewal application card questions inaccurately. He further testified that he had had no intent to deceive the Board. In Dr. Singer's opinion, the Air Force had never granted him defined clinical privileges, therefore, he had had no privileges capable of being suspended or revoked. He never had any privileges except provisional ones, which he felt were not "true" privileges. (Tr. 28) Dr. Singer testified that Col. Dean incorrectly denominated the credentialing action as a "suspension of clinical privileges" in the Notice of May 20, 1986. According to Dr. Singer, the Air Force has no procedure to suspend provisional privileges; the proper procedure is to deny clinical privileges. In support of his argument, Dr. Singer pointed out that, other than the May 20, 1986 Notice, all other Air Force documents referred to the action against Dr. Singer as a refusal to grant clinical privileges.

Regardless of the type of privileges that Dr. Singer had had, as of the May 16, 1986, verbal suspension notice from Col. Dean, he was no longer allowed to practice at F. E. Warren Hospital.

These facts are established by State's Exhibit #9 and by the testimony of Dr. Singer (Tr. 27-32).

7. Dr. Singer left the Air Force on July 3, 1987. He then began the private solo practice in family medicine in Cheyenne, Wyoming which he continues to conduct today.

These facts are established by the testimony of Dr. Singer (Tr. 42, 47).

8. Dr. Singer currently is licensed to practice osteopathic medicine in Wyoming and Colorado, in addition to Ohio. Both the Colorado and the Wyoming Boards investigated the Air Force's action against Dr. Singer. It is not clear exactly what documents they had had for their investigations.

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It would appear that the Wyoming Board required Dr. Singer to take Component II of the FLEX exam. Dr. Singer took that test in June 1987 and scored an 88. He was also questioned by a panel of interviewers. The Wyoming Board of Medical Examiners found no reason to take any action against Dr. Singer's license to practice osteopathic medicine in Wyoming.

Dr. Singer testified at hearing that he believed the Air Force documents had been reviewed by several practitioners in Colorado. The Colorado Board of Medical Examiners issued Dr. Singer a license to practice osteopathic medicine in that state on January 19, 1989.

These facts are established by State's Exhibit #3, Respondent's Exhibit D and by the testimony of Dr. Singer (Tr. 39-41).

CONCLUSIONS

1. The Air Force's suspension of Dr. Singer's provisional clinical privileges and its subsequent decision to not grant Dr. Singer defined clinical privileges, and the acts, conduct, and/or omissions of Jonathan W. Singer, D.O., upon which the Air Force's actions were based, as set forth in Findings of Fact #1 through #4, above, constitute "the revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veteran's administration of the United States, for any act or acts that would also constitute a violation of this Chapter," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: Sections 4731.22(B)(5) "publishing a false, fraudulent, deceptive, or misleading statement," and Section 4731.22(B)(6), "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

State's Exhibits #9 through #19 constitute substantial, reliable, and probative evidence of the actions taken by the Air Force, as well as substantial, reliable, and probative evidence of Dr. Singer's publication of a misleading statement and of his departure from minimal standards of care. The Air Force found that Dr. Singer had made a false statement in a patient record. Though an intent to mislead was not found, it was clear that Dr. Singer's notation in Patient #1's record of "zero breast masses" created the impression that he had done a breast examination when he had not. It was never contended that Dr. Singer did not have a broad base of medical knowledge, or that he was not a compassionate care giver. The evidence did demonstrate, however, that he lacked the ability to recognize when a presenting problem was beyond his abilities and experience. For example, he failed to engage in a thorough evaluation and workup on Patient #9, and missed the diagnosis of pulmonary embolus. He prescribed a thyroid replacement drug to a patient, ignoring that patient's normal thyroid function test and choosing instead to trust his clinical judgment. He sought consultations grudgingly, and felt no compunction to follow the advice given.

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2. The acts, conduct, and/or omissions of Jonathan W. Singer, D.O., as set forth in Findings of Fact #5 and #6, above, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code, and "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Dr. Singer answered "No" to the following questions on his renewal application cards: "At any time since the last renewal of your certificate, have you had any hospital privileges suspended or revoked?" (1987-1988) and, "At any time since signing your last application for renewal of your certification have you had any clinical privileges suspended or revoked for other than failure to maintain records or attend staff meetings?" (1989-1990) (Emphasis added). No specific types of hospital or clinical privileges are either explicitly included or excluded from those questions. Dr. Singer's protestation that he had never received defined clinical privileges, and, therefore, had had no privileges capable of being suspended or revoked, is unpersuasive. It is apparent that the Air Force's decision not to grant defined privileges is the equivalent of a suspension or revocation of existing provisional privileges. It is also apparent that this decision was made because of deficiencies in Dr. Singer's practice. This is the type of information that the question is designed to elicit. Clearly, Dr. Singer acted negligently in failing to answer those questions "yes". He had provisional privileges; before May 16, 1986 he could treat both inpatients and outpatients and after May 16, 1986, he could not. There was nothing to prevent Dr. Singer from answering those questions in the affirmative and providing a written explanation to the Board.

* * * * *

The Air Force never challenged Dr. Singer's intellectual capabilities, his relationship with his patients, or his dedication to the medical profession. Indeed, there are copies of letters in the record, written on behalf of Dr. Singer by several of his Air Force colleagues, wherein they praise those very traits. However, these letters were written in support of Dr. Singer's application for a family practice residency. The consensus of his Air Force colleagues was that Dr. Singer needed additional training, particularly in light of his reluctance to seek consultations and to follow given advice. Dr. Singer has been in solo private practice since leaving the Air Force. While that practice has likely provided Dr. Singer with additional experience, it is unclear whether it has afforded him the opportunity to broaden his knowledge and improve his clinical abilities. This Board is not compelled to follow the actions of any other state licensing board. It is incumbent upon this Board to determine whether Dr. Singer has rectified the deficiencies recognized by the Air Force.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Jonathan W. Singer, D.O., to practice osteopathic medicine and surgery in Ohio is hereby REVOKED. Such revocation shall be stayed, and Dr. Singer's certificate shall be suspended for an indefinite period of time, but not less than one (1) year.
2. The State Medical Board shall not consider reinstatement of Dr. Singer's certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Singer shall submit to the Board an application for reinstatement, accompanied by all appropriate fees. Dr. Singer shall not make such application for at least one (1) year from the effective date of this Order.
 - b. Dr. Singer shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
 - c. In the event that Dr. Singer has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Singer's fitness to resume practice.
 - d. In the event that Dr. Singer wishes to practice in Ohio, he shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless otherwise determined by the Board, shall be limited to a supervised, structured environment in which Dr. Singer's activities will be overseen and supervised by another physician approved by the Board. The Board may require whatever monitoring provisions or practice restrictions it deems appropriate to ensure the safe practice of medicine by Dr. Singer.
3. Further, upon the reinstatement of his Ohio certificate and his commencement of practice in Ohio, the certificate of Jonathan W. Singer, D.O., shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Singer shall obey all federal, state, and local laws and all rules governing the practice of medicine in Ohio.
 - b. Dr. Singer shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.

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- c. Dr. Singer shall appear in person for interviews before the full Board or its designated representatives at six (6) month intervals, or as otherwise requested by the Board.
 - d. Dr. Singer shall not engage in the solo practice of medicine in Ohio without prior written approval by the Board. Dr. Singer shall receive the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to his commencement of practice in Ohio.
 - e. In the event that Dr. Singer should leave Ohio for three (3) continuous months, or reside or practice outside the state, Dr. Singer must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
4. If Dr. Singer violates probation in any respect, the Board, after giving Dr. Singer notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.
 5. Upon successful completion of probation, Dr. Singer's certificate shall be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.


Joan Irwin Fishel
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF MARCH 14, 1990

REPORTS AND RECOMMENDATIONS

Ms. Ross, Mr. Dowling, Mr. Jeffries, Mr. Schmidt, Ms. Thompson, Mr. Dilling, Mr. Compton, Mr. Huston, and Ms. Herman left the meeting at this time.

.....

Dr. Kaplansky asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Gregory P. Calkins, M.D.; Bartis T. Mazeika, D.O.; Jonathan W. Singer, D.O.; and Mattie Vaughn, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. Daniels	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Dr. Kaplansky	- aye

.....

REPORT AND RECOMMENDATION IN THE MATTER OF JONATHAN W. SINGER, D.O.

.....

MS. ROLFES MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JONATHAN W. SINGER, D.O. MR. JOST SECONDED THE MOTION.

.....

A roll call vote was taken on Ms. Rolfes' motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Daniels	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

September 13, 1989

Jonathan W. Singer, D.O.
7511 Drummond Avenue
Cheyenne, WY 82009

Dear Doctor Singer:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about December 21, 1986, you completed and signed your application for biennial license renewal to practice as a Doctor of Osteopathic Medicine for the 1987-1988 biennium.

Further, on the above-mentioned application you answered "no" to question number four (4) which asks, "At any time since the last renewal of your certificate have you had any hospital privileges suspended or revoked?"

In fact, on or about May 16, 1986, your clinical privileges at USAF Hospital F.E. Warren were suspended for an indefinite period of time.

Further, on or about November 10, 1986, the acting Medical Facility Commander directed that you not be granted defined privileges to practice medicine at U.S.A.F. Hospital Francis E. Warren.

Your acts, conduct, and/or omissions as alleged in the above paragraph (1), individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, such acts, conduct, and/or omissions as alleged in the above paragraph (1), individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

September 13, 1989

- (2) On or about March 20, 1987, the Surgeon General of the Department of the Air Force sustained the decision of the Command Surgeon that you not be granted clinical privileges, based on the credentialing proceedings conducted by the department of the Air Force relative to your clinical privileges, which are incorporated by reference herein.

Such acts, conduct, and/or omissions, as alleged in the above paragraph (2), individually and/or collectively, constitute "(t)he revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veterans administration of the United States, for any act or acts that would also constitute a violation of this chapter," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: Sections 4731.22(B)(5), and 4731.22(B)(6), Ohio Revised Code.

- (3) On or about September 26, 1988, you completed and signed your application for biennial license renewal to practice as Doctor of Osteopathic Medicine for the 1989-1990 biennium.

Further, on the above-mentioned application you answered "No" to question number four (4) which asks, "At any time since the last renewal of your certificate have you had any hospital privileges suspended or revoked?"

In fact, on or about March 20, 1987, the Surgeon General of the Department of the Air Force sustained the decision of the Command Surgeon that you not be granted clinical privileges.

Your acts, conduct, and omissions as alleged in the above paragraph (3), individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, such acts, conduct, and/or omissions as alleged in the above paragraph (3), individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

Jonathan W. Singer, D.O.
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September 13, 1989

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P 746 510 074
RETURN RECEIPT REQUESTED