

COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

STATE OF GEORGIA

**Composite State Board
of Medical Examiners**

JUL 21 2005

IN THE MATTER OF:

STEPHEN BRUCE EDELSON M.D.
License No. 013268,

Respondent.

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DOCKET NUMBER
DOCKET NO. 20050112
OSAH-CSBME-PHY-0518591-60-
Walker-Russell

FINAL DECISION

The Office of State Administrative Hearings ("OSAH") docketed an Initial Decision in the above matter on June 14, 2005, which was received by the Board on June 16, 2005. OSAH served the Initial Decision on the Respondent by certified mail and it has not been returned as unclaimed or undeliverable. Neither the Board nor the Respondent requested a review of the Initial Decision within 30 days from the date of notice of the Initial Decision. In the absence of an application to the agency for review of said Initial Decision, or an order by the Board to review said Initial Decision on its own motion, said Initial Decision becomes the Final Decision of the Board by operation of law pursuant to O.C.G.A. § 50-13-17(a).

FINDINGS OF FACT

The Statement of Undisputed Facts entered by the Administrative Law Judge in the Initial Decision are hereby adopted and incorporated by reference herein.

CONCLUSIONS OF LAW

The Conclusions of Law entered by the Administrative Law Judge in the Initial Decision are hereby adopted and incorporated by reference herein.

ORDER

The recommendation of the Administrative Law Judge that the Respondent's license to practice as a physician in the State of Georgia be revoked is incorporated by reference and, having become final on July 18, 2005, is hereby made the Final Decision of the Board. Therefore, **License No. 013268 is revoked.**

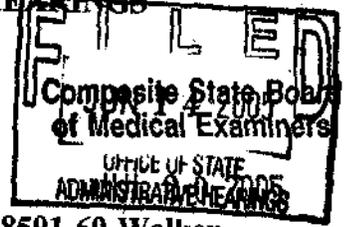
COMPOSITE STATE BOARD
OF MEDICAL EXAMINERS

M. VINAYAK KAMATH, M.D.
PRESIDENT

ATTEST:


LASHARN HUGHES
EXECUTIVE DIRECTOR

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



COMPOSITE STATE BOARD OF
MEDICAL EXAMINERS,
Petitioner,

v.

STEPHEN BRUCE EDELSON, M. D.,
Respondent.

Docket No.:

OSAH-CSBME-PHY-0518591-60-Walker-

Russell

Agency Reference No.: 13268

DOCKET NUMBER

2005 0112

ORDER GRANTING
MOTION FOR SUMMARY DETERMINATION

I.

INTRODUCTION:

The Georgia Composite State Board of Medical Examiners ("Petitioner") moves for summary determination in its favor in this matter, alleging that there are no genuine issues of material fact for determination. Petitioner further moves for sanctioning the license of Stephen Bruce Edelson ("Respondent") to practice as a physician in the State of Georgia pursuant to O.C.G.A. §§ 43-1-19 and 43-34-37. Upon reviewing the Motion, all of the documentary evidence received, and Respondent having filed no response, Petitioner's Motion for Summary Determination is **HEREBY GRANTED**.

II.

STATEMENT OF ISSUES:

Whether Petitioner may sanction the license of Respondent under O.C.G.A. §§ 43-1-19 and 43-34-37 for (1) violating a lawful order of the Board; (2) knowingly performing any act that aided, assisted or encouraged the unlicensed practice of medicine; (3) engaging in unprofessional conduct; and/or (4) violating or attempted to violate a law, rule or regulation of this State, which law, rule or regulation relates to or in part regulates the practice of medicine. These issues are resolved in Petitioner's favor based on the Statement of Undisputed Material Facts and Argument and Citation of Authority as set forth below.

III.

STATEMENT OF UNDISPUTED FACTS:

I.

Respondent, Stephen Bruce Edelson, M.D., is licensed as a physician in the State of Georgia, and was so licensed at all times relevant to these undisputed material facts. ("Exhibit 1," Affidavit of LaSharn Hughes).

2.

On or about April 1, 2004, Petitioner entered into a Public Consent Order, Docket Number 10020064, in which Respondent admitted to improper prescribing and inadequate record keeping. The Public Consent Order placed Respondent's license on probation for three years with certain terms and conditions, including practicing under a supervising physician, monitoring by an acceptable physician, quarterly reports from his monitoring and supervising physicians, and abiding by all laws and rules regulating the practice of medicine and the terms of the consent order. ("Exhibit 1A," Public Consent Order).

3.

On or about September 8, 2004, Respondent admitted to Petitioner's agent that patients were treated at Respondent's medical offices on a regular basis without the presence of an on-site, licensed physician. Respondent further admitted that employee, Dana Carlson, was left in charge and provided patient care when Respondent was not in the office. ("Exhibit 2," Affidavit of Adrienne Baker).

4.

On or about October 18, 2004, Petitioner received notification of a malpractice payment made on Respondent's behalf, in which a lump sum payment of two hundred fifty thousand dollars (\$250,000.00) was paid in settlement of Fulton County Superior Court Civil Case No. 02CV63276. ("Exhibit 1B," Letter regarding Malpractice Settlement from Mendes & Mount).

5.

On or about November 18, 2004, an investigative subpoena for records was served upon Respondent, requesting certified copies of the medical records of the patient at issue in the Malpractice Settlement within fifteen (15) days. Respondent failed to respond to the investigative subpoena. ("Exhibit 3A," Affidavit of Jeffrey D. Lane and Letter and Subpoena for Records).

6.

On or about December 6, 2004, Petitioner requested in writing that Respondent meet with the Board in an informal interview to discuss an ongoing investigation of Respondent's practice by the FDA, and the possible use of unapproved medical devices by Respondent in the treatment of autistic children. ("Exhibit 4," Affidavit of Jim H. McNatt and Letter to Respondent),

7.

On or about January 4, 2005, Respondent sent an electronic mail message to Petitioner, which stated:

"I will not be responding to any of the board's requests so basically you can do whatever you like. Please don't bother me again with your ridiculous issues because I will not respond again to anything you write. I've had enough of the Georgia medical Board and its arcane ways.... This will be my final contact with you or anyone else from your Organization." ("Exhibit 3B").

3.

Petitioner has the power to issue and regulate licenses of physicians in the State of Georgia pursuant to O.C.G.A. §§ 43-34-21, 43-34-24.1, and 43-34-27. Respondent obtained a license from Petitioner as a physician in the State of Georgia. ("Exhibit 1").

4.

Petitioner may impose sanctions on the license of a physician licensed by the board when the licensee has "engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person; knowingly aided, assisted, procured, or advised any person to practice medicine contrary to this chapter or to the rules and regulations of the board; knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or entity to practice medicine; violated or attempted to violate a law, rule, or regulation of this state, which law, rule, or regulation relates to or in part regulates the practice of medicine; or violated a lawful order of the board, previously entered by the board in a disciplinary hearing." O.C.G.A. § 43-34-37.

5.

Petitioner may impose sanctions on the license of a physician licensed by the board when the licensee has engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person to practice a business or profession licensed under this title; and violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, when the licensee knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree or license reinstatement. O.C.G.A. § 43-1-19.

6.

Respondent repeatedly violated the terms of the Consent Order currently in effect between Respondent and Petitioner by terminating his relationship with his monitoring physician, failing to submit quarterly reports as required, and failing to notify Petitioner that he closed his practice and that his address changed. Respondent's repeated violations of the Consent Order constitute unprofessional conduct in violation of O.C.G.A. §§ 43-1-19, 43-34-37, and Composite State Board of Medical Examiners Rule ("Board Rule") 360-3-.02.

8.

On or about January 6, 2005, Petitioner mailed a final request and subpoena for records and a statement regarding the malpractice settlement in Fulton County Superior Court Civil Case No. 02CV63276, to Respondent by certified mail, return receipt requested, Article Number 7004 1160 0004 8330 5459. The signed receipt, stamped January 14, 2005, was returned to Petitioner with Respondent's signature, acknowledging receipt. ("Exhibit 3C").

9.

On or about February 1, 2005, Petitioner's compliance division reported that Respondent had failed to submit certain reports required by his Public Consent Order of April 1, 2004, in violation of the terms of his probation. ("Exhibit 5," Affidavit of Stephanie Cleary).

10.

On or about February 3, 2005, Petitioner received notice from Respondent's monitoring physician, Dr. James Brooks, indicating that Respondent had notified him in November 2004 that Respondent was retiring from his medical practice and no longer needed his professional services. ("Exhibit 1C," Letter from James F. Brooks, M.D).

11.

Respondent's web site, <http://www.edelsoncenter.com/>, has a letter posted to his patients notifying them that Respondent has closed his medical practice. ("Exhibit 6," Printed Copy of Electronic Letter).

12.

Respondent has failed to provide Petitioner with requested statements and subpoenaed records, has failed to notify Petitioner of his practice being closed, and has failed to notify Petitioner of his current address. ("Exhibit 1").

IV. CONCLUSIONS OF LAW

1.

Petitioner has the burden of proof in this matter. However, Respondent bears the burden as to any affirmative defenses. OSAH Rule 07(1)(a).

2.

On a motion for summary determination, the moving party must show by supporting affidavits or other probative evidence that there is no genuine dispute as to any material facts such that the moving party is entitled to a determination in his favor as a matter of law. OSAH Rule 15(1). Once the moving party presents probative evidence supporting its motion, the opposing party must produce probative evidence, by affidavit or otherwise, showing that there is a genuine issue of material fact. OSAH Rule 15(3); Leonaitis v. State Farm Mutual Automobile Insurance Co., 186

7.

Respondent failed to timely respond to an investigative subpoena issued by Petitioner in violation of O.C.G.A. §§ 43-1-19(a)(8), 43-34-37(a)(10), and Board Rule 360-3-.02.

8.

Respondent knowingly aided, abetted, advised or encouraged the unlicensed practice of medicine in violation of O.C.G.A. §§ 43-1-19 and 43-34-37.

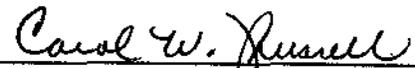
9.

Based upon the foregoing, it is concluded that there are sufficient grounds for the imposition of sanctions against Respondent's license to practice as a physician in the State of Georgia. O.C.G.A. §§ 43-1-19 and 43-34-37.

IV. DECISION

For all of the foregoing reasons, Petitioner's Motion for Summary Determination is **GRANTED**, and Respondent's license to practice as a physician in the State of Georgia is **HEREBY REVOKED**.

SO ORDERED, this 13th day of June 2005.



CAROL E WALKER-RUSSELL
Administrative Law Judge

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

Composite State Board
of Medical Examiners

STATE OF GEORGIA

FEB 22 2005

IN THE MATTER OF:

STEPHEN BRUCE EDELSON, M.D.,

License No. 13268,

Respondent.

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DOCKET NO.:

DOCKET NUMBER

2005 0112

**MATTERS ASSERTED AND
STATUTES AND RULES INVOLVED**

Pursuant to O.G.G.A. § 50-13-13, the Composite State Board of Medical Examiners hereby provides the Respondent with the matters asserted and the statutes and rules involved for purposes of revocation of the Respondent's license to practice medicine in the State of Georgia. The matters asserted below, if correct, constitute sufficient grounds for the revocation of Respondent's license to practice medicine.

MATTERS ASSERTED

1.

Respondent is licensed to practice medicine in the State of Georgia and was so licensed at all times relevant to the matters stated herein.

2.

On April 1, 2004, the Board entered a Public Consent Order, Docket Number 10020064, in which Respondent admitted to improper prescribing and inadequate record keeping. Said Public Consent Order placed Respondent's license on probation subject to certain terms and conditions.

3.

On or about September 8, 2004, Respondent admitted to the Board's agent that patients are treated at his facility on a regular basis without the presence of an on-site, licensed physician. The Respondent admitted that his employee, Mrs. D.C., was left in charge at times when he is not in the office. Mrs. D.C. allegedly has a medical degree from Guatemala, but is not licensed in the United States. Respondent aided his employee in the unlicensed practice of medicine in violation of O.C.G.A. §43-34-37(a)(9).

4.

On or about October 18, 2004, the Board received notification of a malpractice payment in excess of ten thousand dollars (\$10,000.00) made on Respondent's behalf by MGIS Preventative Healthcare Professional Liability Program. A lump sum payment of two hundred fifty thousand dollars (\$250,000.00) was paid in settlement of Civil Case No. 02CV63276, Fulton County Superior Court, Fulton County, Georgia, prior to trial. The case involved a temporary injury caused to an eight (8) year old autistic patient who was being treated by Respondent with alternative medicine procedures including detoxification, chelation therapy and nutritional management.

5.

On or about November 18, 2004, the Board opened an investigation of Respondent, pursuant to O.C.G.A. §§33-3-27 and 43-34-37, and requested information from the Respondent regarding the aforementioned malpractice case and the treatment of the young patient involved. An investigative subpoena was also enclosed requesting this patient's medical records within fifteen (15) days.

6.

On or about December 6, 2004, the Board requested in writing that Respondent meet with them to discuss an ongoing investigation by the U.S. Food and Drug Administration ("FDA") related to Respondent's possible use of unapproved FDA devices in the treatment of autistic children.

7.

On or about January 4, 2005, Respondent sent an electronic mail message to the Board's agent in which he stated:

"I will not be responding to any of the board's requests so basically you can do whatever you like. Please don't bother me again with your ridiculous issues because I will not respond again to anything you write. I've had enough of the Georgia medical Board and its arcane ways. You remind me of the people that caused the death of Dr. Semmelweis in the eighteenth century. This will be my final contact with you or anyone else from your organization."

8.

On or about January 6, 2005, the Board mailed (by certified mail, return receipt requested, Article Number 7004 1160 0004 8330 5459) a final request for records and a statement regarding the malpractice case, to Respondent. The signed receipt, stamped January 14, 2005, was returned to the Board with Respondent's signature acknowledging receipt.

9.

On or about February 1, 2005, the Board's compliance department reported that Respondent had failed to submit certain reports required by his Public Consent Order of April 1, 2004. Specifically, Respondent failed to submit fourth (4th) quarter supervising report for 2004; failed to submit monitoring reports from the third (3rd) and fourth (4th) quarters of 2004 and failed to provide triplicate prescription records for the third (3rd) and fourth (4th) quarters of 2004, in violation of his probation.

10.

On or about February 3, 2005, the Board received notice from Respondent's monitoring physician, Dr. James Brooks, that Respondent had notified him in November 2004 that he would no longer need his professional services due to Respondent's imminent retirement from the practice of medicine.

11.

On or about February 4, 2005, the Board visited Respondent's web site at <http://www.edelsoncenter.com/>, and found a letter from Respondent to his patients notifying them that he has closed his medical practice.

12.

As of February 4, 2005, Respondent has failed to provide the Board with requested statements and records requested for investigative purposes, has failed to notify the Board of his practice being closed and has failed to notify the Board of his current address. In addition, he has ceased monitoring with his Board approved monitoring physician in violation of his Public Consent Order of April 1, 2004.

STATUTES AND RULES INVOLVED

Revocation of the Respondent's license is sought pursuant to the following provisions of O.C.G.A. § 43-1-19, as amended:

(a) A state licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation place upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

O.C.G.A. § 43-1-19(d) provides that: When a state examining board finds that any person is unqualified to be granted a license or finds that any person should be disciplined

pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license; or
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or
- (8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse an examining board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

O.C.G.A. § 43-1-19(e) provides that in addition to and in conjunction with the actions described in subsection (d) of this Code section, a state examining board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

Additionally, revocation of the Respondent's license is sought pursuant to O.C.G.A. § 43-34-37(a), which provides that the board shall have authority to refuse to grant a license to an applicant or to discipline a physician licensed under that chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimal standards of acceptable and prevailing medical practice or by rule of the board;

(9) Knowingly maintained a professional connection or association with any person who is in violation of this chapter or the rules or regulations of the board; or knowingly aided, assisted, procured, or advised any person to practice medicine contrary to this chapter or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or entity to practice medicine; or divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or another entity for bringing or referring a patient;

(10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law, rule, or regulation; or violated a lawful order of the board, previously entered by the board in a disciplinary hearing;

Pursuant to O.C.G.A. § 43-34-37(b)(1), when the board finds that any person is

unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

- (A) Refuse to grant a license to an applicant;
- (B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the licensee;
- (C) Suspend any license for a definite period;
- (D) Limit or restrict any license;
- (E) Revoke any license; or
- (F) Condition the penalty, or withhold formal disposition, upon the physician's submission to the care, counseling, or treatment of physicians or other professional persons, and the completion of such care, counseling, or treatment, as directed by the board.

It follows in O.C.G.A. §43-34-37(b)(2):

In addition to and in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the physician on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

O.C.G.A. § 43-34-37(g) provides that “[t]his code section is enacted in the public welfare and shall be liberally construed.”

O.C.G.A. §43-34-37(i) states: “The Board shall investigate a licensee’s fitness to practice medicine if the board has received regarding that licensee a notification, pursuant to Code Section 33-3-27, of a medical malpractice judgment or settlement in excess of \$100,000.00....”

Additionally, O.C.G.A. § 43-34-24.1(a) provides:

The board shall not be under the jurisdiction of the Secretary of State but shall be an independent state agency attached to the Department of Community Health for administrative purposes only, as provided in Code Section 50-4-3, except that such department shall prepare and submit the budget for the board. The board shall not be a professional licensing board but shall have with respect to all matters within the jurisdiction of the Composite State Board of Medical Examiners as provided under this chapter the powers, duties, and functions of such licensing boards as provided in Chapter 1 of this title.

Furthermore, sanction of the Respondent's license is sought pursuant to the following provisions of the Rules and Regulations of the Composite State Board of Medical Examiners, to wit:

Rule 360-3-.01

“The Composite State Board of Medical Examiners (“Board”) is authorized to deny, revoke, suspend, fine, reprimand or otherwise limit the license of a physician or physician’s assistant for all the grounds set forth in O.C.G.A. §43-1-19(a), and to deny, revoke, suspend, fine, reprimand or otherwise limit the license of a physician pursuant to O.C.G.A. §43-34-37.”;

Rule 360-3-.02

“O.C.G.A. §§43-1-19 and 43-34-37 authorize the Board to take disciplinary action against licensees for unprofessional conduct. ‘Unprofessional conduct’ shall include, but not e limited to, the following:

- (11) Failing to timely respond to an investigative subpoena issued by the Board.
- (18) Any other practice determined to be below the minimal standards of acceptable and prevailing practice.”

Rule 360-3-.03

“The Composite State Board of Medical Examiners is authorized to take disciplinary action for violations of laws and rules and regulations which relate to or in

part regulate the practice of medicine. These laws, rules and regulations include, but are not limited to, the following:

- (1) The Georgia Medical Practice Act (O.C.G.A. T. 43, Ch. 34);
- (6) The Rules of the Composite State Board of Medical Examiners, Ch. 360, Rules and Regulations of the State of Georgia...;

**COMPOSITE STATE BOARD
OF MEDICAL EXAMINERS**

ROLAND S. SUMMERS, M.D.
President

Prepared by:

JANET B. WRAY
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
(404) 656-3345