STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio ~~43215~~ 43266-0315

October 10, 1986

Byron B. Timberlake, M.D.
125 Medical Circle
Winchester, Virginia 22601

Dear Doctor Timberlake:

Please find enclosed a certified copy of the Findings, Order, and Journal Entry approved and confirmed by the State Medical Board of Ohio, meeting in regular session on October 9, 1986.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Court of Common Pleas in the county in which your place of business is located or to said court of the county in which you reside. If you are not a resident of and have no place of business in Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio. 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 appropriate court 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.

Very truly yours,

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 361 887
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio ~~43215~~ 43266-0315

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order, and Journal Entry, approved by the State Medical Board, meeting in regular session on October 9, 1986, constitutes a true and complete copy of the Findings, Order, and Journal Entry in the matter of Byron B. Timberlake, M.D., as it appears in the Journal of the State Medical Board of Ohio.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

October 10, 1986
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

BYRON B. TIMBERLAKE, M.D. *

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came on for consideration after a citation letter was issued to Byron B. Timberlake, M.D., by the State Medical Board of Ohio on August 14, 1986.

On August 14, 1986, notice was given to Dr. Timberlake that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. Dr. Timberlake requested a hearing, but the thirty (30) days had elapsed since the mailing of the aforesaid notice.

WHEREFORE, it is hereby ORDERED that for the reasons outlined in the August 14, 1986 letter of notice which is attached hereto and incorporated herein, accordingly, the license of Byron B. Timberlake, M.D., to practice medicine in Ohio be INDEFINITELY SUSPENDED. Any application for reinstatement would be considered by the Board only after his Virginia license is reinstated.

This ORDER shall become effective on the 9th day of October, 1986.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 9th day of October, 1986, and the original thereof shall be kept with said Journal.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

October 10, 1986
Date

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43266-0315

August 14, 1986

Byron B. Timberlake, M.D.
125 Medical Circle
Winchester, Virginia 22601

Dear Doctor Timberlake:

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 medicine and surgery or to reprimand or place you on probation for the following reason:

1. On or about August 7, 1985, the Commonwealth of Virginia, Department of Health Regulatory Boards, Board of Medicine, entered an Order revoking your license to practice medicine in Virginia, staying said revocation, and placing you on probation for an indefinite period of time subject to terms and conditions. The acts committed by you which formed the basis of the Virginia Board of Medicine's action are set forth in the Findings of Fact, Conclusions of Law and Recommendation of John R. Hooe, III, Esquire, dated June 3, 1985, as amended by the Order of the Virginia Board of Medicine dated August 7, 1985, which documents are attached hereto and incorporated by reference herein. Said acts committed by you involved the inappropriate touching and fondling of the genitals of six (6) minor male patients.

The acts as alleged in Paragraph 1, above, individually and/or collectively, constitute "a departure from or 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" as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, the acts as alleged above in Paragraph 1, individually and/or collectively, constitute the "violation of any provision of a code of ethics of a national professional organization" as that clause is used in Section 4731.22(B)(14), Ohio Revised Code, in that such acts violate Principles I and II of the American Medical Association's "Principles of Medical Ethics."

Further, the August 7, 1985 Order of the Virginia Board of Medicine constitutes "the revocation or suspension by another State of a license or certificate to practice issued by the proper licensing authority of that state for an action that would also have been a violation of this Chapter except for nonpayment of fees", as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Sections 4731.22(B)(6) and (B)(14), 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 made 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 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 made 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 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:caa

enclosures

CERTIFIED MAIL NO. P 569 364 833
RETURN RECEIPT REQUESTED

VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE:

BYRON B. TIMBERLAKE, M.D.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

This case was heard by the Hearing Officer on March 4 and 5, 1985 in Winchester, Virginia, pursuant to Notice Of Hearing/ Statement Of Particulars dated November 14, 1984 and by agreement of counsel, the State Board of Medicine and Byron B. Timberlake, M.D. each being represented by counsel at hearing and Byron B. Timberlake, M.D. being present in person. In addition, the Hearing Officer received, considered and ruled on certain motions as set out in the Hearing Officer's letter dated February 13, 1985, a copy of which is made part of this record, and has received and considered the written memoranda of counsel submitted after the hearing. Finally, the Hearing Officer hereby reaffirms all rulings previously made as to any motions made or objections raised by counsel. All sections and titles cited herein refer to the Code of Virginia of 1950, as amended.

FINDINGS OF FACT

1. Dr. Timberlake has limited his practice of medicine to the speciality of otolaryngology.

2. Dr. Timberlake sees approximately 100 patients a week.

3. The complaints against Dr. Timberlake are with respect to six unrelated patients.

4. The six unrelated patients were all adolescent boys at the time of the alleged behavior of Dr. Timberlake about which they complained.

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5. All alleged actions by Dr. Timberlake in relation to the six adolescent boys occurred between the years 1977 and 1984.

6. Patient A, presenting a history of chronic sinus infections and an abscessed ear, was seen by Dr. Timberlake on October 12, 17 and 20, 1983.

On October 12, 1983 in the presence of patient's mother, Dr. Timberlake examined the patient's ear, nose and throat. On the same date Dr. Timberlake examined Patient A in the operating room with no person present other than Dr. Timberlake and the patient.

7. During the October 12, 1983 examination in the operating room, Dr. Timberlake used the palm of his hand to rub or brush over the testicles and penis of Patient A.

8. On October 20, 1983 Dr. Timberlake examined Patient A in the operating room with no person present other than Dr. Timberlake and the patient.

9. During the October 20, 1983 examination in the operating room, Dr. Timberlake used the palm of his hand to rub or brush over the testicles and penis of Patient A several times.

10. Dr. Timberlake stated that his reason for examining an adolescent male's chest or genital area in a room separate from the patient's mother and the doctor's office staff was that he felt that the male adolescent patient would feel awkward and embarassed.

ROBERTS & HOOE
Attorneys-at-Law
Staunton, Virginia
24401

11. Although Dr. Timberlake testified that when he rechecked Patient A's groin area on the third visit he was "checking for mono mainly", Dr. Timberlake never advised the patient or the patient's mother that he suspected the patient might have mononucleosis.

12. Dr. Timberlake's examination of Patient A's genitals were not customary nor reasonable for an otolaryngologist.

13. There is no medical reason to examine the chest of an adolescent male patient outside the presence of the patient's mother.

14. On July 14, 1983, Dr. Timberlake examined Patient B in an examining room in the presence of patient's mother. Dr. Timberlake then stated that he wanted to examine the patient's heart and lungs, took the patient to the operating room where only Dr. Timberlake and the patient were present. During the examination in the operating room, Dr. Timberlake touched the patient's penis with the heal of his hand.

15. On August 8, 1983, patient B returned to Dr. Timberlake's office for a scheduled pre-operative examination. Dr. Timberlake examined the patient's ears, nose and throat in the presence of the patient's mother and then took the patient to the operating room for the expressed purpose of examining the patient's heart and lungs. During the examination in the operating room, with only Dr. Timberlake and the patient present, Dr. Timberlake placed his hand on the patient's lower abdomen, touching the top of the patient's penis with the heel of his hand.

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24401

16. On September 20, 1983, Dr. Timberlake operated on Patient B. Postoperatively, Dr. Timberlake came to Patient B's hospital room and checked the packs in the patient's nose. Dr. Timberlake also pulled the curtains around the patient's bed, told the patient to lower his pajama bottom and then placed his hand on the patient's lower abdomen, touching the top of the patient's penis with the heel of his hand.

17. It was not within the scope of an appropriate otolaryngology examination to palpate the abdomen of Patient B following a septoplasty since there were no complaints by Patient B of abdominal pain. The postoperative examination conducted by Dr. Timberlake in the hospital room was not within the scope of an appropriate otolaryngology examination.

18. On October 27, 1982, Patient C was examined by Dr. Timberlake in an examining room in the presence of the patient's mother. Dr. Timberlake then stated that he was going to take Patient C to another room to check his lungs. Dr. Timberlake then took Patient C to the operating room and in the presence of only the patient placed his hand on the patient's penis and then his ear on the patient's lower abdomen.

19. Dr. Timberlake examined Patient C seven other times and each occasion took the patient to the operating room, where only the doctor and the patient were present, and placed his hand upon the patient's penis and then placed his ear upon the patient's lower abdomen.

20. It is not with the scope of an appropriate otolaryngology examination for a doctor to place his ear on the

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patient's lower abdomen. It was not within the scope of an appropriate otolaryngology examination for Dr. Timberlake to examine Patient C's genitalia.

21. On April 21, 1977, Dr. Timberlake performed a pre-operative physical examination on Patient D, including a hernia check, for surgery scheduled for April 28, 1977. Dr. Timberlake testified that he generally performs pre-operative physical examinations two days prior to scheduled surgery.

22. Dr. Timberlake on five occasions squeezed the penis of Patient D during pre-operative examinations. Dr. Timberlake's squeezing of Patient D's penis was not within the scope of an appropriate otolaryngology examination.

23. Postoperatively, Dr. Timberalke squeezed Patient D's penis during examinations. There was no medical reason to perform a postoperative examination of Patient D's genital area or to squeeze his penis.

24. On October 17, 1983, Dr. Timberlake examined the ears, nose, throat and chest of Patient E in the presence of the patient's mother. Dr. Timberlake and a nurse took the patient to the operating room for the purpose of removing wax from the patient's ears. In the presence of only the patient, Dr. Timberlake touched the patient's testicles and penis while conducting what Dr. Timberlake described as a check for a hernia.

25. Patient E was examined on two other occasions in the operating room when Dr. Timberlake, only in the presence of the

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patient, touched with his hand the testicles and penis of the patient.

26. The examination of Patient E's genital area was not with the scope of an appropriate otolaryngology examination.

27. Dr. Timberlake treated Patient F during the period of February 25, 1975 through October 26, 1977, including twenty-two office visits.

28. During most of the office visits, Dr. Timberlake took the patient to the operating room and, in the presence of only the patient, on repeated occassions held or cupped the patient's testicles, on some occasions squeezed the patient's penis with his fingers and on one occasion placed his ear on the patient's abdomen below his navel.

29. Dr. Timberlake's repeated examinations of F's genital area were medically unnecessary and not within the scope of an appropriate otolaryngology examination.

30. Dr. Timberlake performs all aspects of his physical examinations in the examining room for all patients other than male adolecent boys.

31. Dr. Timberlake's practice routinely included the examination of the chest or groin of an adolescent boy in private while Dr. Timberlake's nurse or staff member waited in the hallway while Dr. Timberlake performed the examination behind a closed door.

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Attorneys-at-Law
Star Virginia
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CONCLUSIONS OF LAW

1. Dr. Timberlake is guilty of fraud or deceit in the practice of otolaryngology based on the above stated findings of fact.

2. Dr. Timberlake is guilty of unprofessional conduct as defined in §54-317 of the Code of Virginia. Particularly, Dr. Timberlake's inappropriate examinations as described in the findings of fact are contrary to the standards of ethics of his branch of the healing arts and were conducted to such a manner as to make his practice a danger to the health and welfare of his patients. § 54-317(11)

RECOMMENDATIONS

The Hearing Officer recommends that the Board of Medicine, based on the findings of fact and conclusions of law set out above, place Dr. Timberlake on probation for such time as it may designate and direct that during such period Dr. Timberlake not provide any professional services as a medical doctor to any person under the age of 18 years and that he receive such psychiatric counseling as the Board deems appropriate.

Date: 06-03-85

Hearing Officer

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was mailed to Howard M. Casway, Esquire, Assistant Attorney General, 101 N. Eighth Street, Richmond, Virginia 23219 and to Thomas A. Schultz, Jr., Esquire, Harrison & Johnson, P. O. Box 809, Winchester, Virginia 22601, counsel for the respondent.

Hearing Officer

IERTS & HOOE
orneys-at-Law
unton, Virginia
2440

VIRGINIA:

BEFORE THE VIRGINIA STATE BOARD OF MEDICINE

IN RE: Brian B. Timberlake, M.D.

ORDER

Pursuant to §§ 54-318.1, 54-318.3, 54-958, 54-959, and 9-6.14:12 of the Code of Virginia (1950), as amended, a formal administrative hearing was held before John R. Hooe, III, Esquire, in the absence of the Virginia State Board of Medicine (hereinafter the "Board") on March 4, 1985 and March 5, 1985 in Winchester, Virginia. The purpose of the hearing was to inquire into allegations of violation of § 54-316 as more fully described in a Notice of Hearing and Statement of Particulars dated November 14, 1984 and incorporated by reference herein. Dr. Timberlake appeared in person and by counsel, Thomas A. Schultz, Jr., Esquire, and the Board was represented by Howard M. Casway, Assistant Attorney General. The proceedings were recorded by a certified court reporter.

Following the hearing, the hearing officer made Proposed Findings of Fact and Conclusions of Law, to which both parties excepted.

On July 21, 1985, the Board met in Virginia Beach to hear closing arguments by both counsel and to review the record in the case. The proceedings were presided over by Charles Poston, Esquire a duly appointed hearing officer, and were recorded by a certified court reporter. Following its review of all documents filed by counsel, all rulings by Mr. Hooe, the exceptions filed

thereto, the transcript of the proceedings, the exhibits filed, the proposed findings of fact and conclusions of law of Mr. Hooe, and oral argument of counsel, the Board makes the following Findings of Fact, Conclusions of Law, Rulings on evidence, motions and exceptions, and Order:

With respect to Dr. Timberlake's Exceptions to Rulings and Report of the Hearing Officer dated July 8, 1985, the Board rules as follows:

1. The Board sustains Dr. Timberlake's objection and specifically considered the testimony of Dr. George Lehne in reaching its determination;

2. The Board overrules Dr. Timberlake's second exception and sustains the hearing officer, Mr. Hooe, thereby excluding the testimony of Dr. Green;

3. The Board overrules Dr. Timberlake's third exception and sustains the hearing officer, Mr. Hooe, in not requiring the Board to more particularly specify its allegations against Dr. Timberlake;

4. The Board overrules Dr. Timberlake's fourth exception and holds that there is substantial evidence in the record from which Mr. Hooe could have reached his conclusions;

5. The Board overrules Dr. Timberlake's fifth exception, incorporating all previous objections and/or exceptions previously made which are contained in the transcript of the hearing of March 4 and 5, 1985 and in all other documents which are part of the record of this case. Specifically, the Board overrules Dr. Timberlake's objections contained in a document styled Objections

to Proceedings dated February 7, 1985, items 1, 2, 3, and 4, and specifically finds with respect to item 4 that no evidence to substantiate said objection was presented nor was there any evidence of prejudice by virtue of the conduct alleged therein. The Board specifically upholds all other rulings of Mr. Hooe other than with respect to the testimony of Dr. Lehne during the hearing.

With respect to Dr. Timberlake's objection to the use of a second hearing officer dated February 11, 1985, the Board specifically overrules said objection.

With respect to the Proposed Findings of Fact and Conclusions of Law of Mr. Hooe, the Board accepts all Findings of Fact with the following amendments: Finding of Fact #4 is amended to read, "The six unrelated patients were all pre-adolescent boys at the time of the alleged behavior of Dr. Timberlake about which they complained, ages six through thirteen." Finding of Fact #5 is amended to read, "All alleged actions by Dr. Timberlake in relation to the six boys occurred between the years 1977 and 1984." Finding of Fact #11 is amended to read, "Although Dr. Timberlake testified that when he re-checked patient A's groin area on the third visit, he was 'checking for adnopathy', Dr. Timberlake never advised the patient or the patient's mother that he suspected the patient might have mononucleosis, nor did he obtain any laboratory tests to verify his suspicion." Finding of Fact #13 is amended to read, "There is no medical reason to examine the chest of an adolescent or pre-adolescent male patient outside the presence of the patient's

mother." Finding of Fact #14 is corrected typographically in its last line to read, "heel" rather than "heal" of his hand. Finding of Fact #30 is amended to read, "Dr. Timberlake performs all aspects of his physical examinations in the examining room for all patients other than pre-adolescent or adolescent males." Finding of Fact #31 is amended to read, "Dr. Timberlake's practice routinely included the examination of the chest or groin of an adolescent or pre-adolescent male in private while Dr. Timberlake's nurse or staff member waited in the hallway while Dr. Timberlake performed the examination behind a closed door."

CONCLUSIONS OF LAW

The Board accepts Mr. Hooe's Proposed Conclusions of Law with the following amendments:

1. Conclusion of Law #1 is amended to read, "Dr. Timberlake is guilty of fraud or deceit in the practice of otolaryngology in violation of § 54-316(3) as more fully defined in § 54-317(14) based on the above-stated Findings of Fact.

2. Conclusion of Law #2 is amended to read, "Dr. Timberlake is guilty of unprofessional conduct in violation of § 54-316(3) as more fully defined in § 54-317 of the Code of Virginia. Particularly, Dr. Timberlake's inappropriate examinations as described in the Findings of Fact are contrary to the standards of ethics of his branch of the healing arts and were conducted in such a manner as to make his practice a danger to the health and welfare of his patients. § 54-317(11).

3. The Board makes the following additional Conclusion of Law: The above stated Findings of Fact and Conclusions of Law

constitute violations of § 54-316(3) as more fully defined in § 54-317(16).

The Board specifically overrules the proposed sanction of the hearing officer and did not consider it in determining its sanction; therefore the Attorney General's exception to Mr. Hooe's authority to recommend sanctions is moot.

Wherefore, it is hereby ORDERED that the license of Brian B. Timberlake, M.D., be and it hereby is REVOKED. Said revocation is STAYED and the license of Brian B. Timberlake, M.D. is placed on PROBATION for an INDEFINITE PERIOD OF TIME upon the following terms and conditions:

1. That he not provide any medical services as a medical doctor to any male under 18 years of age;

2. That he undergo psychological testing by a clinical psychologist approved by the Board, with a full report submitted to the Psychiatric Advisory Board;

3. That he be seen by a psychiatrist selected from a list of three approved by the Psychiatric Advisory Board;

4. That he authorize any treating psychiatrist or psychologist to freely communicate with the Psychiatric Advisory Board and the Board of Medicine;

5. That he be seen by the Psychiatric Advisory Board at its next regularly scheduled meeting and at such additional times as the Psychiatric Advisory Board may direct, with full reports to the Board of Medicine;

6. That at the conclusion of the above directed psychological and psychiatriac testing and evaluation, Dr. Timberlake

shall be seen by the full Board of Medicine at its next regularly scheduled meeting, at which time the Board reserves unto itself the right to impose such additional terms and conditions of probation as it deems appropriate;

7. Violation of any of the above terms and conditions shall result in the immediate rescission of the stay of revocation.

FOR THE BOARD

George J. Carroll, M.D.
Secretary-Treasurer
State Board of Medicine

ENTER: 8-7-85