



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

March 10, 2004

Emilio Aldo Espinosa, M.D.  
391 Edinborough  
Temperance, MI 48182

Dear Doctor Espinosa:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on March 10, 2004.

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 of the Ohio Revised Code.

Very truly yours,

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 1504  
RETURN RECEIPT REQUESTED

*Mailed 3-11-04  
Second mailing 4-13-04*

In The Matter of Emilio Also Espinosa, M.D.  
Page 2

Second mailing: 391 Edinborough  
Temperance, MI 48182  
CERTIFIED MAIL NO. 7000 0600 0024 5150 2037  
RETURN RECEIPT REQUESTED

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 :  
EMILIO ALDO ESPINOSA, M.D. :

**FINDINGS, ORDER AND JOURNAL ENTRY**

This matter came on for consideration before the State Medical Board of Ohio on March 10, 2004, pursuant to a Notice of Opportunity for Hearing issued to Emilio Aldo Espinosa, M.D., on December 10, 2003. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Sharon W. Murphy, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Murphy's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the December 10, 2003, Notice of Opportunity for Hearing.

Accordingly, it is hereby ORDERED that:

- A. **REPRIMAND:** Emilio Aldo Espinosa, M.D., is REPRIMANDED.
- B. **FINE:** Dr. Espinosa shall pay a FINE of \$5,000.00 to the State Medical Board of Ohio. This fine shall be paid no later than thirty days after the Board's mailing of notification of approval of this Order.
- C. **SUSPENSION OF CERTIFICATE:** The certificate of Dr. Espinosa to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite term.
- D. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Espinosa's certificate to practice until all of the following minimum requirements are met:
  - 1. Dr. Espinosa shall submit an application for reinstatement or restoration, accompanied by appropriate fees.

2. Dr. Espinosa shall pay the fine set forth in Paragraph B, above.
3. Dr. Espinosa shall provide documentation acceptable to the Board of his satisfactory completion of one hundred hours of Continuing Medical Education [CME] credits, at least forty hours of which shall be in Category I, for the October 2, 2000 – October 1, 2002, CME acquisition period. It shall be the responsibility of Dr. Espinosa to work with appropriate Board staff to ascertain what will be considered as satisfactory documentation and to obtain the same.
4. Dr. Espinosa shall supply documentation acceptable to the Board of satisfactory completion of one hundred hours of approved CME, at least forty hours of which shall be in Category I, for each CME acquisition period, if any, during which his certificate remains suspended.
5. In the event that Dr. Espinosa has not been engaged in the active practice of medicine for a period of more than two years prior to his application for reinstatement, Dr. Espinosa shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.

E. **DOCUMENTATION OF CME:** Subsequent to reinstatement or restoration, Dr. Espinosa shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the CME acquisition period in effect at the time of his reinstatement, and for two additional CME acquisition periods thereafter. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME acquisition period, unless otherwise determined by the Board.

F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Espinosa shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Espinosa shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Espinosa shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Espinosa shall also provide a copy of this Order by certified mail, return receipt

requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Espinosa shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

- H. **VIOLATION OF ORDER:** If Dr. Espinosa violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective thirty days after the mailing of notification of approval by the Board.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 8<sup>th</sup> day of October 2003, and the original thereof shall be kept with said Journal.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

March 10, 2004

Date

2004 JAN 30 P 12: 14

**PROPOSED FINDINGS AND PROPOSED ORDER  
IN THE MATTER OF EMILIO ALDO ESPINOSA, M.D.**

The Matter of Emilio Aldo Espinosa, M.D., was reviewed by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio.

**INTRODUCTION**

Basis for the Review

1. By letter dated December 10, 2003, the State Medical Board of Ohio [Board] notified Emilio Aldo Espinosa, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's proposed action was based on allegations that Dr. Espinosa had failed to respond to a random audit of his Continuing Medical Education [CME] during the 2000 - 2002 CME acquisition period. Accordingly, the Board alleged that Dr. Espinosa's failure to respond to the random audit notices rebuts the presumption under Rule 4731-10-08(A), Ohio Administrative Code, that Dr. Espinosa completed the requisite hours of CME and/or demonstrates that Dr. Espinosa failed to keep detailed records of the CME he had taken.

Moreover, the Board alleged that Dr. Espinosa's certifying to the Board that he had completed the statutorily required CME when he had not done so constitutes, "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, [and/or] "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

In addition, the Board advised Dr. Espinosa that he was entitled to a hearing if such hearing was requested within thirty days of the mailing of the notice of opportunity for hearing. (Exhibit 2)

2. In accordance with Section 119.07, Ohio Revised Code, the notice of opportunity for hearing was sent via certified mail on December 11, 2003, return receipt requested, to the address of record for Dr. Espinosa. Dr. Espinosa's address of record was 391 Edinborough, Temperance, MI 48182. Proper service of the notice was documented. (Exhibits 1, 2)

3. As of January 16, 2004, more than thirty days after mailing of the notice of opportunity for hearing, the Board had not received a request for hearing from Dr. Espinosa. (Exhibit 1)

### **EVIDENCE EXAMINED**

1. Exhibit 1: January 16, 2004, Memorandum from Barbara A. Jacobs, Public Services Administrator, to Gregory Porter, Chief Hearing Officer.
2. Exhibit 2: Copy of the notice of opportunity for hearing mailed on December 11, 2003, with copies of certified mail receipts.
3. Exhibit 3: Affidavit of Debra L. Jones, Continuing Medical Education and Renewal Officer for the Board.
  - a. Exhibit 3A: Copy Dr. Espinosa's December 2000 application for renewal of his certificate to practice medicine and surgery in Ohio.
  - b. Exhibit 3B: Copy of a March 13, 2003, letter to Dr. Espinosa from the Board.
  - c. Exhibit 3C: Copy of an April 29, 2003, letter to Dr. Espinosa from the Board.

### **SUMMARY OF THE EVIDENCE**

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Proposed Findings and Proposed Order.

1. On or about December 30, 2002, Emilio Aldo Espinosa, M.D., applied for renewal of the registration of his certificate to practice medicine and surgery in Ohio or the January 2, 2003 – January 1, 2005 registration period. In doing so, Dr. Espinosa certified that he had completed or would complete during the 2000 - 2002 Continuing Medical Education [CME] acquisition period (October 2, 2000 – October 1, 2002) the requisite hours of CME as required by Section 4731.281, Ohio Revised Code. (Exhibits 3, 3A)
2. By a certified mail letter dated March 13, 2003, the Board informed Dr. Espinosa that he must complete and submit a log demonstrating that he had completed at least one hundred hours of CME during the 2000 - 2002 CME acquisition period. The Board further informed Dr. Espinosa that he must provide documentation that he had actually completed at least forty hours of Category I CME credits. Finally, the Board instructed Dr. Espinosa to return the requested material to the Board within three weeks of his receipt of the Board's letter. (Exhibit 3B) The Board has not received any response from Dr. Espinosa regarding the March 13, 2003, audit letter. (Exhibit 3, 3C)

3. By certified mail letter dated April 29, 2003, the Board again requested that Dr. Espinosa submit documentation of his CME credits for the 2000 - 2002 period. The Board further advised Dr. Espinosa that the April 29, 2003, letter was the final notice Dr. Espinosa would receive prior to the initiation of disciplinary action. The Board instructed him to contact the Board within ten days of his receipt of the letter to avoid further action by the Board. (Exhibit 3C) The Board has not received any response from Dr. Espinosa regarding the April 29, 2003, audit letter. (Exhibit 3)

### **PROPOSED FINDINGS**

1. Emilio Aldo Espinosa, M.D., applied for a renewal of the registration of his certificate to practice medicine and surgery for the January 2, 2003 – January 1, 2005 period. In doing so, Dr. Espinosa certified that he had completed or would complete during the 2000 - 2002 Continuing Medical Education [CME] acquisition period (October 2, 2000 – October 1, 2002) the requisite hours of CME as required by Section 4731.281, Ohio Revised Code.
2. By certified mail letter dated March 13, 2003, the Board informed Dr. Espinosa that he must complete and submit a log demonstrating that he had completed at least one hundred hours of CME during the 2000 - 2002 CME acquisition period. The Board further informed Dr. Espinosa that he must provide documentation that he had actually completed at least forty hours of Category I CME credits. By certified mail letter dated April 29, 2003, the Board again requested that Dr. Espinosa submit documentation of his CME credits for the 2000 - 2002 period. Dr. Espinosa has failed to respond to either notice.
3. Dr. Espinosa's lack of response to the notices, as detailed in Findings of Fact 2, rebuts the presumption under Rule 4731-10-08(A), Ohio Administrative Code, that Dr. Espinosa did complete the requisite hours of CME, and/or demonstrates that Dr. Espinosa failed to keep detailed records of CME taken.
4. Dr. Espinosa's certifying to the Board that he had completed the statutorily required CME when he had not done so, as set forth in Findings of Fact 1 and 3, constitutes "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Section 4731.22(A), Ohio Revised Code, provides that,

The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a certificate to a person found by the board to have \* \* \* committed fraud, misrepresentation, or

deception in applying for or securing any certificate to practice or certificate of registration issued by the Board.

R.C. 4731.22(A)

In a recent decision<sup>1</sup> by the Franklin County Court of Common Pleas interpreting this statute, the court held that, when the Board finds a violation of this provision, the Board may only “revoke or \* \* \* refuse to grant a certificate of registration.” The range of penalties available to the Board does not include a fine, probation, suspension, or stayed revocation. Accordingly, unless the Board decides to revoke Dr. Espinosa’s certificate, the Board shall take no further action based on the violation of Section 4731.22(A), Ohio Revised Code.

5. Dr. Espinosa’s certifying to the Board that he had completed the statutorily required CME when he had not done so, as set forth in Findings of Fact 1 and 3, constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
6. Dr. Espinosa’s failure to respond to the audit notices, to obtain the requisite CME, and/or to submit documentation of same, as set forth in Findings of Fact 2 and 3, constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03, 4731-10-05 and 4731-10-08, Ohio Administrative Code, as in effect prior to February 23, 2003.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **REPRIMAND:** Emilio Aldo Espinosa, M.D., is REPRIMANDED.
- B. **FINE:** Dr. Espinosa shall pay a FINE of \$5,000.00 to the State Medical Board of Ohio. This fine shall be paid no later than thirty days after the Board’s mailing of notification of approval of this Order.
- C. **SUSPENSION OF CERTIFICATE:** The certificate of Dr. Espinosa to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite term.

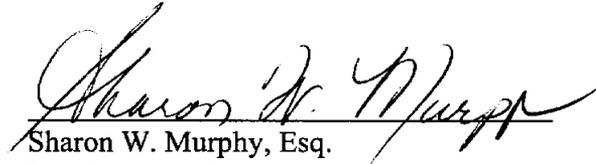
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<sup>1</sup> *Faye F. Istanbuly, M.D., v. State Medical Board of Ohio* (Dec. 4, 2003), Franklin C.P. No. 03CVF-02-2334, unreported.

- D. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Espinosa's certificate to practice until all of the following minimum requirements are met:
1. Dr. Espinosa shall submit an application for reinstatement or restoration, accompanied by appropriate fees.
  2. Dr. Espinosa shall pay the fine set forth in Paragraph B, above.
  3. Dr. Espinosa shall provide documentation acceptable to the Board of his satisfactory completion of one hundred hours of Continuing Medical Education [CME] credits, at least forty hours of which shall be in Category I, for the October 2, 2000 – October 1, 2002, CME acquisition period. It shall be the responsibility of Dr. Espinosa to work with appropriate Board staff to ascertain what will be considered as satisfactory documentation and to obtain the same.
  4. Dr. Espinosa shall supply documentation acceptable to the Board of satisfactory completion of one hundred hours of approved CME, at least forty hours of which shall be in Category I, for each CME acquisition period, if any, during which his certificate remains suspended.
  5. In the event that Dr. Espinosa has not been engaged in the active practice of medicine for a period of more than two years prior to his application for reinstatement, Dr. Espinosa shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
- E. **DOCUMENTATION OF CME:** Subsequent to reinstatement or restoration, Dr. Espinosa shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the CME acquisition period in effect at the time of his reinstatement, and for two additional CME acquisition periods thereafter. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME acquisition period, unless otherwise determined by the Board.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Espinosa shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Espinosa shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

- G. REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Espinosa shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Espinosa shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Espinosa shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.
- H. VIOLATION OF ORDER:** If Dr. Espinosa violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective thirty days after the mailing of notification of approval by the Board.

  
Sharon W. Murphy, Esq.  
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/](http://www.state.oh.us/med/)

December 10, 2003

Emilio Aldo Espinosa, M.D.  
391 Edinborough  
Temperance, MI 48182

Dear Doctor Espinosa:

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

- (1) In applying for registration of your certificate to practice medicine and surgery for the January 2, 2003 – January 1, 2005 period, you certified that you had completed or would complete during the 2000 - 2002 period (October 2, 2000 – October 1, 2002) the requisite hours of Continuing Medical Education [CME] as required by Section 4731.281, Ohio Revised Code.
- (2) By a certified mail letter dated on March 13, 2003, the Board informed you that you were required to complete and submit a log demonstrating that you had completed at least one hundred hours of CME during the 2000 - 2002 period and to provide documentation that you had actually completed at least forty hours of Category I CME credits. By certified mail letter dated April 29, 2003, the Board again requested that you submit documentation of your CME credits for the 2000 - 2002 period. You have failed to respond to either notice.
- (3) Your lack of response to the notices as detailed in the above paragraph (2) rebuts the presumption under Rule 4731-10-08(A), Ohio Administrative Code, that you did complete the requisite hours of CME, and/or demonstrates that you failed to keep detailed records of CME taken.

Your acts, conduct and/or omissions in certifying to the Board that you had completed the statutorily required CME, as set forth in the above paragraph (1), when you had not, in fact, done so, constitute "fraud, misrepresentation, or deception in

*Mailed 12-11-03*

applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct and/or omissions in certifying to the Board that you had completed the statutorily required CME, as set forth in the above paragraph (1), when you had not, in fact, done so, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your failure to respond to the audit notices, to obtain the requisite CME, and/or to submit documentation of same, as alleged in the above paragraphs (2) and (3) constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03, 4731-10-05 and 4731-10-08, Ohio Administrative Code, as in effect prior to February 23, 2003.

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 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 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 medicine and surgery, or to fine, reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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."

Emilio Aldo Espinosa, M.D.  
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Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Lance A. Talmage  
Secretary

Enclosures

CERTIFIED MAIL 7000 0600 0024 5149 5438  
RETURN RECEIPT REQUESTED