State Medical Board of Ohio

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September 9, 1998

Anthony D. Martin, M.D.
1452 Worthington Park Blvd.
Westerville, OH 43081

Dear Doctor Martin:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 9, 1998, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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 233 840 056
RETURN RECEIPT REQUESTED

cc: Terri-Lynne B. Smiles, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 840 057
RETURN RECEIPT REQUESTED

Mailed 10/15/98

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 9, 1998, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Anthony D. Martin, M.D., 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.

Anand G. Garg, M.D.
Secretary

(SEAL)

September 9, 1998
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

ANTHONY D. MARTIN, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 9, 1998.

Upon the Report and Recommendation of R. Gregory Porter, 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 modification, 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 Anthony D. Martin, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

    a. Dr. Martin shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

    b. Dr. Martin shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

    If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Martin's responsibility to know when

personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Martin shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

c. Dr. Martin shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by this Board, the Arizona Board, and any other state medical board. Moreover, Dr. Martin shall cause to be submitted to the Board copies of any reports that he submits to the Arizona Board whenever the Arizona Board requires such submission.

The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

d. Within thirty days of the effective date of this Order, Dr. Martin shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Martin's patient charts and shall submit a written report of such review to the Board on a quarterly basis. The monitoring physician shall monitor Dr. Martin's treatment of his patients as reflected in his patient charts. The chart review may be done on a random basis, with ten percent (10%) of Dr. Martin's general psychiatric patient charts and one percent (1%) of his ADD patient charts to be reviewed on a quarterly basis. The monitoring physician shall provide the Board with reports on Dr. Martin and on the status of his patient charts on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Martin's quarterly declaration. It is Dr. Martin's responsibility to ensure that the reports are timely submitted.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Martin shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Martin shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Martin shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

e. In the event that Dr. Martin should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Martin must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

f. If Dr. Martin violates probation 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.

2. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Martin's certificate will be fully restored.

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

Anand G. Garg, M.D.
Secretary

(SEAL)

September 9, 1998
Date

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REPORT AND RECOMMENDATION
IN THE MATTER OF ANTHONY D. MARTIN, M.D.

The Matter of Anthony D. Martin, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on July 2, 1998.

INTRODUCTION

I. Basis for Hearing

A. By letter dated March 11, 1998, the State Medical Board of Ohio [Board] notified Anthony D. Martin, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

> On or about March 14, 1997, Dr. Martin entered into a Stipulation and Order with the Board of Medical Examiners, State of Arizona. The Stipulation and Order required Dr. Martin to obtain a second opinion at his expense prior to treating any patient who is thirteen years or older for attention deficit disorder.

The Board alleged that the Stipulation and Order constituted "'[t]he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code."

Finally, the Board advised Dr. Martin of his right to request a hearing in this matter. (State's Exhibit 1)

B. By letter received by the Board on April 14, 1998, Terri-Lynne B. Smiles, Esq., requested a hearing on behalf of Dr. Martin. (State's Exhibit 3)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Christopher E. Wasson, Assistant Attorney General.

B. On behalf of the Respondent: Terri-Lynne B. Smiles, Esq.

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EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

Anthony D. Martin, M.D., as upon cross-examination

B. Presented by the Respondent

Anthony D. Martin, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1 through 12: Procedural exhibits.

2. State's Exhibit 13: Copies of documents from the Board of Medical Examiners of the State of Arizona [Arizona Board] concerning the Matter of Anthony Martin, M.D., and consisting of the following: a Stipulation and Order between the Arizona Board and Dr. Martin, dated April 21, 1997; and an Order of the Arizona Board concerning Dr. Martin's treatment of patients over the age of thirteen that he diagnoses as suffering from attention deficit disorder [ADD]. (3 pp.)

3. State's Exhibit 14: Excerpt from the *Diagnostic and Statistical Manual of Mental Disorders,* Fourth Edition [DSM-IV], concerning Attention-Deficit/Hyperactivity Disorder. (9 pp.)

4. State's Exhibit 15: Copy of transcript of a March 14, 1997, Informal Interview of Anthony D. Martin, M.D., before the Arizona Board. (101 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Affidavit of Charles E. Buri, Esq. (2 pp.)

2. Respondent's Exhibits B, C, and D: Excerpts from medical journals and textbooks: APA Committee on Research on Psychiatric Treatments, *Psychopharmacological Screening Criteria,* (J Clin Psychiatry 53:6, June 1992); Wender, *Attention-Deficit Hyperactivity Disorder in Adults,*

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(Oxford University Press, 1995); Bellak, Kay, and Opler, *Attention Deficit Disorder Psychosis as a Diagnostic Category,* Psychiatric Developments (1987).

3. Respondent's Exhibit E: Blank forms used by Dr. Martin during his initial psychiatric evaluations. (14 pp.)

4. Respondent's Exhibit F: Not presented.

5. Respondent's Exhibit G: Curriculum vitae of Anthony Martin, M.D.

6. Respondent's Exhibits H through K: Notes, excerpts from patient records, and excerpts from Arizona Board documents compiled by Dr. Martin in preparation for the Arizona Board action. (Note: These exhibits have been sealed to protect patient confidentiality.)

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.

Background Information

1. Anthony D. Martin, M.D., obtained his Doctor of Medicine degree in 1988 from the Universidad Central Del Este in the Dominican Republic. From 1988 until 1989, Dr. Martin participated in a pathology residency at Northside Medical Center, Youngstown, Ohio. He entered an adult psychiatry residency at Case Western Reserve University in 1989 and completed it in 1992. From 1992 to 1993, Dr. Martin completed the first year of a two-year fellowship in child and adolescent psychiatry at the University of Cincinnati. In addition, from 1992 through 1994, Dr. Martin completed a two-year degree program in family therapy at the Family Therapy Center, Cincinnati, Ohio. (Respondent's Exhibit [Resp. Ex.] G)

   Dr. Martin practiced psychiatry in Cincinnati until June 1994, when he moved to Arizona to complete a National Service Corps contract. From July 1994 until October 1996, Dr. Martin worked as the Medical Director of Outpatient Services at the Community Counseling Centers, Inc., in rural Arizona. (Resp. Ex. G)

   Dr. Martin stated that he is board eligible in psychiatry. (State's Exhibit [St. Ex.] 15, pp. 40-41)

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2. Dr. Martin testified that he had first learned sometime around March 1996 that he was being investigated by the Arizona Board of Medical Examiners [Arizona Board]. Dr. Martin testified that the Arizona Board had received several complaints. Dr. Martin stated that two complaints concerned Patient L.M.C., who had committed suicide while under Dr. Martin's care. Three other complaints involved standard of care issues concerning Dr. Martin's treatment of adult patients for attention deficit disorder [ADD]. Another complaint accused Dr. Martin of abusing drugs. Finally, another complaint concerned an office romance that Dr. Martin had participated in. Dr. Martin testified that the Arizona Board dismissed the complaints concerning drug abuse and the office romance following an informal interview. (Transcript at pages [Tr.] 35-42)

   Dr. Martin testified that the Arizona Board had obtained from Dr. Martin's employer, Community Counseling Centers, a list of patients that Dr. Martin had treated with stimulant medication for ADD. The Arizona Board then asked Dr. Martin to provide a summary of his treatment of each of those patients. The Arizona Board's expert, Dr. Brennan, then reviewed each of those cases. Four of these were discussed at an informal interview before the Arizona Board. Dr. Martin testified that the cases that the Arizona Board reviewed were "some of the most confusing and difficult cases" he had worked with. (Tr. 43-50, 123-124)

<u>The March 14, 1997, Informal Interview before the Arizona Board</u>

General Information

1. An informal interview of Dr. Martin took place before the full Arizona Board on March 14, 1997. Dr. Martin was represented by counsel at this interview, and the interview was transcribed. During this interview, the Arizona Board heard an unsworn presentation by Dr. Brennan, the Arizona Board's expert. The Arizona Board also heard from Dr. Martin, who also was not sworn. (<u>St. Ex. 15</u>; Tr. 56)

2. During the informal interview, Dr. Brennan told the Arizona Board that he had had an opportunity to speak with and question Dr. Martin. Dr. Brennan stated that Dr. Martin told him that 50 percent of Dr. Martin's patients met the criterion for attention deficit disorder. Dr. Brennan further stated that Dr. Martin acknowledged that he had not performed baseline lab tests before prescribing stimulants, that Dr. Martin had not performed "cross-validating biological testing for whether or not substances are being utilized," and had not tested for underlying organic causes of the patients' symptoms. Moreover, Dr. Brennan stated that he had been "appalled" that Dr. Martin seemed "unaware of exactly what an EKG demonstrates in a first-degree heart block as a consequence of tricyclic antidepressants." Dr. Brennan further stated that Dr. Martin utilized tricyclics in combination with stimulants without obtaining baseline studies of EKG, thyroid, "or other things[.]" Dr. Brennan further criticized Dr. Martin for diagnosing ADD in conjunction with psychotic symptoms. (<u>St. Ex. 15</u>, p. 5, 10-14)

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3. Dr. Martin acknowledged during the informal interview that some of Dr. Brennan's criticism concerning recordkeeping were valid. However, Dr. Martin testified during the present hearing that he had meant to say that more documentation is always a good idea, not that the medical records lacked the criteria necessary for the diagnoses that had been rendered. (St. Ex. 15, pp. 31-34; Tr. 60-63)

   Dr. Martin further testified at the present hearing concerning Dr. Brennan's criticism that Dr. Martin had failed to obtain baseline EKGs or thyroid studies prior to prescribing stimulants. Dr. Martin testified that Dr. Brennan's criticism was not valid. Dr. Martin stated that such studies are not typically performed when prescribing stimulant medication, and that his position is supported by the American Psychiatric Association. In addition, Dr. Martin testified that the symptomology between ADD and thyroid disease is dissimilar, and that psychiatrists do not routinely screen for thyroid disease when a diagnosis of ADD is being considered. Dr. Martin testified, however, that he always takes a patient's blood pressure before prescribing stimulant medication. (St. Ex. 15, pp. 5, 35-38; Resp. Ex. B, p. 188; Tr. 127-132)

4. Dr. Martin testified at the present hearing that he had never been given a meaningful opportunity to respond to the Arizona Board's criticism during the informal interview. Dr. Martin acknowledged that he had been asked by the Arizona Board if he had anything to present. Nevertheless, Dr. Martin testified that he had been interrupted so often when he tried to do so that he was denied an opportunity to present his side of his case. In addition, Dr. Martin testified that Dr. Brennan's criticisms had been worded in a very general fashion, and that Dr. Martin had not been given an opportunity to respond to that criticism in a specific, case-by-case manner. (Tr. 56-60)

   Dr. Martin acknowledged that the case summaries that he had prepared had been forwarded to offices of the Arizona Board for its review prior to the informal interview. (Tr. 56-60)

Patient L.M.C.

1. Dr. Brennan told the Arizona Board that he had been concerned that Dr. Martin had placed Patient L.M.C., a 111 pound female, on a daily dose of 250 mg. of Imipramine, and that "there were no levels throughout the entire record for plasma levels or for EKG's." Dr. Brennan noted that an EKG that yielded normal results had been performed by a hospital, although not at Dr. Martin's direction. Dr. Brennan further stated that he was concerned that the patient had been placed on 60 mg. of Ritalin. (St. Ex. 15, pp.5-8)

   Dr. Brennan told the Arizona Board that the patient eventually committed suicide. The evidence indicated that the patient had consumed at least nine beers that evening, and that there were no warning signs that she was about to kill herself. Dr. Brennan said that he

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could find no causal relationship between Dr. Martin's care and Patient L.M.C.'s suicide. Nevertheless, Dr. Brennan criticized what he characterized as Dr. Martin's lack of documentation of symptomology, Dr. Martin's failure to monitor the patient's Imipramine level, and the "rapid movement" to a daily dose of 60 mg. Ritalin. (St. Ex. 14, pp. 5-6)

2. Dr. Martin testified at the present hearing that a daily dose of 250 mg. Imipramine for a 111 pound female is not necessarily a problem; however, he had prescribed 200 mg. Imipramine. Dr. Martin testified that the daily dose was subsequently raised to 250 mg. by the patient's family physician. Dr. Martin testified that he left the patient on this dose because she had been doing well, and because the patient was getting an EKG from her family physician. Dr. Martin testified that he lowered the Imipramine to 50 mg. when he suspected ADD because the stimulant medication used to treat ADD can cause an increase in a patient's level of tricyclics. (St. Ex. 15, p. 6; Resp. Ex. J; Tr. 132-134) (At the informal interview, Dr. Martin had stated that he had placed the patient on 150 mg. Imipramine, which was raised to 200 mg. Imipramine by her family physician. [St. Ex. 15, p. 36])

   Dr. Martin testified that EKGs are not routinely performed on patients receiving tricyclic antidepressants unless there is a history of cardiac risk. (St. Ex. 15, p. 6; Resp. Ex. B; Tr. 164-165)

   Dr. Martin further testified that that a daily dose of 60 mg. Ritalin is reasonable for an adult patient. (St. Ex. 15, p. 33; Tr. 134)

Patient M.A.D.

1. At the informal interview, Dr. Brennan told the Arizona Board that Dr. Martin had diagnosed Patient M.A.D. as suffering from attention deficit disorder despite the fact that the patient had previously been diagnosed with undifferentiated schizophrenia. Dr. Brennan stated that the patient had a history of hospitalizations that included psychological testing. She responded to internal stimuli, and demonstrated delusions and hallucinations. Dr. Brennan stated that she was socially isolated and "by all family accounts did not manifest any of the intrusive qualities that would have been encountered with attention deficit disorder[.]" Dr. Brennan stated that Patient M.A.D. "had been diagnosed by a myriad of psychiatrists as having schizophrenia, and attentional cognitive problems are a unique problem with borderline IQ's and a poor diagnostic barometer to treatment in those people." (St. Ex. 15, pp. 14-16)

   Dr. Brennan stated that Dr. Martin discounted evidence that did not support a diagnosis of ADD, and accepted evidence that supported a diagnosis of ADD without first excluding other causes of such symptoms, such as an organic problem or psychosis. Dr. Brennan stated that, for example, Patient M.A.D.'s Wender-Utah Rating Scale (a test used to diagnose ADD) yielded a low score of 8. Nevertheless, Dr. Martin had indicated to

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Dr. Brennan that it would be possible for such a patient to have ADD, and that the low score may have been due to "a lack of accurate recollection of facts." (St. Ex. 15, p. 16)

2. Dr. Martin testified at the present hearing that he first saw Patient M.A.D. on October 29, 1995. Dr. Martin testified that she had previously been found by another practitioner to have a borderline IQ and elevations in the schizoid and compulsive scales of the Millon Clinical Multiaxial Inventory. She had also been found to have severe difficulties with attention and concentration. Dr. Martin stated that the patient was withdrawn and solitary. Moreover, Dr. Martin testified that the patient had failed to respond to "just about every category of psychotropic medications." (Resp. Ex. H; Tr. 138-142)

   Dr. Martin testified that he had been unable to get a sufficient history from the patient for a diagnosis of ADD, but that he believed a trial of stimulant medications was worthwhile to see if it would increase her ability to concentrate and focus on tasks. Dr. Martin testified that she responded well to the stimulants: "Her mother told me that this was the best that she had done in a long time on any medication. I saw her again, and she looked brighter, more with it. She was more outgoing. She wasn't anxious." (Resp. Ex. H; Tr. 142-145)

   Dr. Martin testified that he did not administer the Wender-Utah Rating Scale when he first saw Patient M.A.D. because he had not yet discovered that test in the literature. Dr. Martin testified that he administered that test to Patient M.A.D. in June 1996, several months after he began treating her. Dr. Martin testified that her score on that test was 8, which was "significantly low." Dr. Martin testified that he concluded that he had been treating some depressive symptoms, and began antidepressant therapy. Dr. Martin further testified that he left her on the stimulant medication "because she had done well with it, and that's what a good clinician would do." (St. Ex. 15, pp. 68-71; Resp. Ex. H, Tr. 145-146)

Patient S.H.

1. Concerning Patient S.H., Dr. Brennan stated that Dr. Martin's initial impression of methamphetamine withdrawal would explain why this patient had been inattentive. Dr. Brennan stated that Dr. Martin's initial diagnoses were dysthymia, rule out panic disorder and polysubstance abuse, and that a diagnosis of ADD warranted further investigation. Dr. Brennan further stated that the patient had reported "confused thinking, visual and auditory hallucinations, and feeling anxious and unable to sleep with stomach pains." Subsequently, the patient was readmitted with suicidal ideations. Dr. Brennan stated that a diagnosis of personality disorder was eventually rendered. Dr. Brennan further said that Dr. Martin stated that the patient was doing well in spite of the fact that the patient had suffered repeated hospital admissions and complained of depression and suicidal ideation. Dr. Brennan stated that Dr. Martin's "clinical course in his notes alone demonstrate one of chaos, repeated suicidal ideations with multiple admissions and polysubstance abuse." (St. Ex. 15, pp. 16-18)

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2. Dr. Martin testified at the present hearing that he had diagnosed Patient S.H. as suffering from possible methamphetamine withdrawal. Dr. Martin also included in his initial impression that a diagnosis of ADD would bear further investigation. (Resp. Ex. I; Tr. 147-148)

Dr. Martin testified that a patient's withdrawal from methamphetamine would not preclude a diagnosis of ADD. Dr. Martin testified that patients with ADD often try to self-medicate with stimulants, including amphetamines, cocaine, or large amounts of caffeine. Dr. Martin further testified that if a patient is withdrawing from a substance that the patient was using to self-medicate, it's part of the history. Dr. Martin acknowledged that it would be difficult to confirm a diagnosis of ADD while the person is in active withdrawal. Dr. Martin testified that he had included the statement concerning ADD not as a diagnosis, but rather to indicate that some of the characteristics of that disorder were present. Dr. Martin testified that he had suspected ADD in Patient S.H. because of a positive family history of that disorder, and because the patient had a history of learning difficulties in school. (Resp. Ex. I; Tr. 148-152)

Dr. Martin testified that he subsequently diagnosed Patient S.H. with "rule out ADD, combined," because of a history related by Patient S.H.'s sister, and because Patient S.H. scored a significant 55 out of 73 positives on Dr. Amen's Adult ADD Questionnaire. Dr. Martin further testified that he prescribed Cylert for Patient S.H. because Cylert has a low abuse potential. Moreover, Dr. Martin testified that Patient S.H. responded to the medication. Dr. Martin acknowledged that this patient had stated that she felt "speedy" when given her first dose of Cylert; nevertheless, Dr. Martin stated that Patient S.H. had a reputation for manipulating and misleading staff at the center, and stated that the patient had been visibly calmer. Finally, Dr. Martin testified that the patient later reported that she was able to think more clearly. (Resp. Ex. I, Tr. 152-159)

Patient J.E.

Dr. Martin testified that Patient J.E. was a 42-year-old woman who had previously been diagnosed with major depression and psychotic symptoms. Dr. Martin testified that when he first saw Patient J.E. she was obtunded from tranquilizers. Dr. Martin testified that Patient J.E. told him that antipsychotic medications had never "modulated the frequency or intensity of voices which came to her." Dr. Martin further testified that Patient J.E. heard the voices when she became depressed. Dr. Martin stated that he diagnosed Patient J.E. as "having criteria for PTSD, chronic, intermittent; a positive history of anxiety attacks; and rule out attention deficit disorder, residual, without hyperactivity." (Resp. Ex. K; Tr. 167-169)

Dr. Martin testified that he had considered the ADD diagnosis because Patient J.E. reported a lifelong history of short attention span and impulsivity which preceded her history of depression. She also had a family history of attention problems and impulsivity. Dr. Martin

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further testified that Patient J.E.'s husband had confirmed her reports of attention problems and impulsivity. Dr. Martin testified that Patient J.E. took Dr. Amen's Adult ADD Questionnaire and scored a significant 46 positives out of 73. Dr. Martin testified that Patient J.E. was given Dexedrine, "and when she came back, you could visually see the calmness, and it was also reported by her husband." (Resp. Ex. K; Tr. 169-171)

Dr. Martin testified that Patient J.E. reported less anxiety and a decrease in her auditory hallucinations while on Dexedrine. Dr. Martin stated that "[t]his would be the opposite of what you would see if she was actually psychotic. If she was having psychotic symptoms, the Dexedrine would exacerbate those symptoms rather than make them less." Dr. Martin testified that he titrated her dose up and, when she began to experience an increase in anxiety, brought it back down. (Resp. Ex. K; Tr. 171-173)

Dr. Martin testified that he then gradually reduced Patient J.E.'s antipsychotic medication (Stelazine), and that she continued to do well. Nevertheless, Dr. Martin testified that the patient eventually became rather difficult, and attempted to sabotage her own treatment. Dr. Martin further testified that this patient had exhibited similar behavior in the past with other psychiatrists. (Resp. Ex. K; Tr. 173-181)

The Stipulation and Order of the Arizona Board

1. On or about March 14, 1997, at the close of the informal interview, the Arizona Board made the following determinations:

   - The allegation concerning possible drug abuse was dismissed. (St. Ex. 15; pp. 71-72)
   - The allegation concerning Dr. Martin's relationship with a co-worker was dismissed. (St. Ex. 15, p. 72)
   - The Board combined the allegations concerning quality of care issues. The Board moved to request that Dr. Martin stipulate that he would obtain a second opinion on all of his adult ADD cases for two years prior to the initiation of any treatment. (St. Ex. 15, pp. 72-100)

2. Based upon these determinations, the Arizona Board issued the following Order:

   "For a period of two years from the date of this Order, IT IS HEREBY ORDERED as follows:

   "1. Prior to treating any patient who is 13 years of age or older for attention deficit disorder ("ADD"), ANTHONY MARTIN, M.D. shall obtain a second opinion from a psychiatrist regarding the ADD diagnosis for the patient.

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"2. The psychiatrist shall be board certified by the American Board of Psychiatry and Neurology and approved by Board staff.

"3. The psychiatrist shall provide written evidence of the consultation to Dr. MARTIN, who shall provide it to the Board.

"4. DR. MARTIN shall pay all costs of the second opinion.

"Dated this 14 day of day of [sic] March, 1997." (St. Ex. 13) (Emphasis in original.)

3. On or about April 21, 1997, Dr. Martin stipulated to the March 14, 1997, order of the Arizona Board. (St. Ex. 13)

Dr. Martin's Testimony Concerning ADD in Adults

1. Dr. Martin testified that about 50 percent of his patients in Arizona, juvenile and adult combined, had been diagnosed as suffering from ADD. Dr. Martin stated that the juvenile population of his practice ran about 80 percent ADD, which was within the range one would expect. Dr. Martin further testified that approximately 20 to 25 percent of his adult patients were treated for ADD. Dr. Martin said that that number would seem very high to the average psychiatrist who treats adult patients because ADD is not considered in their differential diagnosis. Dr. Martin stated that he was trained in similar fashion, and early in his practice never considered ADD as a possible diagnosis for adult patients. (St. Ex. 14, pp. 43-45; Tr. 78-83)

Dr. Martin testified that, after practicing adult psychiatry for two years, he entered a fellowship in child psychiatry at the University of Cincinnati. In that fellowship, Dr. Martin often diagnosed children with ADD. Dr. Martin testified that he "began to observe that the behavior, the fidgitiness, the verbal impulsivity, the history of lack of concentration, high intelligence with low achievement, appeared to be the same oftentimes in the parent—in one of the parents or both of the parents of the ADD-diagnosed child." Dr. Martin testified that he also made this observation while working at one of the child psychiatry units at Mill Creek Psychiatric Center for Children, in Cincinnati, Ohio. (Resp. Ex. G; Tr. 96-98)

Dr. Martin testified that he then began reading more about ADD in adults. Dr. Martin testified that he learned through the literature that experts such as Dr. Paul Wender had concluded that ADD does not go away in adolescence. The overt hyperactivity may abate (although fidgitiness and an inability to sit still remain), but the attention deficit components follow the patient into adulthood "and underlie a number of other psychiatric conditions." Dr. Martin testified that it is the abatement of the hyperactive component that has led adult psychiatrists to believe that ADD disappears during adolescence. (Tr. 98, 101-103)

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Dr. Martin testified that adults with ADD often develop problems with mood and stability. Dr. Martin stated:

> Attention span as you get older usually increases, no matter whether you have ADD or not. * * * [T]oday the theory is not so much that attention deficit disorder is primarily an attention deficit problem, but it is a controlling of executive functions, the ability to control your impulses, the ability to control your moods. That is really the underlying key problem with attention deficit disorder. So as you get older, you get more adult frustrations. You begin to have more moodiness, more mood instability, more depressions, that sort of thing.

(Tr. 101-103)

2. Dr. Martin testified that, when he began treating adult patients for ADD, he found that the number of his cases of treatment-resistant depression cases was reduced. Dr. Martin further testified that he "used to get the usual 10 to 20 percent treatment-resistant depressions. As [he] began to look into ADD as an underlying condition for depression, [he] essentially [has] had very few cases of treatment-resistant depression in the past two years." (Tr. 98-101)

3. Dr. Martin testified that he had referred to schizophrenia, schizoaffective disorder, and bipolar as "wastebasket diagnoses" at the informal interview. Dr. Martin explained that, at one time prior to the establishment of DSM criteria, approximately 50 percent of all psychiatric patients were diagnosed as suffering from schizophrenia. More recently, some of those same patients continue to be treated for this condition based upon diagnoses made years ago. Dr. Martin stated that some of these diagnoses deserve to be reviewed. (St. Ex. 15, pp. 38-40; Tr. 63-65)

4. Dr. Martin testified that if an adult patient requires treatment for ADD the medications of choice are the same as for children with ADD, primarily the stimulants Cylert, Ritalin, and Dexedrine. Dr. Martin testified that these medications work by "strengthening the function of the prefrontal cortex" which is believed to be the "part of the brain that sends signals to other parts of the brain, such as the emotion centers, slowing things down." In addition, such patients should receive cognitive behavioral therapy, psychodynamic treatments, and other forms of therapy to slow down their thinking and improve their family relationships, which can be tumultuous. Moreover, Dr. Martin testified that letting the patient know that they have ADD is a big part of the treatment: "There's a large amount of relief that comes from knowing that the reason why you've had difficulty achieving in your life is not because you're an idiot but simply you have this condition that's biological in nature and can be treated." Dr. Martin testified that treatment with stimulant medications is usually only necessary for one or two years, until the patient learns coping skills. (Tr. 109-112)

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Dr. Martin further testified:

> [T]his is one of the most exciting aspects of this whole thing, and this is what motivated me to continue treating these individuals with these other diagnoses once I saw the positive results. Because it is a way out of the * * * psychiatric maze that they are all in.
>
> If you have a diagnosis of schizophrenia or schizoaffective disorder, you're always in the mental health field, you're always taking medicines, you are always treated as if you are a patient. But if in fact there is an underlying attention deficit disorder and you were misdiagnosed with schizophrenia or schizoaffective disorder, then through medication you can leave [the psychiatric maze] and not come back and have a life.

(Tr. 114)

5. Dr. Martin testified that it is possible for an adult ADD patient to have other comorbid psychiatric conditions as well. Dr. Martin further testified that other, non-ADD symptoms, or a diagnosis of a psychotic disorder, do not preclude a diagnosis of ADD. (Tr. 114-115)

6. Dr. Martin testified concerning ADD Psychosis. Dr. Martin stated that the defining characteristic of a psychotic individual is that the individual's reality testing is impaired. For example, if the person is having auditory hallucinations, the person is really experiencing his own thoughts but interpreting those thoughts as though he was hearing a voice outside of himself; the person's reality testing is impaired. Dr. Martin stated, "If you think about it, that is also a function of your ability to concentrate. In other words, it takes a certain amount of concentration to be able to detect that the thoughts you are having inside your head are yours." Dr. Martin testified that patients who suffer from ADD have impaired concentration. Some ADD sufferers, when confronted with stressful circumstances, lose even more of their capacity to concentrate, and sometimes cannot distinguish between their own thoughts and a voice coming from outside. Dr. Martin testified that, "at that point they are experiencing psychosis." (Tr. 73-75)

   Dr. Martin testified that "[t]he fundamental makeup of someone's personality is also dependent on the development of their relationship to an internal dialogue that we all carry on every day." Dr. Martin testified to the effect that each person engages in a dialogue with himself while performing mundane tasks such as standing in front of a mirror and shaving. "Your ability to concentrate and listen to your own thinking has over time created a relationship that you have with yourself, solidifying your sense of being a person, of having a solid personality." This internal dialogue is impaired in individuals who suffer from ADD. Dr. Martin stated that "in ADD individuals one of the characteristics is that

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their thoughts come and go, very fleeting; and, therefore, they don't have the opportunity to solidify their makeup[.]" (Tr. 75-76)

7. Dr. Martin testified that the DSM-IV does not have a classification for ADD psychosis, stating that it has not become sufficiently prominent in the medical literature, and not enough practitioners have recognized it as a condition. Dr. Martin testified that there are other conditions that are widely believed to exist, such as sexual addiction, that also have no classification in the DSM-IV. (Tr. 76-77)

   Dr. Martin testified that psychiatrists who treat adult patients have been taught to believe that ADD is a condition that disappears when the patient reaches adolescence. Because most psychotic disorders first appear during adolescence, the two have never been linked together as coexisting. (Tr. 77-78)

8. The DSM-IV states that "Attention-Deficit/Hyperactivity Disorder is not diagnosed if the symptoms are better accounted for by **another mental disorder** (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, Personality Disorder, Personality Change Due to a General Medical Condition, or a Substance-Related Disorder)." (St. Ex. 14, p. 83) (Emphasis in original.) Dr. Martin testified that the functional element of the statement is "'better accounted for[,]'" and that decision is made by the clinician based on the patient's history. (Tr. 68)

   The DSM-IV also states that "[w]hen a Mood Disorder or Anxiety Disorder co-occurs with Attention-Deficit/Hyperactivity Disorder, each should be diagnosed. Attention-Deficit/Hyperactivity Disorder is not diagnosed if the symptoms of inattention and hyperactivity occur exclusively during the course of a **Pervasive Developmental Disorder** or a **Psychotic Disorder.**" (St. Ex. 14, p. 83) (Emphasis in original) Dr. Martin testified:

   > The operative word is 'exclusively.' * * * If your loss of concentration, your impulsivity, all of the symptoms that would be recognized, manifest themselves only when you are having a psychotic episode or when you're having a schizophrenic episode, then obviously it's common sense that you're not going to label the person [as suffering from] attention deficit disorder. However, attention deficit disorder does something that is constant in the individual, and if that impulsivity was there in childhood while they did not show any psychotic symptoms, any schizophrenic symptoms, if their lack of attention was there before the onset of any of these psychotic or pervasive developmental disorders, then the underlying condition is the attention deficit disorder.

   (Tr. 70-71)

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Dr. Martin noted that schizophrenic symptoms, such as hallucinations and delusions, are not constant, although the patient may have a constant, underlying mechanism in the brain that causes the disorder. In distinguishing between schizophrenia and ADD, Dr. Martin testified that schizophrenia usually begins when the patient is about 18 or 19. Dr. Martin further testified that "[i]t basically comes down to how good a history you can take. Schizophrenic disorders normally don't start before the age of 7, whereas ADD does[.]" Dr. Martin further testified that distinguishing these conditions can be affected by "how atypical the presentation has been of the possible schizophrenic or schizophrenic affective disorder." A patient history that includes ADD symptoms before the age of seven is an indication that the patient probably suffers from ADD. (Tr. 66-68, 71-72, 120-121)

9. Dr. Martin testified that patients "with ADD and overlying psychotic disorder normally don't respond very well to antipsychotic medications. You can give them enough to tranquilize them, but their difficulties continue. And the course of treatment is atypical, and if you give them, instead, stimulant medications or tricyclic compounds, they improve and sometimes dramatically so. If these individuals had simply had a psychotic disorder, the use of stimulant medications would have probably actually made their condition worse." (Tr. 121)

Dr. Martin testified that individuals who do not have ADD experience a decrease in concentration and calmness, and an increase in their anxiety and activity levels, when given a significant amount of stimulant medication. In addition, the individual will have a dysphoric feeling, similar to drinking two or three too many cups of coffee. (Tr. 121-122)

10. Dr. Martin testified that he has searched for ways to better document ADD in his charts, because of the skepticism that adult ADD generates in his profession. He began to use Dr. Amen's adult ADD questionnaire, which Dr. Martin said is one of the best, as well as the Wender-Utah Rating Scale, which Dr. Martin testified has a reliability of 96 percent. Dr. Martin further testified that these tests provide further documentary support for a diagnosis of ADD, and are more accurate than an individual interview by a psychiatrist. Dr. Martin noted that there are currently no physical or chemical tests for the diagnosis of ADD. (Tr. 85-88)

Dr. Martin testified that a trial of medication for ADD can be started if a patient fulfills the DSM-IV criteria for the condition, or if the patient still has symptoms but does not meet the full criteria. Dr. Martin further testified that he has tried to improve his strategy for an initial diagnosis of ADD, because the DSM criteria can also be met by someone suffering from another condition, such as chronic depression. In addition, Dr. Martin testified that he contacts the parents of patients, including adult patients, to try to trace the condition back to childhood, which increases the accuracy of an ADD diagnosis. Dr. Martin testified that the patients' parents often are better at providing such a history. (Tr. 83-85)

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11. Dr. Martin testified that he does not prescribe stimulant medication if he suspects the patient has an active drug abuse problem or if he suspects some sort of illegal activity in the home (because these substances have street value), or if the patient has a medical condition that prohibits its use, such as high blood pressure. (Tr. 110-111)

Dr. Martin's Practice Following the Arizona Board Order

1. Dr. Martin testified that he is currently in the private practice of psychiatry in Westerville, Ohio, and, until July 12, 1998, is acting as Director of the geropsych unit at Park Medical Center in Columbus, Ohio. Dr. Martin further testified that he is working for two nursing homes, and cares for their geropsychiatric patients. (Tr. 28-29)

   Dr. Martin testified that he moved to Ohio in April 1997. Dr. Martin testified that this move was prompted by an employment offer in Columbus from Southeast, Inc. Dr. Martin testified that he was unable to find work in Arizona as a result of the Arizona Board action. (Tr. 30-31, 187-188)

   Dr. Martin testified that he no longer works for Southeast. He stated that he was "assigned to over 450 patients," which he said was an overwhelming number and three times as many patients as any other physician as Southeast. Dr. Martin testified that he worked for Southeast for three months, and was terminated on the last day of his probationary period there. (Tr. 31-33)

   Dr. Martin testified that the subject of ADD in adults also became an issue for Southeast, and that it has been an issue for subsequent employers as well. Dr. Martin testified that his psychiatrist colleagues who treat only adult patients are not trained to recognize, diagnose, or treat ADD, and are bothered by Dr. Martin's frequent diagnoses of ADD. Dr. Martin added that he uses "paper-and-pencil screening tests, which are not usually used." Dr. Martin stated that his use of these screening tests "caused the diagnosis to be made more frequently." (Tr. 31-33)

2. Dr. Martin testified that he now documents his diagnoses in the charts well enough "so that even the most skeptical person would have a hard time not agreeing that that was the proper diagnosis." Nevertheless, Dr. Martin testified that it has been impossible to comply with the Arizona Board order since he moved to Ohio. Dr. Martin testified that his patients have not wanted their charts to be read by other people, "and especially by another board in another state[.]" Dr. Martin stated that, Because Arizona's subpoena power does not extend to Ohio, there has been no way for him to fulfill his obligation under that order. (Tr. 186-191)

   Dr. Martin testified that he hoped that the Board could somehow help him to satisfy his obligation to the Arizona Board. Nevertheless, Dr. Martin testified that any formal action

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taken against him by the Ohio Board would further damage him professionally. Dr. Martin testified that the psychiatric profession is very conservative, and that he has been confronted with prospective employers who believe that his stipulation with the Arizona Board is tantamount to a guilty plea to having done something wrong. Dr. Martin testified that his stipulation with the Arizona Board has nearly ended his career. (Tr. 191-193)

FINDINGS OF FACT

On or about March 14, 1997, the Arizona Board of Medical Examiners entered the following Order against the certificate of Anthony D. Martin, M.D., to practice medicine in that state:

> "For a period of two years from the date of this Order, IT IS HEREBY ORDERED as follows:
>
> 1. Prior to treating ant patient who is 13 years of age or older for attention deficit disorder ("ADD"), ANTHONY MARTIN, M.D. shall obtain a second opinion from a psychiatrist regarding the ADD diagnosis for the patient.
>
> 2. The psychiatrist shall be board certified by the American Board of Psychiatry and Neurology and approved by Board staff.
>
> 3. The psychiatrist shall provide written evidence of the consultation to Dr. MARTIN, who shall provide it to the Board.
>
> 4. DR. MARTIN shall pay all costs of the second opinion."

On or about April 21, 1996, Dr. Martin stipulated to the March 14, 1997, order of the Arizona Board.

CONCLUSIONS OF LAW

The March 14, 1997, Order of the Arizona Board of Medical Examiners, and the April 21, 1997, Stipulation of Anthony Martin, M.D., to that Order, constitutes "[t]he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees," 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 certificate of Anthony D. Martin, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

   a. Dr. Martin shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

   b. Dr. Martin shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

      If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Martin's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Martin shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

   c. Dr. Martin shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by this Board, the Arizona Board, and any other state medical board. Moreover, Dr. Martin shall cause to be submitted to the Board copies of any reports that he submits to the Arizona Board whenever the Arizona Board requires such submission.

      The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

   d. Within thirty days of the effective date of this Order, Dr. Martin shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Martin's patient charts and shall submit a written report of such review to the Board on a quarterly basis. The monitoring physician shall monitor Dr. Martin's

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treatment of his patients as reflected in his patient charts. The chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. The monitoring physician shall provide the Board with reports on Dr. Martin and on the status of his patient charts on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Martin's quarterly declaration. It is Dr. Martin's responsibility to ensure that the reports are timely submitted.

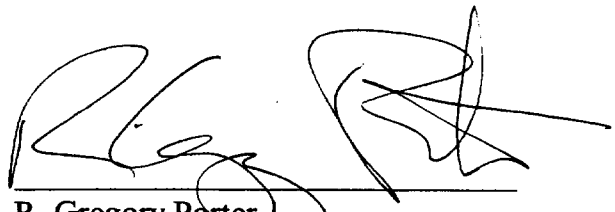
In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Martin shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Martin shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Martin shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

e. In the event that Dr. Martin should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Martin must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

f. If Dr. Martin violates probation 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.

2. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Martin's certificate will be fully restored.

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



R. Gregory Porter
Attorney Hearing Examiner

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EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 9, 1998

REPORTS AND RECOMMENDATIONS

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

Dr. Buchan 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: Advanced Heart & Lung Surgeons, Inc.; William J. Booth, P.A.; Ira N. Chaiffetz, M.D.; Fernando G. Chaves, M.D.; Richard M. Donnini, D.O.; Altaf Hussain, M.D.; Jeffrey C. Lapeyrolerie, M.D.; Anthony D. Martin, M.D.; Hil Rizvi, M.D.; and Julia K. Saluke, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

Dr. Buchan 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. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

Dr. Buchan - aye

In accordance with the provision in Section 4731.22(C)(1), 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. Buchan 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.

.....

ANTHONY D. MARTIN, M.D.

Dr. Buchan directed the Board's attention to the matter of Anthony D. Martin, M.D. He advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

Dr. Buchan continued that a request to address the Board has been timely filed on behalf of Dr. Martin. Five minutes would be allowed for that address.

Ms. Smiles stated that from the outset of this matter Dr. Martin has sought to get before the Board some clinical evidence on how he handles patients and how he diagnoses adult attention deficit disorder (ADD) in his patients. That is still his goal. Ms. Smiles stated that they don't have any strong objection to the Proposed Order in this matter. They are here to work with the Board to modify the Proposed Order to a point where it will accomplish both the Board's goals and be workable in terms of making sure the Board ends up with the information it is seeking. Ms. Smiles at this time introduced Dr. Martin.

Dr. Martin thanked the Board for the opportunity to resolve this matter. He thought the Hearing Examiner did a pretty good job of delineating the issues in this matter, and he believes that the quality of his work will stand on its own and that the issues before this Board can be resolved quickly.

Dr. Martin stated that, before that can be done, there are three technicalities which he would like the Board to address. The first is that this is a piggy-back action, based solely on the existence of a voluntary agreement he made with Arizona. He requested that the Board limit the scope of this matter to the parameters agreed upon with Arizona. He agreed to get a second opinion on his initial diagnosis of ADD in adults and adolescents, thirteen years old and above, for a period of time until the Board was satisfied that his diagnostic techniques were appropriate. He was assured at the time of entering into this voluntary

agreement that this did not constitute being put on probation or any other type of disciplinary action.

Dr. Martin stated that the second matter is that, since the State of Arizona cannot subpoena material from patients in Ohio, he cannot at this time fulfill the conditions of the voluntary agreement he made with Arizona unless he moves back to Arizona. If he moves back to Arizona, he wouldn't be able to fulfill the conditions of the Ohio Board. At the time he could not get a job in Arizona and was forced by economic circumstances to accept a job in Ohio. He does understand from his Arizona lawyer, however, that the Arizona Board is likely to accept the findings of the Ohio Board in this matter. Therefore he thanks the Board for the opportunity to resolve this matter.

Dr. Martin continued that the third matter is that work with ADD individuals is simply no longer available to him at this time because of the Arizona stipulation and the Ohio action. He can't get any work at a community mental health center and he cannot develop a private practice because he can't receive any referrals from HMOs. The result is that if the scope of this matter is limited to the monitoring of future cases only, the Board will not receive enough information to resolve this matter, and it could theoretically be prolonged indefinitely. Dr. Martin asked that a monitoring physician review his diagnostic techniques in a representative sample of the dozens of cases that he's done here in Ohio. He will agree to the same with any future cases that might come up until this matter is resolved.

Dr. Martin asked that this matter be reviewed by the Board as soon as the review of the representative cases is returned to the Board.

Dr. Martin stated that he would answer any questions the Board might have.

Dr. Buchan asked whether the Assistant Attorney General wished to respond.

Mr. Wasson stated that this case didn't involve just a minor stipulation. This was a significant restriction on Dr. Martin's license. The restrictions were so significant that Dr. Martin was forced to leave Arizona because he was unable to find work.

Mr. Wasson explained that the way Arizona handles these situations is that, after the informal interview, if the Board decides that the information provided is not of sufficient seriousness to merit suspension for more than twelve months or revocation of a license, the Arizona Board can take different actions. If that Board decides that the case isn't above that threshold, it looks at other actions. The agreement entered into in this case restricted or limited the doctor's practice or medical activities in order to rehabilitate the doctor, protect the public, and ensure the physician's ability to safely engage in the practice of medicine. That was the option taken by the Arizona Board, and was therefore a restriction on Dr. Martin's ability to practice. This is a violation of Ohio's Medical Practices Act.

As far as the specifics of the recommendation, Mr. Wasson stated that he would defer to the expertise of the Board in this matter in determining what is appropriate for this particular physician.

DR. SOMANI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ANTHONY D. MARTIN, M.D. DR. AGRESTA SECONDED THE MOTION.

Dr. Buchan stated that he would now entertain discussion in the above matter.

Dr. Egner stated that one of the things that she likes about medicine is that it truly is an art and science. There's a lot of variance in medicine. That has a good and a bad point to it. She believes that Dr. Martin represents one side of that spectrum. Dr. Egner stated that she personally is very much a traditionalist. Dr. Martin does not represent the spectrum from which she happens to come, but she appreciates having physicians like this around because they meet the needs of many different patients.

Dr. Egner stated that, having said this, she also believes that when a physician is fairly non-traditional and questions arise in Arizona and Ohio, requiring a monitoring physician is very appropriate. It allows the physician to practice medicine. She noted that the monitoring physician isn't just for ADD patients, but for all of his patients. The Board isn't singling out one particular diagnosis in his psychiatric practice. He will be able to fulfill the Board Order. The Proposed Order is appropriate and allows Dr. Martin to practice. It doesn't restrict his practice, but gives the Board the assurance that he's practicing appropriate psychiatric medicine. If Dr. Martin cannot find another psychiatrist who agrees with his method of practice, then that speaks for itself.

Dr. Heidt stated that Dr. Martin's problems were all with ADD, and noted that paragraph 1(d) of the Proposed Order requires review of Dr. Martin's charts.

DR. HEIDT MOVED TO AMEND PARAGRAPH 1(d) TO REQUIRE REVIEW OF CHARTS WITH DIAGNOSES OF ADD ONLY. DR. EGNER SECONDED THE MOTION.

Dr. Egner commented that her second was for purposes of discussion only. She added that when she read this case, she felt that, even though the diagnoses of ADD brought this matter to light, she doesn't believe that that was the only issue. There seems to be a question about the diagnosis of ADD and whether other psychiatric conditions were then treated appropriately. For herself, she doesn't want to know what Dr. Martin is doing just in the area of ADD. She really wants to know what he is doing in all areas of his psychiatric practice. This also makes it easier on the monitoring physician.

Dr. Heidt stated that there is no other problem Dr. Martin has except with ADD. He doesn't think the Board should burden the monitoring physician with anything else.

Dr. Somani asked whether Dr. Martin can see patients with ADD under the Arizona agreement. Dr. Somani stated that it is his understanding that Dr. Martin may not be able to because of the Arizona stipulations. Is the Board suggesting that Dr. Martin have the same restrictions here in Ohio?

Dr. Egner stated that this case is not just about the treatment of ADD, it's about the ability to diagnose. If the Board just restricts monitoring to one diagnosis, she doesn't think the Board is doing what needs to be done. She gave as an example a surgeon having a problem diagnosing appendicitis. Dr. Egner stated that, if that physician has a problem with such diagnoses, other diagnoses may be missed. She thinks that there is disagreement about other psychiatric conditions.

Dr. Buchan stated that there is a motion on the table to limit chart review to patients with ADD.

Dr. Somani asked Dr. Heidt whether he is suggesting that the Board modify its Proposed Order to reflect Point One of the Arizona agreement.

Dr. Heidt stated that he is not.

Dr. Somani stated that he is not clear as to what Dr. Heidt's motion does.

Dr. Heidt stated that his amendment doesn't have anything to do with the Arizona agreement. It is only specifying what the monitoring physician has to review.

Mr. Sinnott asked whether it is Dr. Heidt's intention to amend paragraph 1(d) to refer to patient charts involving patients with ADD only.

Dr. Heidt stated that it is.

Dr. Agresta stated that he thought Dr. Martin wasn't going to be seeing patients with ADD anymore.

Dr. Martin stated that there may be some cases that will come up through some unusual channels in which the patient will have ADD. He is still allowed to practice in the state of Ohio. What he is saying is that HMOs are not referring to him and that he can't get a job in a community mental health center. These are the two main sources from which he would get future cases of ADD. There may be some cases that come up. He will be glad to provide whatever information the Board asks on those. The main point he wants to make is that in order for this to be done quickly, it can easily be done by reviewing the cases that he has already done in the state of Ohio. His main purpose for being here is to request that that be done.

Dr. Agresta asked if he's talking about ADD cases or all cases.

Dr. Martin stated that the issue before the Arizona Board was just ADD. This Board is welcome to look at any cases that he has, but he thought the issue was simply his diagnosis of ADD.

Dr. Buchan noted that the Proposed Order recommends general monitoring of Dr. Martin's practice. Dr. Heidt is suggesting modifying that to monitoring his ADD patients only. Dr. Buchan stated that since

Dr. Martin's practice has been limited with respect to ADD, he would suggest that the Board stay with the general monitoring requirement.

A vote was taken on Dr. Heidt's motion to amend:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- nay
	Dr. Egner	- nay
	Mr. Sinnott	- nay
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- nay
	Dr. Buchan	- nay

The motion failed.

Dr. Buchan stated that he would now entertain further discussion on the Proposed Order.

Dr. Stienecker asked whether the Board wants to make any recommendation as to the number of charts to be reviewed. He noted that the Proposed Order requires that chart review be done on a random basis, the number of charts to be determined by the Board. He noted that "general monitoring" is now being ordered, and asked what would be considered "general monitoring" in a psychiatric practice.

Dr. Buchan suggested that Dr. Martin submit a probationary request for the Board to determine the number of charts to be reviewed and the frequency of the review, rather than amending the original Order.

Dr. Agresta stated that he feels it is appropriate to make that determination now.

Dr. Somani stated that it could be negotiated at the time the Board sits down to define the terms of the agreement.

Dr. Buchan asked for a recommendation.

Dr. Stienecker stated that it would be an encumbrance to require the monitoring physician to review more than five charts per week. He believes that would be adequate.

Dr. Agresta stated that the number of patients a psychiatrist sees is much lower than the number a general practitioner would see.

DR. AGRESTA MOVED THAT THE BOARD REQUIRE REVIEW OF 10% OF DR. MARTIN'S GENERAL PSYCHIATRIC PATIENT CHARTS AND 1% OF HIS ADD PATIENT CHARTS ON A QUARTERLY BASIS. DR. BHATI SECONDED THE MOTION. A vote was taken:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ANTHONY D. MARTIN, M.D. DR. SOMANI SECONDED THE MOTION. A vote was taken:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

Dr. Martin asked whether he could request the Board to review additional charts.

Dr. Buchan stated he couldn't at this point, but he could bring it up in the future.

Dr. Martin stated that his main purpose is to have his ADD diagnoses reviewed to the point where the Board would make a finding on that matter, and that that could then be relayed to the Arizona Board. In order to do that in a large enough volume, given his practice right now, it would be necessary to do a retroactive review of some charts. He asked that the Board do this.

Dr. Buchan stated that that should be brought up at the quarterly appearance with the Secretary and Supervising Member.

State Medical Board of Ohio

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

March 11, 1998

Anthony D. Martin, M.D.
2500 Show Low Lake Rd.
Show Low, AZ 85901

Dear Dr. Martin:

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 one or more of the following reasons:

(1) On or about March 14, 1997, you entered into a Stipulation and Order with the Board of Medical Examiners, State of Arizona, a copy of which is attached hereto and fully incorporated herein. The Stipulation and Order required you to obtain a second opinion at your own expense prior to your treating any patient thirteen years or older for attention deficit disorder.

The Stipulation and Order, as alleged in paragraph (1) above, constitutes "[t]he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees," as that clause 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.

Mailed 3/12/98

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 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/bjs
Enclosures

CERTIFIED MAIL #P 152 984 771
RETURN RECEIPT REQUESTED

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF ARIZONA

In the Matter of **ANTHONY MARTIN, M.D.** Holder of License No. 22394 For the Practice of Medicine In the State of Arizona. Re: M.H. (Pt.: L.M.C.) v. Anthony Martin, M.D. (Inv. #9214) C.M. & J.M. (Pt.: L.M.C.) v. Anthony Martin, M.D. (Inv. #9352) BOMEX Inquiry (11-01-95) v. Anthony Martin, M.D. (Inv. #9363)	**STIPULATION AND ORDER**

In confirmation of the voluntary agreement made between ANTHONY MARTIN, M.D. and the Arizona Board of Medical Examiners ("Board") at an Informal Interview on March 14, 1997;

IT IS HEREBY STIPULATED AND AGREED by and between ANTHONY MARTIN, M.D. holder of License No. 22394 and the Board, pursuant to A.R.S. §32-1451(G)(5), that the Board shall enter the accompanying Order. ANTHONY MARTIN, M.D. acknowledges that any violation of this Order constitutes unprofessional conduct within A.R.S. §32-1401(25)(r), and may result in disciplinary action pursuant to A.R.S. §32-1451.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

MARK R. SPEICHER
Executive Director
ELAINE HUGUNIN
Deputy Director

Dated: April 21, 1997

ANTHONY MARTIN, M.D.

Dated: _____

ORDER

For a period of two years from the date of th.. Order, IT IS HEREBY ORDERED as follows:

1. Prior to treating any patient who is 13 years of age or older for attention deficit disorder ("ADD"), ANTHONY MARTIN, M.D. shall obtain a second opinion from a psychiatrist regarding the ADD diagnosis for the patient.

2. The psychiatrist shall be board certified by the American Board of Psychiatry and Neurology and approved by Board staff.

3. The psychiatrist shall provide written evidence of the consultation to Dr. MARTIN, who shall provide it to the Board.

4. Dr. MARTIN shall pay all costs of the second opinion.

DATED this 14 day of day of March, 1997.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

[SEAL]

By _____
MARK R. SPEICHER
Executive Director
ELAINE HUGUNIN
Deputy Director

ORIGINAL of the foregoing Stipulation and Order mailed by Certified Mail for signature this 10th day of April, 1997 to:

Anthony Martin, M.D.
P.O. Box 1378
Show Low, Arizona 85901

COPY of the foregoing signed Stipulation and Order mailed by Certified Mail this 2nd day of April, 1997 to:

Anthony Martin, M.D.
P.O. Box 1378
Show Low, Arizona 85901

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04/14/97 10:30 ☎602 271 4733 LAW OFFICES 005

COPY of the foregoing unsigned Stipulation and Order mailed this 10th day of April, 1997 to:

Charles E. Buri, Esq.
FRIEDL, RICHTER & BURI
1440 E. Washington, Suite 200
Phoenix, Arizona 85034-1163

Secretary

COPY of the foregoing signed Stipulation and Order mailed this 22nd day of April, 1997 to:

Charles E. Buri, Esq.
FRIEDL, RICHTER & BURI
1440 E. Washington, Suite 200
Phoenix, Arizona 85034-1163

SN9707940.017/N

04/14/97 10:30 602 271 4733 LAW OFFICES 008