



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

October 11, 1996

James A. Walsh, M.D.
21 Tupelo Road
Hilton Head Island, SC 29938

Dear Doctor Walsh:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Melinda R. Early, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 9, 1996, including Motions approving and confirming the Findings of Fact, and the Conclusions of Law 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 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

Certified Mail No. P 152 982 889
Return Receipt Requested

cc: Michael H. Igoe, Esq.

Certified Mail No. P 152 982 890
Return Receipt Requested

Mailed 10/15/96



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43260 • Tel. 614.464.1100

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Melinda R. Early, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 9, 1996, including Motions approving and confirming the Findings of Fact, and the Conclusions of Law 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 James A. Walsh, 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.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

10/10/96

Date



STATE MEDICAL BOARD OF OHIO

7 South High Street, 20th Floor • Columbus, Ohio 43260-0315 • 614-464-7800

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES A. WALSH, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 9th day of October, 1996.

Upon the Report and Recommendation of Melinda R. Early, Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the 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 the matter of James A. Walsh, M.D. be DISMISSED.

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

A handwritten signature in cursive script, reading "T. E. Gretter M.D.", written over a horizontal line.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

10/21/96

Date

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REPORT AND RECOMMENDATION IN THE MATTER OF JAMES A. WALSH, M.D.

The Matter of James A. Walsh, M.D., was heard by Melinda R. Early, Esq., Hearing Examiner for the State Medical Board of Ohio, on June 3, 1996.

INTRODUCTION

I. Basis for Hearing

- A. The State Medical Board of Ohio [Board] notified James A. Walsh, M.D., by letter dated March 13, 1996, that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on one or more of the following allegations:

On or about November 9, 1995, the Colorado State Board of Medical Examiners [Colorado Board] approved a Stipulation and Final Agency Order, placing [Dr. Walsh's] license to practice medicine in the State of Colorado on probationary status for a period of five (5) years subject to certain specified terms and restrictions, including that [he] shall not resume the practice of medicine in Colorado until [he] [had] undergone an evaluation by Colorado Personalized Education for Physicians [CPEP] for the preparation of a learning plan and until [he] [had] received notice from the Colorado Board that the CPEP letter and evaluation [had] been reviewed and [his] proposed practice monitor [had] been approved. These terms and restrictions further include that, upon resuming practice in Colorado, [Dr. Walsh] shall comply with all reeducation activities recommended by CPEP; that [he] shall not interpret more than twenty (20) mammograms in a single day; and that [his] medical practice will be monitored.

The Board further asserted that the Colorado Board action was based on a determination that Dr. Walsh's reading of mammograms was deficient. Moreover, Dr. Walsh admitted that he failed to detect lesions in seven cases which were later determined, by biopsies, to represent malignancies.

The Board asserted that the actions of the Colorado Board 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, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to March 5, 1996, to wit: Section 4731.22(B)(6), Ohio Revised Code.

The Board advised Dr. Walsh of his right to request a hearing in this matter. (State's Exhibit [St. Ex.] 1).

- B. Dr. Walsh submitted a written hearing request on March 20, 1996. (St. Ex. 2).

I. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Patrick Beatty, Assistant Attorney General.
- B. On behalf of Respondent: John W. Seidensticker, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Neither party presented witnesses.

II. Exhibits Presented

In addition to State's Exhibit 1, noted above, the following exhibits were identified and admitted into evidence:

- A. Presented by the State
 - 1. State's Exhibit 2: In addition to requesting a hearing, Dr. Walsh submitted copies of: Motion for Reconsideration submitted to the Colorado Board; December 18-19, 1995, CPEP Assessment Report; CME Documentation for 1992-1995; List of professional references Dr. Walsh uses in his practice; Report of Gale A. Sisney, M.D.,

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University of Colorado Health Sciences Center, regarding her evaluation of the study Colorado Permanente Medical Group performed of Dr. Walsh's 2,958 mammograms; Review by Knox Community Hospital; and Dr. Walsh's curriculum vitae.

2. State's Exhibit 3: March 27, 1996, letter to Dr. Walsh from the Board, notifying him that a hearing had been scheduled for April 9, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
3. State's Exhibit 4: April 4, 1996, letter to Dr. Walsh from the Board, scheduling the hearing for May 20, 1996.
4. State's Exhibit 5: Respondent's Motion for Continuance with supporting memorandum. (19 pp.)
5. State's Exhibit 6: State's Memoranda Contra Motion for Continuance. (3 pp.)
6. State's Exhibit 7: May 3, 1996, Entry granting Respondent's motion for continuance of hearing.
7. State's Exhibit 8: Certified copy of Colorado Stipulation and Final Agency Order. (8 pp.)

B. Presented by Respondent

1. Respondent's Exhibit A: May 20, 1996, letter to Dr. Walsh from the Colorado Board advising him that the Colorado Board denied his motion for reconsideration of his probationary terms.
2. Respondent's Exhibit B: Elmore, J., Wells, C., Lee, Howard, D., Feinstein, A., *Variability in Radiologists' Interpretations of Mammograms*, 331 New Eng. J. Med. (1994).
3. Respondent's Exhibit C: Copy of Certificate regarding Dr. Walsh's completion of intensive mammography course at Mammography Education, Inc., May 15-18, 1996.
4. Respondent's Exhibit D: Documentation of Mammography education Dr. Walsh completed from 1969 through 1996.

5. Respondent's Exhibit E: Copy of continuing medical education certificate in breast imaging from The American Association of Physician Specialists, October 20-22, 1995. (5 pp.)
 6. Respondent's Exhibit F: Copy of American Medical Association Physicians Recognition Award certificate, February 1, 1995, through February 1, 1998.
- C. Post Hearing Admissions
1. At hearing, the Attorney Hearing Examiner requested Dr. Walsh's counsel to submit certified copies of the CPEP Assessment Report and the Colorado Board's May 20, 1996, letter to Dr. Walsh denying his Motion for Reconsideration. Additionally, the Attorney Hearing Examiner requested Dr. Walsh's counsel to submit information regarding CPEP. Mr. Seidensticker submitted the certified documents on June 28, 1996. Accordingly, the certified copy of the CPEP Assessment Report is admitted to the record as Board Exhibit A, and the certified copy of the May 20, 1996, correspondence from the Colorado Board to Dr. Walsh is admitted to the record as Board Exhibit B. Moreover, Mr. Seidensticker submitted the Affidavit of Elizabeth J. Korinek, M.P.H., Executive Director of CPEP, on July 3, 1996. Attached to Ms. Korinek's Affidavit were documents regarding CPEP. Accordingly, Ms. Korinek's Affidavit, with attachments, is admitted to the record as Board Exhibit C.
 2. Mr. Beatty submitted a copy of Section 12-36-117 C.R.S. for inclusion in the hearing record as the Attorney Hearing Examiner requested at hearing. Accordingly, this document is admitted to the hearing record as Board Exhibit D.

PROCEDURAL MATTERS

On July 2, 1996, after the hearing but prior to the record closing, Dr. Walsh filed a Motion to Introduce Affidavit of Marcelino T. Silva, M.D., with supporting memorandum. On July 3, 1996, an amended motion with supporting memorandum was filed. Dr. Walsh's motion stated that Dr. Silva's Affidavit contained information which was directly and materially relevant to the issue of the standard of care he practiced in 1993 at Knox Community Hospital, Mount Vernon, Ohio.

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particularly with respect to mammograms. Further, Dr. Walsh stated Dr. Silva was unavailable to testify at hearing.

The State opposed the introduction of Dr. Silva's Affidavit on the basis that Dr. Silva was not subject to cross-examination on a pivotal issue. Moreover, the State argued that Dr. Walsh attempted to submit an expert opinion vis a vis Dr. Silva's Affidavit, yet Dr. Silva had never been qualified as an expert. The State further argued that it would have been more appropriate for the parties to have deposed Dr. Silva if he was unavailable to testify at hearing.

The State makes a valid argument. The basis for the Colorado Board's disciplinary action against Dr. Walsh was the standard of care Dr. Walsh delivered in reading and interpreting seven mammograms for the period October 1993 through May 1995. Thus, if Dr. Walsh wished to submit evidence of the standard of care he delivered in 1993 while working in Ohio, then the appropriate form of that evidence would have been sworn testimony of a qualified expert who was subject to cross-examination. Accordingly, Dr. Walsh's Motion to Introduce Affidavit of Marcelino T. Silva, M.D., is denied. Dr. Silva's Affidavit, however, will be held as a proffer.

Dr. Walsh's Motion to Introduce Affidavit of Marcelino T. Silva, M.D., with supporting memorandum, is admitted to the record as Board Exhibit E and the State's Memoranda Contra Motion to Introduce Affidavit is admitted to the record as Board Exhibit F.

SUMMARY OF THE EVIDENCE

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

1. James A. Walsh, M.D., received his medical degree from Jefferson Medical College, Philadelphia, Pennsylvania, in 1961. He then entered the Navy and completed a rotating internship at the U. S. Naval Hospital, Newport, Rhode Island. Following active duty as a flight surgeon and general medical officer, he completed a radiology training program at Bryn Mawr Hospital, Bryn Mawr, Pennsylvania, in 1967. Dr. Walsh then completed a radiology fellowship concentrating on nuclear medicine and interventional radiology at the University of Colorado.

Over the next nineteen years, Dr. Walsh practiced clinical radiology in New Jersey, Pennsylvania, and Virginia. However, Dr. Walsh became increasingly involved with administrative functions and was appointed medical director of the Lewis-Gale Clinic, Salem, Virginia, in 1987. In 1989, he was recruited to become the medical director of St. Joseph Hospital, Denver, Colorado, where he worked until there was a major change in hospital administration. Dr. Walsh then decided to return to a clinical practice.

Because he had been away from clinical work for more than two years, Dr. Walsh arranged a position as Assistant Clinical Professor of Radiology at Colorado University Medical Center. There, Dr. Walsh focused on cross-sectional radiology, particularly magnetic resonance imaging and computerized tomography scans, in addition to teaching residents. Dr. Walsh continued to refresh his clinical skills by working in locum tenens positions throughout Ohio, North Carolina, Virginia, and Pennsylvania. When he was comfortable that his clinical skills were at the level he had reached prior to pursuing administrative responsibilities, he accepted a position with Colorado Permanente Medical Group [CPMG] as chief of radiology of a two-man outpatient practice in October 1993. Dr. Walsh additionally assumed the position as head of the quality assurance committee of radiology with responsibility for reviewing twenty radiologists in seven offices.

Dr. Walsh is board certified in radiology, nuclear radiology, nuclear medicine, quality assurance and utilization review, and medical management. Dr. Walsh currently resides in South Carolina and continues to practice radiology. (St. Exs. 2, 5; Board Exhibit [Bd. Ex.] A).

2. In January 1995, Dr. Walsh suffered a mild stroke. He sufficiently recovered from the stroke to return to work by the end of February 1995. A neurological examination on May 23, 1995, demonstrated only fatigue; the neurological and visual field examinations were otherwise normal. The fatigue Dr. Walsh experienced in the months immediately following the stroke has since resolved.

On April 18, 1995, Dr. Walsh was summoned to a meeting with the CPMG chief of radiology and a CPMG administrator. CPMG then advised Dr. Walsh of a variety of complaints regarding his clinical performance and administrative skills. CPMG offered Dr. Walsh the choice of voluntary resignation or involuntary dismissal. Although Dr. Walsh was concerned about the lack of due process CPMG accorded him, he resigned on the advice of legal counsel.

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Following his resignation, a panel of CPMG radiologists reviewed 2,958 mammograms Dr. Walsh had read while employed by CPMG. This panel concluded that 259 of these patients should have been called back for additional studies. Accordingly, the panel contacted these patients and performed additional studies. Of this patient group, final readings for 252 comported with Dr. Walsh's original readings; final readings in seven cases reported suspicious lesions. When biopsied, these seven cases were diagnosed with cancer. Thus, Dr. Walsh was accused of missing seven cancerous lesions.

In June 1995, CPMG reported Dr. Walsh to the Colorado Board. Then, in July 1995, CPMG released a press release to the Denver press regarding Dr. Walsh's resignation. (St. Exs. 2, 5; Bd. Ex. A).

3. After reviewing the newspaper articles and material CPMG provided of its internal investigation of Dr. Walsh's 2,958 mammogram interpretations, the Colorado Board referred the investigation of Dr. Walsh to the Colorado Attorney General. Dr. Walsh then entered into a Stipulation and Final Agency Order [Final Order] with the Colorado Board in lieu of a formal disciplinary hearing. In the Final Order, Dr. Walsh admitted, and agreed, that his failure to detect lesions in the seven cases subsequently determined to be malignancies, established a prima facie case, if unrebutted, of a violation of section 12-36-117(1)(p) C.R.S. Accordingly, the Final Order subjected Dr. Walsh's Colorado medical license to specific probationary terms for five years.

When he entered into the Final Order with the Colorado Board, Dr. Walsh was not practicing medicine. Thus, the Colorado Board considered this when drafting the Final Order and stipulated that only one Final Order term would be effective while Dr. Walsh was not practicing in Colorado; all other probationary terms would be tolled until he notified the Colorado Board that he intended to resume a Colorado practice. Accordingly, the Final Order stipulated that within sixty days of the effective date, Dr. Walsh was required to submit to an initial evaluation by the Colorado Personalized Education for Physicians [CPEP] for the development of a learning plan, if CPEP so recommended. Additionally, Dr. Walsh was required to provide the Colorado Board with a copy of the CPEP evaluation report within fourteen days of his receipt of the report. The Final Order incorporated any and all reeducation recommendations of CPEP.

Other probationary terms of the Final Order included:

- a) Dr. Walsh was restricted to interpreting no more than 20 mammograms per day during the probationary period;
- b) If, and when, Dr. Walsh resumed a Colorado practice, his practice would be subject to monitoring by a "practice monitor" approved by the Colorado Board. The practice monitor would function as the eyes of the Colorado Board to insure that Dr. Walsh practiced within the standard of care and in compliance with the Final Order. As such, the Final Order stipulated that the practice monitor's duties and responsibilities would include monthly review of at least five cases involving Dr. Walsh's radiologic interpretations; three of the five cases were to be Dr. Walsh's interpretations of mammograms, and the remaining two cases were to be studies other than mammograms. Prior to resuming the practice of medicine in Colorado, Dr. Walsh was required to submit, to the Colorado Board, information regarding the practice monitor and receive the Colorado Board's approval. Additionally, the Colorado Board required the practice monitor to be a Colorado licensed and Colorado practicing board certified radiologist; and
- c) Prior to resuming the practice of medicine in Colorado, Dr. Walsh was required to provide the Colorado Board with a letter from CPEP outlining whether a new initial evaluation was required. Moreover, if CPEP required an additional initial evaluation, then Dr. Walsh was required to submit the results of the initial evaluation.

The Final Order became effective November 9, 1995. (St. Ex. 8).

4. CPEP is an independent, nonprofit organization. The purpose, as delineated in its articles of incorporation, is to provide personalized and systematic process of addressing physicians' educational needs in scientific knowledge, technical skills, and interpersonal skills as related to the practice of medicine. CPEP serves physicians who are self-referred and physicians who are referred as a result of a review process. (Bd. Ex. C).
5. Pursuant to the Final Order, CPEP performed an initial evaluation of Dr. Walsh which included a structured oral interview, multiple choice question testing, psychological/personality assessment, and physical and psychiatric assessments.

The structured oral interview portion of the evaluation, which was designed to determine Dr. Walsh's fund of clinical knowledge and clinical reasoning, was conducted by three practicing radiologists from the Denver metropolitan area.

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The three radiologists conducted clinical interviews based on cases from their personal files involving a variety of film types, including mammograms. Each of the three radiologists determined that Dr. Walsh had a fund of knowledge and clinical skills which would enable him to practice within acceptable standards of care. In fact, of all the cases reviewed orally, Dr. Walsh missed only two or three subtle observational findings, while he correctly identified all other pathological and normal findings, both direct and incidental. One of the radiologists stated, "He was able to identify subtle findings, state satisfactory differential diagnoses, was able to recommend current additional modalities to arrive at a correct diagnosis and was able to discuss findings and clinical information in an intelligent and state-of-the-art-manner."

The multiple choice examination consisted of 54 questions developed by a consulting radiologist based on self-assessment books published by the American College of Radiology. Dr. Walsh's overall score was 66% which was regarded as "well above the level deemed good" by the consultant who developed the test. Although Dr. Walsh's written test results were not statistically significant, CPEP nonetheless concluded that these results confirmed the findings of the three radiologists who conducted the oral survey.

CPEP concluded that that there was no need for Dr. Walsh to undertake additional educational activities beyond his existing continuing education program. Additionally, CPEP did not recommend any changes to the manner in which Dr. Walsh practiced medicine. (St. Exs. 2, 5; Bd. Ex. A).

6. In November 1995, Dr. Walsh retained Gale A. Sisney, M.D., Director of Breast Imaging at the University of Colorado Health Sciences Center to evaluate the methodology and results of the CPMG review of the 2,958 mammograms. Dr. Sisney noted that recalling 259 of 2,958 patients (8.7%) for further evaluation is an expected recall percentage based on current literature. Moreover, seven cancers, from a patient population of 2,958, detected after a 0-18 month interval, is an expected ratio based on the statistic that two to four per 1,000 incident cancers are predictable by annual screening. Further, in reviewing the seven cancers which Dr. Walsh purportedly "missed," Dr. Sisney noted that three appeared to be screening errors. The remaining four were radiographically occult. That is, the four cases represented either interval cancers which were true negatives on retrospective review, or were cases in which there was minimal sign present at the initial screening. Dr. Sisney additionally noted that a more accurate evaluation of Dr. Walsh's mammographic interpretation skills would be his cancer detection rate. Inasmuch as this statistic was not available, together with dates regarding Dr. Walsh's complete audit results, Dr. Sisney could not recommend specific

remedial educational requirements. Moreover, Dr. Sisney concluded that there was insufficient evidence to indicate that Dr. Walsh was grossly negligent in reading the subject films. (St. Exs. 2, 5)(See also Respondent's Exhibit [Resp. Ex.] B).

7. After receiving the results of Dr. Sisney's review, and the CPEP report, Dr. Walsh petitioned the Colorado Board for reconsideration of its position regarding the probationary terms and conditions placed on his Colorado medical license. The Colorado Board, at its May 15, 1996, meeting, denied Dr. Walsh's motion for reconsideration. Accordingly, the Colorado Board advised Dr. Walsh that the Final Order remained in effect. (Resp. Ex. A; B Ex. B).

FINDINGS OF FACT

1. On or about November 9, 1995, the Colorado State Board of Medical Examiners approved a Stipulation and Final Agency Order [Final Order] which placed Dr. Walsh's license to practice medicine in Colorado on probationary status for five years subject to certain specified terms and restrictions. In the Final Order, Dr. Walsh admitted and agreed that his failure to detect lesions in seven cases which were subsequently determined to represent malignancies, established a prima facie case, which, if un rebutted would sustain a finding of a violation of section 12-36-117(1)(p) C.R.S.
2. Section 12-36-117(1)(p) C.R.S. states:
 - (1) "Unprofessional conduct" as used in this article means:
 - (p) An act or omission constituting grossly negligent medical practice or two or more acts or omissions which fail to meet generally accepted standards of medical practice, whether the two or more acts or omissions occur during a single treatment of one patient, during the course of treatment of one patient, or during the treatment of more than one patient.
3. The probationary terms and restrictions of the Final Order included the following:
 - a) Within 60 days of the effective date of the Order, Dr. Walsh was required to undergo an initial evaluation by Colorado Personalized Education for Physicians (CPEP) for the preparation of a learning plan, if

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recommended. Dr. Walsh was required to provide the Colorado Board with a copy of the initial evaluation report within fourteen days of receiving a copy of the report:

- b) Dr. Walsh was required to comply with any and all reeducation activities recommended by CPEP which became terms of the Order;
- c) Dr. Walsh was restricted to interpreting no more than 20 mammograms per day during the probationary period; and
- d) Dr. Walsh's practice of medicine in Colorado would be subject to monitoring by a "practice monitor" approved by the Colorado Board. The practice monitor would function as the eyes of the Colorado Board to insure that Dr. Walsh practiced within the standard of care and in compliance with the Final Order. Dr. Walsh was not to resume a medical practice in Colorado until he received the Colorado Board's approval of the practice monitor.

When Dr. Walsh entered into the Final Order with the Colorado Board he was not then practicing medicine. Thus, the Colorado Board, in the Final Order, required Dr. Walsh to submit the following prior to resuming the practice of medicine in Colorado:

- a) Information regarding a practice monitor; and
- b) A letter from CPEP outlining whether a new initial evaluation was required. Moreover, if CPEP required an additional initial evaluation, then Dr. Walsh was to submit the results of the initial evaluation.

CONCLUSIONS

Findings of Fact 1, 2, and 3, above, support a conclusion that the Colorado Stipulation and Final Agency 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, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as set forth in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to March 5, 1996, to wit: Section 4731.22(B)(6), Ohio Revised Code.

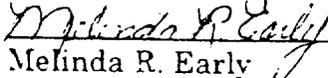
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Dr. Walsh admitted and agreed in the Final Order that his failure to detect lesions in seven cases which were subsequently determined to represent malignancies, established a prima facie case of a violation of Colorado's minimal standards of care law. This fact alone substantially supports a conclusion that Dr. Walsh violated Section 4731.22(B)(6), Ohio Revised Code. Nevertheless, Dr. Walsh presented substantial mitigating evidence regarding his skills in practicing radiology, as evidenced by the CPEP evaluation report. Moreover, Dr. Walsh presented credible mitigating evidence regarding the standards of care in radiology, particularly with respect to reading mammograms. Thus, it appears this Board would have very little to gain by imposing harsh disciplinary sanctions against Dr. Walsh's Ohio certificate to practice medicine.

PROPOSED ORDER

It is hereby ORDERED that the certificate of James A. Walsh, M.D., to practice medicine and surgery in the State of Ohio shall be REPRIMANDED.

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



Melinda R. Early
Attorney Hearing Examiner

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 9, 1996

REPORTS AND RECOMMENDATIONS

Dr. Stienecker announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that, due to the Board's inability to obtain service in the Matter of Archie W. Bedell, M.D. and Walter Woodhouse, M.D., the case will be considered at another time. He asked members to maintain their hearing record in that case until such time as it is finally decided.

Dr. Stienecker 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: Albert B. Cinelli, M.D.; Sunil P. Pandit, M.D.; Ramachandra Pudupakkam, M.D.; Luis E. Quiroga, M.D.; Nancy Stover, M.T. and American Institute of Massotherapy; Michael Paul Torosian, D.O.; James A. Walsh, Jr., M.D.; and Jerome A. Wensinger, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Stienecker	- aye

Dr. Stienecker 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. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye

Dr. Steinbergh - aye
Dr. Stienecker - aye

Dr. Garg stated that, due to a conflict of interest, he will recuse himself in the matter of Albert B. Cinelli, M.D.

Dr. Stienecker and Mr. Sinnott advised that, due to conflicts of interest, they will recuse themselves in the matter of Ramachandra Pudupakkam, M.D.

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.

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

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REPORT AND RECOMMENDATION IN THE MATTER OF JAMES A. WALSH, M.D.

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

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES A. WALSH, M.D. DR. BHATI SECONDED THE MOTION.

Dr. Stienecker asked whether there were any questions concerning the proposed findings of fact, conclusions and order in the above matter.

Dr. Steinbergh stated that she was rather impressed with the Colorado Personalized Education for Physicians (CPEP) report. After reading that report, she feels confident that she could support an Order of reprimand in this matter. She added that she would even be willing to dismiss this case. She believes that Dr. Walsh has done the appropriate things, and nothing else needs to be done at this time.

Dr. Garg noted that the Hearing Examiner proposes to reprimand the certificate of Dr. Walsh. He asked whether this was correct language.

Ms. Strait stated that it is not, and that a correction would be appropriate.

Dr. Agresta stated that, having read through this case carefully, he, too, could support an order of dismissal.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JAMES A. WALSH, M.D., TO A DISMISSAL. DR. GARG SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- nay
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JAMES A. WALSH, M.D. DR. GARG SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- nay
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

100 North High Street, 20th Floor • Columbus, Ohio 43260-0315 • (614) 466-3953

March 13, 1996

James A. Walsh, Jr., M.D.
1549 Genesse Vista Road
Golden, CO 80401

Dear Doctor Walsh:

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 November 9, 1995, the Colorado State Board of Medical Examiners approved a Stipulation and Final Agency Order, placing your license to practice medicine in the State of Colorado on probationary status for a period of five (5) years subject to certain specified terms and restrictions, including that you shall not resume the practice of medicine in Colorado until you have undergone an evaluation by Colorado Personalized Education for Physicians (hereinafter "CPEP") for the preparation of a learning plan and until you have received notice from the Colorado Board that the CPEP letter and evaluation have been reviewed and your proposed practice monitor has been approved. These terms and restrictions further include that, upon resuming practice in Colorado, you shall comply with all reeducation activities recommended by CPEP; that you shall not interpret more than twenty (20) mammograms in a single day; and that your medical practice will be monitored.

This action was based on a determination that your reading of mammograms was deficient and your admission that you failed to detect lesions in seven cases that were later determined by biopsies to represent malignancies. A copy of the Stipulation and Final Agency Order is attached hereto and fully incorporated herein.

The Stipulation and Final Agency Order, as alleged in paragraph (1) above, individually and/or collectively, 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, or the imposition of probation by that authority, for an action that also would have been a

Mailed 3/14/96

March 13, 1996

violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to March 5, 1996, to wit: Section 4731.22(B)(6), Ohio Revised Code.

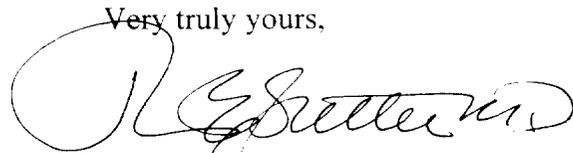
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 152 983 379
RETURN RECEIPT REQUESTED

rev.2/15/95

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF
JAMES A. WALSH, M.D., LICENSE NO. 15796.

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel A ("Panel") of the Colorado State Board of Medical Examiners ("Board") and James A. Walsh, M.D. ("Respondent") as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on April 9, 1963, and was issued license no. 15796 which Respondent has held continuously since that date.
2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.
3. Respondent is a radiologist.
4. On October 10, 1995, the Panel reviewed newspaper articles describing Respondent's resignation from Colorado Permanente Medical Group, P.C. ("CPMG") as well as written material from CPMG. Based upon this material, the Panel thereupon referred this matter to the Attorney General.
5. The written information from CPMG concerned Respondent's reading of mammograms. As alleged by CPMG, the percentage of those cases that Respondent read as "other than normal" was far less than that of other CPMG radiologists. CPMG utilized two additional levels of review on 2,958 cases that Respondent had previously cleared. Of these, 259 cases were felt to require further evaluation. Based on this evaluation, seven patients had a malignancy as determined by biopsy.
6. Respondent submits that a triple reading of mammograms such as that employed by CPMG would yield similar results for any radiologist practicing within the standard of care in the United States.

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7. It is the intent of the parties and the purpose of this Order to provide for a settlement of all facts set forth above and all matters related to the review of Respondent's cases by CPMG, without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order.

8. Respondent understands that:

a. Respondent has the right to be represented by an attorney of the Respondent's choice;

b. Respondent has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.

c. By entering into this Stipulation and Final Agency Order (hereinafter, the "Order"), Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Order, and relieves the Panel of its burden of proving such facts; and

d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence and to cross-examine witnesses who would testify on behalf of the Panel.

9. Respondent admits and agrees that his failure to detect lesions in the seven cases that later were determined to represent malignancies establishes a prima facie case, which, if unrebutted, would sustain a finding of a violation of § 12-35-117(1)(p) C.R.S. The Panel has no evidence that any other aspect of Respondent's practice, other than the reading of mammograms, is deficient.

10. Based upon the above, the Panel is authorized by § 12-36-118(5)(g)(III), C.R.S. to order probation and such conditions upon Respondent's practice which it deems appropriate.

PROBATIONARY TERMS

11. Respondent's license to practice medicine in the state of Colorado is hereby placed on probationary status for a period of five years. During the probationary period, Respondent agrees to be bound by the terms and restrictions set forth in the paragraphs below. Respondent is presently not practicing medicine. It is anticipated by the parties that Respondent may not resume his practice of medicine in the state of Colorado. While Respondent is not practicing medicine in this state, he need not comply with any of the probationary terms below, with the exception of the CPEP initial assessment, and the five year term shall be tolled. Prior to returning to the practice of medicine in the state of Colorado, Respondent shall submit the material concerning the practice monitor, as set forth below. Respondent shall also submit a letter

from CPEP indicating whether a new initial assessment is required, and if so, a new initial assessment. Upon notice to Respondent from the Panel that it has approved the practice monitor and has reviewed the letter from CPEP, Respondent may resume the practice of medicine in Colorado subject to the following probationary terms. Respondent may not resume the practice of medicine in this state prior to such notice.

CPEP LEARNING PLAN

12. Regardless of whether Respondent is practicing medicine in the state of Colorado, within 60 days of the effective date of this Order, Respondent shall undergo the initial evaluation by Colorado Personalized Education for Physicians ("CPEP") for the preparation of a learning plan, in the event a learning plan is recommended. It is anticipated by the parties that a learning plan will not be created until such time as Respondent resumes the practice of medicine in Colorado.

13. Respondent shall provide the Panel a copy of the initial evaluation report 14 days after having been provided a copy. Respondent shall provide the Panel a copy of the report of the learning plan 14 days after having been provided a copy, if such is recommended.

14. Respondent shall comply with all reeducation activities recommended by CPEP. All recommendations made by CPEP as to reeducation shall be terms of this Order. Failure to timely comply with CPEP reeducation activities, as such is determined by the Panel in consultation with CPEP, may be sanctioned as set forth in paragraph 25 below. Until such time as Respondent resumes the practice of medicine in the state of Colorado, he need not comply with such reeducation activities. It is also anticipated by the parties that CPEP may require a new initial assessment prior to resuming practice in this state.

PRACTICE MONITORING

15. While practicing medicine in Colorado, Respondent's medical practice at all office and hospital locations shall be monitored by a "practice monitor." The practice monitor shall be a physician licensed and currently practicing medicine in Colorado. The practice monitor must be board certified by the American Board of Radiology or the American Osteopathic Board of Radiology. Most importantly, the practice monitor must function as the eyes of the Board and must not feel an allegiance to Respondent that would prevent a fair and impartial review of Respondent's practice to insure that Respondent is practicing within the standard of care and in compliance with this Order. The practice monitor shall have no financial interest in Respondent's practice of medicine. The practice monitor may be selected by Respondent but must be approved by the Panel. Prior to the Panel's approval, the practice monitor

shall submit to the Panel a current curriculum vitae and letter to the Panel. In the letter, the practice monitor shall state that the practice monitor has read this Order, and understands and agrees to perform the obligations as set forth herein.

16. The practice monitor shall perform the following:

a. At least once each month, the practice monitor shall review at least five cases wherein Respondent has interpreted images as a radiologist. Three such reviews shall be of Respondent's interpretations of mammograms. The remaining two shall be cases other than mammograms. The practice monitor shall make reasonable effort to insure that he reviews all aspects of Respondent's care and all types of image interpretation performed by Respondent. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Respondent as the practice monitor deems appropriate.

b. The practice monitor shall submit quarterly written reports to the Panel. The first such report shall be submitted to the Panel on the last day of the first full month after the practice monitor has been approved by the Board. All subsequent reports shall be submitted on the last day of each third month thereafter.

c. The practice monitor's reports shall include the following:

- 1) a description of each of the cases reviewed;
- 2) a description of the condition of Respondent's office facilities.
- 3) the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice; and
- 4) any indication that Respondent has violated a term of this Order.

d. While the responsibilities of CPEP as set out below and the responsibilities of the practice monitor are separate, the practice monitor shall communicate with CPEP on an annual basis to determine if there are any issues which need to be discussed.

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

18. Respondent shall insure that all reports by the monitor are complete and are submitted to the Panel on time. If, in the Panel's judgment, the monitor fail to perform the functions contemplated by this Order, the Panel may require that a new practice monitor assume the responsibilities specified herein. If Respondent becomes aware that the practice monitor has ceased to perform the functions contemplated by this Order, Respondent shall nominate a new practice monitor within 30 days.

OTHER PROBATIONARY TERMS

19. At no time during the probationary period shall Respondent interpret more than 20 mammograms in a single day.

OTHER TERMS

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

21. Respondent shall obey all state and federal laws during the probationary period ordered herein.

22. If, at any time during the probationary period, Respondent does not have in effect a policy of medical malpractice insurance in compliance with § 13-64-301, C.R.S., Respondent shall immediately notify the Panel in writing.

23. At the completion of the probationary term ordered herein, including any extension required by this paragraph, Respondent may make a written request to the Panel for restoration of Respondent's license to unrestricted status. With such request, Respondent shall supply any outstanding reports from the practice monitor or CPEP. If Respondent has complied with the terms of probation, such release shall be granted by the Panel in the form of written notice. However, the period of probation shall be tolled by any period of time during which:

a. Respondent is not engaged in the clinical practice of medicine in Colorado;

b. Respondent is not being monitored as required by the terms of this Order; or

c. Respondent is not in compliance with any other term of this Order.

24. Respondent shall report to the Board when gaining hospital privileges so that the Board may notify the hospital pursuant to § 12-36-118(13), C.R.S. Respondent presently holds privileges at the following hospitals:

- NONE -

25. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary hearing pursuant to § 12-36-118(5)(g)(III), C.R.S. Failure to comply with the terms of this Order may be sanctioned by the Inquiry Panel as set forth in § 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C.R.S.

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

27. This Order shall be effective upon approval by the Panel and signature by a Panel member. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member, it is void.

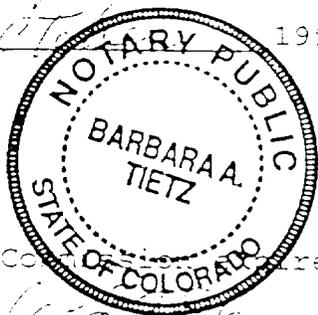
24. Upon becoming effective, this Order shall be open to public inspection and shall be reported as required by law.

James A. Walsh, M.D.
James A. Walsh, M.D.

1549 GEVESEK VISTA RD

GOLDEN, CO 80401
Address

SUBSCRIBED AND SWORN to before me in the County of Adams, State of Colorado, this 12th day of October, 1995.



Barbara A. Tietz
NOTARY PUBLIC

My Comm. Expires:

6/30/98

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 9th day of November, 1995.

FOR THE COLORADO STATE BOARD
OF MEDICAL EXAMINERS
INQUIRY PANEL A

Lawyer's Signature

APPROVED AS TO FORM:

FOR THE RESPONDENT

FOR THE BOARD OF MEDICAL EXAMINERS

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Attorney General

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