State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

July 13, 2011

Martin Escobar, M.D.
89 Heather Creek Run
Boardman, OH 44511

RE: Case No. 10-CRF-099

Dear Doctor Escobar:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2011, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3019 8003
RETURN RECEIPT REQUESTED

CC: Elizabeth Y. Collis, Esq.
CERTIFIED MAIL NO. 91 7199 9991 7030 3311 5016
RETURN RECEIPT REQUESTED

Mailed 7-15-11

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2011, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Martin Escobar, M.D., Case No. 10-CRF-099, 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.

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 13, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 10-CRF-099
MARTIN ESCOBAR, M.D.	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 13, 2011.

Upon the Report and Recommendation of Patricia A. Davidson, State Medical Board 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 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:

A. **REPRIMAND**: Martin Escobar, M.D., is hereby REPRIMANDED.

B. **DOCUMENTATION OF CME**: Dr. Escobar shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education for the 2010-2012 CME period, as well as the two additional CME periods thereafter. This documentation shall be due in the Board's offices within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.

C. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Escobar shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or healthcare center where he has privileges or appointments.

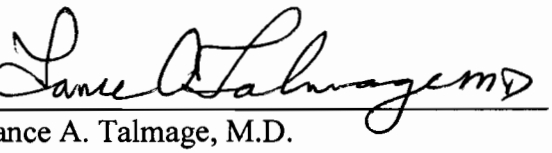
In the event that Dr. Escobar provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, Dr. Escobar shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Escobar shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity through which he currently holds any license or certificate, including but not limited to the Drug Enforcement Agency.

3. **Required Documentation of the Reporting Required by Paragraph C**: Dr. Escobar shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

EFFECTIVE DATE: This order shall become effective immediately upon the mailing of the notification of approval by the Board.



Lance A. Talmage, M.D.
Secretary

(SEAL)

July 13, 2011
Date

STATE MEDICAL BOARD
OF OHIO

2011 JUN -6 AM 11: 20

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
		Case No. 10-CRF-099
Martin Escobar, M.D.,	*	
		Hearing Examiner Davidson
Respondent.	*	

REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated August 11, 2010 [Notice], the State Medical Board of Ohio notified Martin Escobar, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. (St. Ex. 1A) The Board set forth the following allegations:

- In 2007, Dr. Escobar entered into a Consent Agreement with the Board based on his failure to complete the required hours of Continuing Medical Education [CME]. Under the terms of this agreement, Dr. Escobar was required, among other things, to document his CME hours for the CME period from October 2, 2006, through October 1, 2008, and to provide this documentation within thirty days of the end of the period unless otherwise determined by the Board. The deadline for documentation was subsequently extended to February 5, 2009.

- Dr. Escobar failed to complete the required number of Category I CME hours for the two-year period ending on October 1, 2008.

- In October 2008, Dr. Escobar filed a renewal application to maintain his Ohio licensure for the two-year period beginning in January 2009. In this renewal application, Dr. Escobar certified that he had completed or would complete the CME required during the period from October 2, 2006, through October 1, 2008.

- Dr. Escobar failed to respond to the extended deadline of February 5, 2009, for documenting his CME compliance for the period ending October 1, 2008.

The Board further alleged that Dr. Escobar's acts, conduct and/or omissions constitute violations of the following: Ohio Revised Code [R.C.] 4731.22(B)(5) and 4731.22(B)(15); and violation of R.C. 4731.22(B)(20) with respect to underlying violations of R.C. 4731.281 and Ohio Administrative Code Sections [Rules] 4731-10-02 and Rule 4731-10-08.

On September 9, 2010, the Board received Dr. Escobar's request for a hearing. (St. Ex. 1B)

Appearances

Mike DeWine, Attorney General, and Kyle C. Wilcox, Assistant Attorney General, for the State.
Elizabeth Y. Collis, Esq., for the Respondent.

Hearing Date: February 23, 2011

SUMMARY OF THE EVIDENCE

All exhibits and testimony admitted in this matter, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background

1. Martin Escobar, M.D., received his medical degree in 1998 from the Ross University School of Medicine in Dominica, West Indies. According to his curriculum vitae, he completed a year of postgraduate training in internal medicine at Pennsylvania Hospital in Philadelphia, and completed his second and third years at Forum Health Northside Medical Center, an affiliate of Northeastern Ohio University College of Medicine. (Resp. Ex. A)

2. In 2001, Dr. Escobar was granted a license to practice allopathic medicine and surgery in Ohio under certificate number 35.079291, which is currently active. Dr. Escobar testified that he also holds a license to practice medicine in California. His employment history is described in his curriculum vitae and hearing testimony. (Resp. Ex. A; Tr. at 47-49; State of Ohio, Ohio eLicense Center at <*https://license.ohio.gov/lookup/default.asp? division=78*>, query on May 18, 2011)

2007 Consent Agreement

3. On April 11, 2007, Dr. Escobar and the Board entered into a Consent Agreement in lieu of formal proceedings based on his violation of R.C. 4731.22(A) and 4731.22(B)(5), and violation of R.C. 4731.22(B)(20) with respect to R.C. 4731.281 and Rules 4731-10-02 and 4731-10-08. (St. Ex. 2)

4. In the Consent Agreement, Dr. Escobar admitted that, when submitting his renewal application for the 2005-2007 registration period, he had certified that he had completed the required CME hours for the two-year period ending in October 2004, when, in fact, he had not completed the required hours. Dr. Escobar admitted that he had completed only 15 hours of the required 40 hours of Category I CME during the period ending in October 2004 and that he had completed zero hours of Category II CME, for a deficit of 85 hours.[1] (St. Ex. 2)

---

[1] Under R.C. 4731.281 and Rule 4731-10-02, a licensed physician must complete 100 hours of CME every two years, including 40 hours of Category I CME. Category I credit is earned by completing formal programs approved for Category I credit, and the physician's completion of Category I activities is documented by a certificate issued by the CME provider. In contrast, Category II credit is earned by doing less formal activities, and no certificates from a CME provider are required. (Tr. at 19-21)

5. Pursuant to the Consent Agreement, Dr. Escobar was reprimanded and fined $750. The agreement notes that Dr. Escobar had made up all the missing hours for the CME period ending in October 2004. (St. Ex. 2)

6. In addition, the Consent Agreement requires that Dr. Escobar must document his CME compliance for two additional CME periods, those ending in October 2006 and October 2008. By the time the agreement was finalized, Dr. Escobar had documented CME compliance for the two-year period ending on October 1, 2006. Therefore, Paragraph 3 of the Consent Agreement provides:

> * * * Dr. Escobar shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME hours for the October 2, 2006, through October 1, 2008, CME period that corresponds with Dr. Escobar's next period of active licensure. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME period, unless otherwise determined by the Board.

(St. Ex. 2)

7. In a letter dated November 15, 2007, Debra Jones, the Board's CME and Renewal Officer, wrote to Dr. Escobar to address the documentation he had submitted regarding his preceptoring activities at St. Joseph Health Center in 2007. (St. Ex. 5 at 23)

In her letter, Ms. Jones informed Dr. Escobar that his preceptor hours at St. Joseph would be counted *only* "as Category II credit hours toward [his] first CME reporting dates of October 2, 2006 through October 1, 2008." In addition, Ms. Jones reminded Dr. Escobar that he must submit documentation of his Category I hours to the Board no later than November 1, 2008. (St. Ex. 5 at 23)

October 2008: Renewal Application for Licensure Period Beginning in January 2009

8. As of October 1, 2008, Dr. Escobar's two-year period to complete the CME hours had ended. Two other deadlines were on the horizon: the November 1 deadline to document the CME he had completed by October 1, 2008, pursuant to the Consent Agreement; and the January 1, 2009 deadline to submit his renewal application for licensure. (St. Ex. 2, Tr. at 17)

9. On or about October 2, 2008, Dr. Escobar filed his renewal application for the two-year licensure period beginning January 2, 2009. His application was posted on the Board's computer system on October 2, 2008. In this application, Dr. Escobar answered "yes" when asked whether he had met the CME requirements for licensure, meaning that he had completed a total of 100 hours of CME during the period ending October 1, 2008, including 40 hours of Category I CME. In submitting the application, Dr. Escobar swore or affirmed that all his answers were complete and correct, under penalty of law and/or Board disciplinary action. (St. Ex. 2, Tr. at 17)

November 2008 – December 2008

10. On November 7, 2008, Dr. Escobar submitted a document to establish that he had completed his CME activities for the period ending October 1, 2008. This document was a letter dated November 1, 2007, confirming that Dr. Escobar had participated in a preceptor program at St. Joseph Health Center for which he had earned 107 hours of "CME credit" for his activities from July 2007 through October 2007. (St. Ex. 5 at 1-2; Tr. at 75-77)

11. Ms. Jones responded to Dr. Escobar by certified letter dated November 26, 2008, stating that she had received the information regarding CME credit for the preceptor program at St. Joseph Health Center. However, she reminded him that these hours could be claimed *only* as Category II hours, and she noted that she had previously informed him of this fact in her letter of November 15, 2007. (St. Ex. 5 at 28)

    Ms. Jones also told Dr. Escobar that his "Category I hours MUST be submitted to the Board by December 17, 2008." (St. Ex. 5 at 28, emphasis in original)

12. Dr. Escobar did not submit the documentation by December 17, 2008. Instead, his assistant submitted a letter dated December 15, 2008, stating that Dr. Escobar was out of the country and would like to have an extension of time to submit his documentation of CME credits. (St. Ex. 5 at 29)

13. Ms. Jones replied by certified mail dated December 16, 2008, approving the request for additional time and stating that Dr. Escobar must submit proof of compliance with his CME requirements no later than January 5, 2009. (St. Ex. 4, Tr. at 18)

14. On December 29, 2008, Dr. Escobar submitted documents showing that he had completed courses for certification in Advanced Cardiovascular Life Support and Basic Life Support (CPR, etc.). These documents established 16.0 hours of Category I CME as of October 1, 2008. (Tr. at 22-23, St. Ex. 5 at 3-5)

January 2009

15. However, Dr. Escobar did not submit documents to establish the remaining 24 hours of Category I credit by January 5, 2009. Instead, he sought another extension of time. In a certified letter dated January 15, 2009, Ms. Jones stated that, in a telephone conversation with Dr. Escobar on that date, he had requested a further extension of time to submit his proof of CME compliance. Ms. Jones granted an extension to February 5, 2009. (St. Ex. 4, Tr. at 18-19)

16. On January 9, 2009, Dr. Escobar submitted 15 CME certificates documenting that the Massachusetts Medical Society had certified his participation in its "*New England Journal of Medicine* Weekly CME Program" [the *NEJM* Program], awarding him 15.0 hours of Category I CME credit. (St. Ex. 5 at 6-22)

Three of these certificates state that Dr. Escobar "participated in the educational activity titled the NEJM Weekly CME Program on 10/7/2008 and is awarded 1.00 AMA PRA Category I Credit™." Twelve of the certificates state that Dr. Escobar "participated in the educational activity titled the NEJM Weekly CME Program on 10/8/2008 and is awarded 1.00 AMA PRA Category I Credit™." (St. Ex. 5 at 7-22; duplicates at St. Ex. 5 at 36-50 and Resp. Exs. B, D)

17. With regard to the *NEJM* Program, Dr. Escobar explained that it involved reading an item in the journal, answering questions provided, and submitting his answers to the *NEJM* Program, which then graded the test and issued a certificate stating that he had passed the test. Dr. Escobar explained that the test answers could have been submitted via the internet, but he preferred to write the answers on a form and fax them for manual processing because he is "computer illiterate." Dr. Escobar noted that he had never before participated in this CME program, although he had received the journal on a weekly basis. (Tr. at 52-54, 59-61)

18. Dr. Escobar testified that his assistant transmitted his completed CME tests to the *NEJM* Program on September 30, 2008, before the expiration of his CME-earning period on October 1, 2008. (Tr. at 53-54, 61-62)

19. Dr. Escobar explained that the "Date Completed" as shown on the summary report is the date on which the *NEJM* Program graded his handwritten exams that he had submitted for review. (Tr. at 63)

20. Dr. Escobar testified that, when he realized in late November 2008 that he needed further documentation for Category I credit, he contacted the *NEJM* Program, "the people who grade this," and asked them to verify that he had submitted his completed tests on September 30, 2008. (Tr. at 53, 59-60, 76-77; St. Ex. 5 at 28)

21. On January 14, 2009, Dr. Escobar received a response from a customer-service representative at the *NEJM* Program by email, stating in part: "We received your faxed order for 15 NEJM Weekly CME Exams on September 30, 2008, and your exams were processed in our system on October 7, 2008 and October 8, 2008." (St. Ex. 5 at 31, 35; Tr. at 53, 59, 63)

    A subsequent email message to Dr. Escobar's assistant confirmed that Dr. Escobar's exams had been received by the *NEJM* Program on September 30, 2008. (St. Ex. 5 at 34-35)

22. On January 15, 2009, Dr. Escobar submitted to the Board the following items from the *NEJM* Program: the two email messages from customer-service representatives at the *NEJM* Program, a Summary Report of all his CME credits awarded by the program, and duplicates of the 15 CME certificates previously submitted on January 9. (St. Ex. 5 at 30-50; see, also, Resp. Ex. B)

    The Summary Report sets forth 15 CME activities for Dr. Escobar in chart format, including a column for the "Date Completed." For three of the CME activities in Dr. Escobar's summary report, the "Date Completed" is identified as "10/7/08." For twelve of the activities, the *NEJM* Program identifies the "Date Completed" as "10/8/08." (St. Ex. 5 at 32-33; duplicate at Resp. Ex. B)

23. Kay Rieve, the Administrative Officer in the Licensure and Renewal department of the Board, testified that the Summary Report provided by the *NEJM* Program provides a correct summary of all the certificates awarding CME credit to Dr. Escobar by the NEJM program. She further testified that the 15 hours certified by the *NEJM* Program were not counted toward the total hours completed for the period ending October 1, 2008, because the *NEJM* Program expressly certified that the CME activities had been completed on October 7 and 8, 2008. (Tr. at 24-25, 26-29, 35, 37, 40-44)

24. On January 15, 2009, Dr. Escobar submitted four letters from St. Joseph Health Center documenting that he had obtained Category I CME credit by attending staff meetings. (St. Ex. 5 at 51-56, Tr. at 34-35)

Calculation of Category I CME Hours, Per CME Certificates

25. Ms. Rieve testified that Dr. Escobar had earned 16.0 hours of Category I CME credit for completing courses in Advanced Cardiovascular Life Support and in Basic Life Support, during the CME period at issue. (Tr. at 22-23, 27, 31)

26. In addition, Ms. Rieve testified that Dr. Escobar had earned 21.5 hours of Category I CME by attending staff meetings at St. Joseph Health Center (Tr. at 27-28, 32-35), as follows:

Date of CME	CME Activity at St. Joseph Hlth. Ctr.	# of Meetings	CME Hrs. per Mtg.	Hrg. Record reference	Total CME hrs,
"in 2008"	Clinical Case Committee Meetings	5	1.5	St. Ex. 5 at p. 52	7.5
"in 2008"	Dept. of Medicine Meetings	4	1.0	St. Ex. 5 at p. 54	4.0
"in 2008"	Medical Staff Meetings	3	2.0	St. Ex. 5 at p. 55	6.0
"in 2008"	Trauma & Emergency Medicine Meetings	4	1.0	St. Ex. 5 at p. 56	4.0
				Total	21.5

27. Ms. Rieve acknowledged that the Board's staff had originally calculated a lower total for the St. Joseph meetings. However, Ms. Rieve stated that the Board's staff had re-computed the CME hours for the St. Joseph meetings and decided to approve more hours: "We went back over this information today and recalculated the staff meeting hours. We feel that we calculated them too low and that the time * * * for the staff meetings * * * instead of 15 hours, was 21.5 hours."[2] (Tr. at 27-28)

[2]The Hearing Examiner notes that St. Joseph Health Center did not identify the dates when these meetings took place in 2008, and Dr. Escobar testified that the meetings were "quarterly." (Tr. at 51; St. Ex. 5 at 52-56) This strongly suggests that several of the meetings, perhaps a fourth of the total hours, took place after October 1, 2008. However, the Hearing Examiner accepts the determination made by the Board's CME staff to allow all 21.5 hours to be credited to the period ending on October 1, 2008.

28. Accordingly, Dr. Escobar had submitted CME certificates showing 37.5 hours of Category I CME:

Total Category I Credits by October 1, 2008, Per Formal Written Verification

ACLS and BLS programs	16.0 hours
Staff Meeting at St. Joseph Health Center	21.5 hours
	37.5 hours

This calculation yields a deficiency of 2.5 hours of Category I credit, because licensees must complete 40 hours of Category I CME during each two-year CME period. (Compare Tr. at 28-29)

Compliance with the Documentation Deadline of February 5, 2009

29. With respect to whether Dr. Escobar met the extended deadline of February 5, 2009, for submitting his documentation, the evidence shows:

a. *Preceptor Activities at St. Joseph Health Center - successful completion of more than 100 hours of Category II CME in 2007:*

Ms. Rieve confirmed that Dr. Escobar submitted the documentation for these CME hours on November 7, 2008. (Tr. at 22, St. Ex. 5 at 1-2)

b. *Courses in Advanced Cardiovascular Life Support and Basic Life Support - successful completion of 16 hours of Category I CME as of October 1, 2008:*

Ms. Rieve confirmed that Dr. Escobar submitted the documentation for these CME hours on December 29, 2008. (Tr. at 22-23, St. Ex. 5 at 3-5)

c. *Staff meetings at St. Joseph Health Center - successful completion of 21.5 hours of Category I CME as of October 1, 2008:*

Ms. Rieve confirmed that Dr. Escobar submitted the documentation for these CME hours on January 15, 2009. (St. Ex. 5 at 51-56, Tr. at 34-35)

d. NEJM *Program – successful completion of 15 hours of Category I CME* as of *October 7 and 8, 2008, and email correspondence regarding the submission date of the tests*

Ms. Rieve confirmed that Dr. Escobar submitted the documentation for these CME hours on January 9 and 15, 2009. (Tr. at 23-24, St. Ex. 5 at 6, 10, 30-50)[3]

---

[3] The Hearing Examiner did not find any reliable evidence that Dr. Escobar had "failed to respond to the extended deadline of February 5, 2009." Although there is a statement in an affidavit that Dr. Escobar had "failed to respond" to the extended deadline (St. Ex. 3), the affiant did not testify at the hearing subject to cross-examination. Moreover, the statement in the affidavit was contradicted by Ms. Rieve's subsequent testimony at hearing, which was credible. Further, Ms. Rieve's testimony regarding the timing of Dr. Escobar's documentation is consistent with the Board's documents in the hearing record, which show the submission of documentation on the dates set forth above. (See St. Ex. 3, Tr. at 14-44, and St. Exs. 2, 4, 5)

Dr. Escobar's Interpretation of the *NEJM* Documents

30. Dr. Escobar testified that he did in fact complete all the required CME hours during the period from October 2, 2006 through October 1, 2008, including 40 hours of Category I credit. He contends that his participation in the *NEJM* Program was actually completed on September 30, 2008, when he sent the completed test sheets to the *NEJM* Program for grading. (Tr. at 23-24, 26-27, 35, 40-41, 51, 55; St. Ex. 5 at 31-33)

31. During the hearing, Ms. Rieve was asked about the correspondence stating that Dr. Escobar had submitted his completed exams to the *NEJM* Program on September 30, 2008. Ms. Rieve acknowledged that the formal certification "doesn't seem to be the same as what they have said in this email." However, she stated that the Board relies on the information in the certificate from the organization that has granted the credit. She also commented that, despite the information in the email correspondence, an argument could be made that the Board is entitled to rely on the date of completion set forth in the formal certificate from the CME sponsor. (Tr. at 8, 44-43, 67-69, 73)

Additional Testimony and Evidence from Dr. Escobar

32. Dr. Escobar testified that, when he submitted his renewal application, he was sure he had completed all the necessary CME hours. He explained that he had participated in a "medical knowledge self-assessment program, New England Journal of Medicine, as well, a full review CD course; and the UpToDate that we get through – in the computer." In addition, he had completed staff meetings at St. Joseph and also received certification for the life-support courses.[4] (Tr. at 51, 55)

33. Dr. Escobar explained that he had believed that his preceptor activities would be counted as Category I hours and that, therefore, he had thought he had "well over" the number of CME credits required. Dr. Escobar asserted that he had held this belief on September 30, 2008, when he submitted his tests to the *NEJM* Program, and that he had *not* sent the 15 tests to the *NEJM* Program in a last-minute attempt to earn Category I credits that he had tardily realized were lacking. Rather, Dr. Escobar argued that he had not known, until he received the Board's letter in November 2008, that the Board would not be accepting his preceptor hours as Category I hours.[5] He insisted that, after receiving this November 2008 letter, he had then submitted the *NEJM* Program documentation to the Board. (St. Ex. 5 at 28; Tr. at 59-60, 75-77)

---

[4] No certificates from the UpToDate system are in the record. A certificate for an audio course is included, but the participation date appears to be "01/31/06" or "1 December 2005–30 November 2006," and Dr. Escobar did not raise an issue at the hearing as to why no credits from that program were applied to the CME period ending in October 2008. (Tr. at 14-44, Resp. Exc. B)

[5] There are several problems with the alleged reliance on letters certifying CME credit for the preceptor activities: the Board's CME Officer had previously notified Dr. Escobar in a letter dated November 15, 2007, that his preceptor activities could be claimed *only* as Category II hours toward his CME requirements for the period ending October 1, 2008; in addition, the letter certifying the preceptor hours does *not* state that the activity has been approved for Category I credit; and, further, pursuant to Rule 4731-10-02, it is the licensee's responsibility to ascertain whether CME hours have been approved for Category I credit. (St. Ex. 5 at 1-2, 23)

34. When Dr. Escobar was asked whether he had maintained a log or some other way of recording his CME credits for the period ending in October 2008, he answered:

> No, I did not. I did not. I did have it in my office, a large sheet of all my CMEs credit that I had, but I had -- like, for example, the article, I didn't submit until later I found out, wow, you are short of hours. So I said, no, I did all these hours. So I called these companies that did my CME credits with so they can send me a certificate saying I have these CME credits.

(Tr. at 58-59)

35. In addition to the letter he had submitted to the Board on November 7, 2008, which had documented 107 hours of preceptor activities from July through October 2007), Dr. Escobar submitted further documentation of his preceptor activities at St. Joseph Health Center, for a total of 333 hours of Category II CME providing clinical instruction to postdoctoral students from January 2007 through June 2008. (St. Ex. 5 at 1-2, 24-27)

36. Dr. Escobar testified that he now keeps better records and keeps track of his certificates for Category I credit. In addition, Dr. Escobar stated that a CME hearing will not happen again because it has been a "very scary thought, you know, that my medical license could be taken, in terms of I have two families to feed, one in Japan and one here in America, and this is my breadwinner. I mean, I take my medicine very seriously. I take my CME credits very seriously. So, yeah, I will continue to submit every time I do CME credits, submit them to you, make sure that they are in compliance." (Tr. at 57-58, 64-65)

37. When Dr. Escobar was asked why it is important for a physician to complete all the continuing education as required, he answered:

> Because, I mean, this is a -- mainly, to -- I guess it's a protocol that they pass and they pass in every single state that we have to submit -- you know, that we are consistent in compliance with the protocol that you -- that the Ohio State has and, yes, to mention we are up to date in the -- in the treatment, management, and we're not -- we're not -- I guess didn't finish school and stop reading, I continue to read. Every single day, I read medicine. And, yes, we keep -- I guess the main purpose is to say to the Board that we're up to date in how to treat a patient because what 20 years was, treatment has changed totally from up -- from up to this date.

(Tr. at 56-57)

CME Compliance for Period Ending in October 2010 -- The Next CME Period

38. Ms. Rieve testified that, for the CME period from October 2, 2008, through October 1, 2010, Dr. Escobar documented 70 hours of Category I CME and 86 hours of Category II CME Therefore, Ms. Rieve concluded that Dr. Escobar is in full compliance with the CME requirements for the CME period ending on October 1, 2010. (Tr. at 40-41)

39. Further, Ms. Rieve testified that the extra Category I hours earned during this 2008-2010 period were more than needed to make up the deficiency in the 2006-2008 period. In other words, Dr. Escobar has already made up the hours that were identified as a deficiency for the 2006-2008 period. (Tr. at 40-41)

SELECTED STATUTES AND RULES

Section 4731.281 of the Revised Code, which is captioned "Continuing education," provides in part:

> (A) On or before the deadline * * * for applying for renewal of a certificate of registration, each person holding a certificate under this chapter to practice medicine and surgery * * * shall certify to the state medical board that in the preceding two years the person has completed one hundred hours of continuing medical education.
>
> * * * In determining whether a course, program, or activity qualifies for credit as continuing medical education, the board shall approve all continuing medical education * * * that is certified by the Ohio state medical association, all continuing medical education taken by persons holding a certificate to practice osteopathic medicine and surgery that is certified by the Ohio osteopathic association, and all continuing medical education taken by persons holding a certificate to practice podiatric medicine and surgery that is certified by the Ohio podiatric medical association. * * *
>
> The board may require a random sample of persons holding a certificate to practice under this chapter to submit materials documenting completion of the continuing medical education requirement during the preceding registration period, but this provision shall not limit the board's authority to investigate pursuant to section 4731.22 of the Revised Code.
>
> (B)(1) Every person holding a certificate under this chapter to practice medicine and surgery * * * wishing to renew that certificate shall apply to the board for a certificate of registration * * * according to the following schedule [setting forth deadlines based on the individual's last name].
>
> * * *
>
> (E) **If an individual certifies completion of the number of hours and type of continuing medical education required to receive a certificate of registration or reinstatement of a certificate to practice, and the board finds** through the random

> samples [audits] it conducts under this section or through any other means **that the individual did not complete the requisite continuing medical education, the board may impose a civil penalty of not more than five thousand dollars.** (Emphasis added)
>
> * * * A civil penalty imposed under this division may be in addition to or in lieu of any other action the board may take under section 4731.22 of the Revised Code. * * *

In addition, Rule 4731-10-02 provides in part:

> (A) The respective CME program requirements certified by the Ohio state medical association, the Ohio osteopathic association, or the Ohio podiatric medical association and approved by the board shall consist of two categories, category 1 and category 2.
>
> (1) Category 1 and category 2 CME shall be defined and identified within the programs certified by the respective state medical associations and approved by the board.
>
> (2) **In a two-year CME period, a licensee shall be required to earn a total of one hundred hours of CME, of which a minimum of forty hours shall be category 1 as certified by their respective state professional associations and approved by the board.** * * * (Emphasis added)
>
> (3) **When undertaking a CME program, a licensee shall be responsible for ascertaining from the sponsor or co-sponsor whether the CME program will be credited toward the category 1 or category 2 requirement.**
>
> * * *
>
> (C) If a licensee has not completed the requisite hours of CME, a licensee is not eligible for license renewal or license reinstatement until such time as the requisite hours have been completed. Any CME undertaken after the end of a renewal period and utilized for purposes of renewing or reinstating a suspended license cannot also be utilized to meet the CME requirement of the current CME period.

Further, Rule 4731-10-08, which is captioned "Evidence of continuing medical education," provides:

> (A) Each applicant for license renewal or license reinstatement shall certify that the applicant has completed the requisite hours of CME since the start of the CME period.
>
> (B) The board may select applications for verification that all CME requirements have been met. Licensees whose applications are selected shall submit additional documentation of compliance with CME requirements as the board may require. Failure to submit the additional documents shall constitute a violation of section 4731.281 of the Revised Code and section 4731.22 of the Revised Code.

> (C) **Applicants and licensees have a continuing obligation to maintain detailed records of CME hours earned.** Each applicant or licensee shall be responsible for and shall retain written verification obtained from the sponsoring entity of attendance at category 1 CME programs. **Written verification shall include a description of the CME activity, the location of the CME activity, the dates of attendance, the hours of each CME activity and the category of CME.** * * * Records of all CME undertaken shall be retained by the licensee for two years after the end of the CME period and shall be made available to the board upon request. (Emphasis added)

ANALYSIS

CME Earned Through the NEJM Program - Interpretation of the Completion Date

Both Ms. Rieve and the State's counsel acknowledged that there is ambiguity regarding the date on which Dr. Escobar earned the CME credits through the *NEJM* Program, given the evidence that he sent the completed examinations for review on September 30, 2008. For example, Ms. Rieve acknowledged that the formal certification "doesn't seem to be the same as what they have said in this email." (Tr. at 8, 44-43, 67-69, 73)

The State's counsel acknowledged that there is room for interpretation of the *NEJM* documents, but advocated against the interpretation argued by Dr. Escobar:

> This is an interesting case that boils down to the interpretation, essentially, of these documents * * *. But I think what should be considered, first of all, is that, you know, Dr. Escobar was on notice, you know, CME had been an issue with him in the past, so this was something that clearly, you know, he was required to submit documentation. The order -- the Consent Agreement he entered into in 2007 explicitly outlined what his responsibilities were.
>
> And I think the ambiguity in the documents that were submitted probably should not be interpreted in his favor because, again, he needs to comply with what the Board has required him to do and has disciplined him in the past for not doing.
>
> The interpretation of Pages 31 and 32 and 33 are obviously something the Board will have to do in its final decision in this case. Whether completion of the CME within that period, which would have had to have been completed by October 1st of 2008, if that counts as when the doctor testified he did it or when, you know, the actual -- he was actually credited with completion of the CME by the folks at the New England Journal, who indicated they credited him -- or, entered it -- processed his CME on October 7th and October 8th of 2008.
>
> And that's how the Board's licensure staff obviously interpreted it, which would have put it outside the period, which then would have made Dr. Escobar not in compliance with his Consent Agreement and, therefore, in violation of what the Board has alleged in the notice letter, as well as, you know, not providing truthful and accurate information on his

> renewal for his licensure, which is also what the Board has -- has alleged in the notice letter.
>
> So that's the crux of the case. It comes down to the -- to how the Board interprets that information. And it's too bad that it comes down to that, I mean, given the fact that Dr. Escobar, you know, was on notice to kind of make sure that he had all of his i's dotted and his t's crossed. So with that, again, I thank everyone * * *.

(St. Ex. 67-69, 73)

Overarching Policy Considerations

In considering this question, the Hearing Examiner does not view the present case in isolation. It is important to bear in mind that numerous audits are performed every year by the Board's administrative staff. In order to promote a smooth, fair, and cost-effective auditing process, the calculation of CME hours must be fairly uniform, simple, and clear-cut.

Ms. Rieve made clear that the Board has a policy of relying on the completion date set forth in the CME certificate issued by the organization that grants the credit. The Hearing Examiner finds this policy to be reasonable, practical, and fair. Using a "bright line" determination, based on the data set forth in formal CME certificates, promotes administrative efficiency and uniformity.

Further, the Hearing Examiner agrees with the State's counsel that the Board has discretion to accept or reject Dr. Escobar's argument that he actually earned the *NEJM* hours as of September 30, 2008, and also agrees that, under the circumstances, Dr. Escobar should have been far more careful and diligent with his recordkeeping. Given the certainty of an audit due to his Consent Agreement, it would have been prudent to make sure he had all the necessary CME certificates in his hands by the close of the CME-earning period on October 1, 2008.

Conclusion regarding the NEJM Program Hours

Nonetheless, considering all the circumstances, the Hearing Examiner recommends that the Board allow Dr. Escobar to apply the 15 *NEJM* hours toward the period ending in October 2008. First, Dr. Escobar has presented formal written verification of 37.5 hours of Category I credit as of October 1, 2008, which is very close to the 40 hours required. Second, Dr. Escobar did complete the actual reading and test-taking for the *NEJM* credits on or before September 30, 2008, and Category I credit was promptly approved a few days later.

Third, it is understandable that a participant in a testing program would assume that the program administrators would certify the date of passing the test and earning the credit as of the date on which the tests were taken and submitted for processing. For example, when the Board determines the date on which an applicant took and passed the U.S. Medical Licensing Examination, the Board uses the date on which the examination was taken, not the date on which the results were announced. See, e.g., *Matter of Bastawros*, Case No. 10-CRF-061 (Nov. 2010); *Matter of Rychwalski*, 09-CRF-052 (Jan. 2010).

However, this interpretation of Dr. Escobar's CME hours for the *NEJM* Program does not alter the conclusion that the Board's policy—requiring official written verification of Category I credit during the audit process—is entirely reasonable. During the hearing process, an adjudicator is in a position to consider alternatives types of proof as well as testimony regarding special exceptions, and, in addition, is in a position to evaluate divergent documentary exhibits in light of testimony taken under oath and subject to cross-examination. Part of the adjudicative process is to make determinations regarding the credibility, persuasiveness, and weight of the evidence. Accordingly, following a hearing, the Hearing Examiner and the Board are well placed to consider licensees' claims of exceptional circumstances. In sum, the Hearing Examiner sees nothing to preclude the Board from continuing to rely on formal written verifications to establish Category I credit, leaving consideration of alternative types of evidence for the hearing process.

Violation of Rule 4731-10-08

Nonetheless, the Hearing Examiner does find a CME violation: that Dr. Escobar failed to maintain detailed records regarding his CME compliance for the CME period at issue. He failed to comply with Rule 4731-10-08, which imposes an "obligation to maintain detailed records of CME hours."

Dr. Escobar's demeanor, tone, and testimony during the hearing, together with his need to have several extensions of time to submit the CME documents, convinced the Hearing Examiner that he had been very disorganized and inattentive regarding his CME recordkeeping. The Hearing Examiner is convinced that Dr. Escobar's failure to keep detailed records regarding his CME compliance caused a situation in which he did not realize until late September 2008 that he may be short of Category I hours, which led him to submit a large batch of CME tests to the *NEJM* Program on the second-last day of a two-year period for earning CME.

The Hearing Examiner notes that this was not a situation involving a random audit, when a licensee might reasonably need additional time to complete the required CME forms and submit all the documentation. In the present action, Dr. Escobar had certain knowledge in 2007 that he would be audited in 2008 regarding his Category I credit for the period ending October 1, 2008. Nonetheless, his submission on November 7, 2008, was not only tardy, it consisted of documentation that the Board had expressly told him, well in advance, was not acceptable. The Board then gave Dr. Escobar extension after extension, and he eventually submitted acceptable documentation of all his CME hours, more than three months after the close of his CME-earning period on October 1, 2008. Based on all the foregoing, the Hearing Examiner is convinced that Dr. Escobar failed to keep detailed records of his CME hours as required.

FINDINGS OF FACT

1. In April 2007, Martin Escobar, M.D., entered into a Consent Agreement with the State Medical Board of Ohio in lieu of formal proceedings based on his violation of R.C. 4731.22(A) and 4731.22(B)(5), and his violation of R.C. 4731.22 (B)(20) with respect to R.C. 4731.281 and Ohio Administrative Code Sections [Rules] 4731-10-02 and 4731-10-08. Under the terms of this Consent Agreement, Dr. Escobar was reprimanded and fined $750.00.

In addition, Paragraph 3 of the Consent Agreement requires that Dr. Escobar "shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME hours for the October 2, 2006, through October 1, 2008, CME period." Paragraph 3 also requires that the documentation "shall be due in the Board's offices within thirty days of the conclusion of each CME period, unless otherwise determined by the Board."

The Board extended this deadline to February 5, 2009, as set forth in letters dated November 26. 2008, December 16, 2008, and January 15, 2009.

2. (a) For the CME period from October 2, 2006, through October 1, 2008, Dr. Escobar submitted formal written verification of satisfactory completion of 37.5 hours of Category I CME.

   (b) Dr. Escobar testified at the hearing, and submitted correspondence from the *NEJM* Program to confirm, that he had submitted fifteen CME examinations to the *NEJM* Program on September 30, 2008. The Hearing Examiner accepts that Dr. Escobar's completed CME examinations were submitted to the *NEJM* Program on September 30, 2008.

   On September 7 and 8, 2008, the *NEJM* Program processed Dr. Escobar's examinations and approved them for 15 hours of Category I CME credit, as set forth in the formal CME certificates. In these formal CME certificates, Dr. Escobar's dates of participation in the CME activities are as set forth as September 7 and 8, 2008.

   (c) Under the circumstances, the Hearing Examiner finds that the evidence submitted during the hearing is sufficient to find that Dr. Escobar completed at least 40 hours of Category I CME credit during the period from October 2, 2006, through October 1, 2008.

3. On October 2, 2008, Dr. Escobar submitted an application to renew his certificate to practice medicine and surgery in Ohio for the registration period beginning January 2, 2009, and ending January 1, 2011. As part of this renewal application, Dr. Escobar certified that he had met the CME requirements for his license, thus certifying that he had completed at least 100 hours of CME for the period from October 2, 2006 through October 1, 2008, including at least 40 hours of Category I CME.

   When Dr. Escobar made this statement, he believed it to be true. Further, pursuant to Finding of Fact 2(c), his statement was true. In the alternative, in the event that it may be determined that the *NEJM* Program credits cannot be applied to the CME period ending October 1, 2008, then the Hearing Examiner finds that Dr. Escobar sincerely, although mistakenly, believed that he had completed the required CME as of October 1, 2008.

4. Dr. Escobar failed to maintain detailed CME records regarding the CME he completed during the period from October 2, 2006, through October 1, 2008, as demonstrated by one of or more of the following subsidiary findings: He admitted that, when he realized in November 2008 that his preceptor hours did not constitute Category I hours (which he should have known), he began contacting the CME "companies," asking them to send him certificates for his CME credits. He further admitted that he did not maintain a log or some other method of recording

his CME credits to allow him to submit his documentation promptly without having to contact CME providers after the documentation deadline, seeking CME certificates. Dr. Escobar did not adequately maintain the November 2007 letter from the Board's CME Officer explaining that his preceptor hours would not count as Category I credit. He did not ascertain whether the preceptor hours were approved for Category I credit, as required, and he did not maintain detailed records regarding which CME activities were approved for Category I and which activities could be claimed only as Category II activities. It was not until January 2009 that he obtained documents from the *NEJM* Program regarding the date on which the program had received his tests, despite the fact that months had passed since the initial deadline as imposed under the Consent Agreement. In addition, despite the fact that Dr. Escobar knew, at least a year in advance, that he must submit his CME documentation no later than November 1, 2008, he was unable to complete his submission of documents until after he had received three extensions of time, ultimately submitting his final documentation more than two months after the initial deadline.

5. With respect to the documentation referenced in Finding of Fact 2, Dr. Escobar supplied the documentation to the Board before February 5, 2009, the deadline for documentation under the Consent Agreement as extended by the Board. Accordingly, the evidence is insufficient to establish that Dr. Escobar failed to respond to the extended deadline of February 5, 2009.

CONCLUSIONS OF LAW

1. The acts, conduct and/or omissions of Martin Escobar, M.D., as set forth in Finding of Fact 4, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that language is used in R.C. 4731.22(B)(20), with respect to violation of Rule 4731-10-08.

2. The acts, conduct and/or omissions of Martin Escobar, M.D., as set forth in Findings of Fact 1 through 6, do not constitute, individually and/or collectively, a violation of Dr. Escobar's 2007 Consent Agreement. Therefore, his acts, conduct and/or omissions do not constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15).

3. Dr. Escobar's acts, conduct and/or omissions as set forth in Findings of Fact 2 and 3, individually and/or collectively, do not constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that language is used in R.C. 4731.22(B)(20), with respect to R.C. 4731.281.

4. Dr. Escobar's acts, conduct and/or omissions as set forth in Findings of Fact 2 and 3, individually and/or collectively, do not constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that language is used in R.C. 4731.22(B)(20), with respect to Rule 4731-10-02. Although Rule 4731-10-02 provides that it is the "responsibility of" licensees

to ascertain whether their CME is approved for Category I credit, it appears that this provision does not contain a mandate that is subject to "violation" but serves the purpose of assigning the burden of being informed, so that a licensee's failure to complete 40 hours of Category I CME cannot be excused on the grounds that the licensee lacked knowledge of the CME category.[6]

5. Dr. Escobar's acts, conduct and/or omissions as set forth above in Findings of Fact 1 through 4, do not establish that Dr. Escobar made "a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that language is used in R.C. 4731.22(B)(5).

6. The Hearing Examiner concludes that the Board was substantially justified in making the allegation in the Notice that Dr. Escobar had failed to comply with his CME requirements, based on the formal CME verifications that Dr. Escobar had submitted.

Rationale for Proposed Order

Stripped down to the basic facts, this case involves a physician who participated in sufficient CME but was very careless and inattentive with regard to the recordkeeping, causing himself and the Board's staff a lot of unnecessary difficulties.

Discipline is warranted on the grounds that Dr. Escobar did not comply with his "continuing obligation to maintain detailed records of CME hours" as required under Rule 4731-10-08. Although a fine might be viewed as appropriate, it is not proposed because fines are statutorily authorized only for a violation of R.C. 4731.281(E), which has not been found here.

Given that the required CME was completed for the period ending in 2008 as well as the period ending in 2010, the Hearing Examiner recommends a reprimand and future CME audits to make sure that Dr. Escobar has developed reliable recordkeeping practices.

PROPOSED ORDER

It is hereby ORDERED that:

A. **REPRIMAND**: Martin Escobar, M.D., is hereby REPRIMANDED.

---

[6]While a genuine mistake regarding the category may serve to avert discipline under R.C. 4731.22(B)(5) for making a false statement on the renewal application, a failure to ascertain the category would not excuse the licensee from discipline under R.C. 4731.281 and Rule 4731-10-02 for failing to earn 40 hours of Category I CME, because Rule 4731-10-08 makes clear that the responsibility for ascertaining the category rests on the licensee.

B. **DOCUMENTATION OF CME**: Dr. Escobar shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education for the 2010-2012 CME period, as well as the two additional CME periods thereafter. This documentation shall be due in the Board's offices within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.

C. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Escobar shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or healthcare center where he has privileges or appointments.

   In the event that Dr. Escobar provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, Dr. Escobar shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Escobar shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity through which he currently holds any license or certificate, including but not limited to the Drug Enforcement Agency.

3. **Required Documentation of the Reporting Required by Paragraph C**: Dr. Escobar shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

EFFECTIVE DATE: This order shall become effective immediately upon the mailing of the notification of approval by the Board.

Patricia A. Davidson
Hearing Examiner

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF JULY 13, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Suppan announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Douglas B. Karel, M.D.; Rula Nadim Al-Aouar, M.D.; Steven Francis Brezny, M.D.; Allan William Clark, M.D.; Janice Electa Green Douglas, M.D.; Martin Escobar, M.D.; Philip M. Hutchison, D.O.; Melissa J. Marker, D.O.; and Larry Lee Smith, D.O. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan 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:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert and Dr. Amato served as Supervising Member. In addition, Dr. Steinbergh served as Acting Secretary in the case of Steven Francis Brezny, M.D., and therefore she cannot vote in that matter.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....

MARTIN ESCOBAR, M.D., Case No. 10-CRF-099

.....

Dr. Steinbergh moved to approve and confirm Ms. Davidson's Findings of Fact, Conclusions of Law, and Proposed Order in the matter Martin Escobar, M.D. Dr. Strafford seconded the motion.

.....

A vote was taken on Dr. Steinbergh's motion to approve:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- nay
	Dr. Suppan	- aye
	Dr. Madia	- nay
	Dr. Talmage	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

The motion carried.

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

August 11, 2010

Case number: 10-CRF- 099

Martin Escobar, M.D.
17674 Mahoning Ave. Ste B
Lake Milton, Ohio 44429

Dear Doctor Escobar:

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

(1) On or about April 11, 2007, you entered into a Consent Agreement [April 2007 Consent Agreement] with the Board in lieu of formal proceedings based upon your violation of Sections 4731.22(A), (B)(5) and (B)(20), to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-02 and 4731-10-08, Ohio Administrative Code. Pursuant to the terms of the April 2007 Consent Agreement, you were reprimanded and fined $750.00 payable to the Board within thirty days of the effective date of this Consent Agreement. Paragraph 3 of the April 2007 Consent Agreement requires that you "shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME [Continuing Medical Education] hours for the October 2, 2006, through October 1, 2008, CME period that corresponds with [your] next period of active licensure. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME period, unless otherwise determined by the Board."

Despite the provision, you failed to complete your CME hours for the October 2, 2006, through October 1, 2008, CME period as required by the April 2007 Consent Agreement and further as required by Section 4731.281, Ohio Revised Code.

(2) In your renewal application due on or about January 1, 2009, for the biennial registration of your certificate to practice medicine and surgery for the January 2, 2009 – January 1, 2011 period, you certified that during the October 2, 2006 – October 1, 2008 CME period, you had completed or would complete the requisite hours of CME as required by Section 4731.281, Ohio Revised Code.

Mailed 8-12-10

(3) By certified mailings dated December 16, 2008 and January 15, 2009, the Board informed you that you were required to complete and submit a log demonstrating that you had completed at least one hundred hours of CME during the October 2, 2006 – October 1, 2008 CME period, and to provide documentation that, in fact, you had completed at least forty hours of Category 1 CME credits. Despite certifying on the aforementioned renewal application that you had completed all CME requirements, you submitted documentation of only fifteen hours of Category 1 CME credits; and failed to respond to the extended deadline of February 5, 2009, as established by the Board's December 16, 2008 and January 15, 2009 certified mail letters. Your lack of response to the notice provided to you on or about December 16, 2008 and January 15, 2009, rebuts the presumption under Rule 4731-10-08, Ohio Administrative Code, that you completed the requisite hours of CME, and/or demonstrates that you failed to maintain detailed records of the CME hours earned as required.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-10-02, Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate,

any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-10-08, Ohio Administrative 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 days of the time of mailing of this notice.

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT/MAP/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3020 4605
RETURN RECEIPT REQUESTED

CONSENT AGREEMENT BETWEEN
MARTIN ESCOBAR, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Martin Escobar, M.D., [Dr. Escobar] and the State Medical Board of Ohio [the Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Escobar enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

A. The Board is empowered by Section 4731.22(A), Ohio Revised Code, to revoke or refuse to grant a certificate to a person found by the Board to have committed "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board."

B. The Board is also empowered by Section 4731.22(B)(5), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board."

C. The Board is also empowered by Section 4731.22(B)(20), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."

D. Additionally, the Board is empowered by Section 4731.281(E), Ohio Revised Code, to impose a civil penalty of not more than five thousand dollars on an individual whom the Board finds did not complete the requisite Continuing Medical Education [CME] during the applicable time period.

E. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(A), (B)(5) and (B)(20), to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-02 and 4731-10-08, Ohio

OHIO STATE MEDICAL BOARD

MAR 19 2007

Administrative Code, as detailed in Paragraphs H and I below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

F. Dr. Escobar is licensed to practice medicine and surgery in the State of Ohio, License No. 35-079291.

G. Dr. Escobar states that he is also licensed to practice medicine and surgery in the State of California.

H. Dr. Escobar admits that in completing his application for renewal of his certificate to practice medicine or surgery for the January 2, 2005 – January 1, 2007, registration period, he certified that he had completed during the 2002 - 2004 CME period (October 2, 2002, through October 1, 2004) the requisite hours of CME, as required by Section 4731.281, Ohio Revised Code, when, in fact, he had not done so.

I. Dr. Escobar admits that, in fact, he completed only 15 hours of the required 40 hours of Category I CME during the applicable time period of October 2, 2002, through October 1, 2004.

J. Dr. Escobar states, and the Board acknowledges receipt of acceptable documentation to support, that he has completed 100 credit hours of Category I CME during the current CME period, 25 hours of which will be applied towards his credit deficiency in the period. The Board agrees that Dr. Escobar has now satisfied his CME requirement for the CME period.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Escobar knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

REPRIMAND

1. Dr. Escobar shall be and hereby is REPRIMANDED.

FINE

2. Dr. Escobar shall pay a fine of seven hundred and fifty dollars to the Board within thirty days of the effective date of this Consent Agreement.

DOCUMENTATION OF CME

3. Dr. Escobar has supplied documentation acceptable to the Board of satisfactory completion of the requisite number of CME hours for the CME period of October 2, 2004, through October 1, 2006. These CME hours will be in addition to the 25 hours that Dr. Escobar completed after October 2, 2004, that have been credited to the 2002 -

2004 CME period. Moreover, Dr. Escobar shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME hours for the October 2, 2006, through October 1, 2008, CME period that corresponds with Dr. Escobar's next period of active licensure. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME period, unless otherwise determined by the Board.

REQUIRED REPORTING BY LICENSEE

4. Within thirty days of the effective date of this Consent Agreement, Dr. Escobar shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, for a period of five years following the effective date of this Consent Agreement, Dr. Escobar shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

5. Within thirty days of the effective date of this Consent Agreement, Dr. Escobar shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license. Further, for a period of five years following the effective date of this Consent Agreement, Dr. Escobar shall provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Escobar shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Escobar appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Escobar acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Escobar hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

OHIO STATE MEDICAL BOARD

MAR 19 2007

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Escobar acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Martin Escobar, M.D.

3-13-07
Date

Lance A. Talmage, M.D.
Secretary

4-11-07
Date

Raymond J. Albert
Supervising Member

4/11/07
Date

Diann Thompson, Esq.
Assistant Executive Director

March 28, 2007
Date

OHIO STATE MEDICAL BOARD

MAR 19 2007