

Oregon Medical Board  
**BOARD ACTION REPORT**  
**March 16, 2009 – April 15, 2009**

The information contained in this report summarizes new, interim, and final actions taken by the Oregon Medical Board between **March 16, 2009 – April 15, 2009**.

Scanned copies of Interim Stipulated Orders, Orders of Emergency Suspension, Stipulated Orders, Final Orders, Termination Orders, Modification Orders and Voluntary Limitations are included at the end of this report in the order that they appear in the report. These orders are marked with an \* asterisk. **Scanned copies of Corrective Action Orders are not posted as they are not disciplinary action and impose no practice limitations.** Complaint and Notices of Proposed Disciplinary Action are not listed in this report as they are not final actions by the Board. Both Orders, however, are public and are available upon request as described below.

Printed copies of the Board Orders listed below are available to the public. To obtain a printed copy of a Board Order, please complete a [service request form](#) on the Board's web site, submit it with the \$10.00 fee *per licensee* and mail to:

**Oregon Medical Board  
1500 SW 1st Ave, Ste 620  
Portland, OR 97201**

*Copies of the Orders listed below are mailed to Oregon hospitals where the Licensee had self-reported that he/she has privileges.*

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**ANDERSON, Molly West, MD; MD29134; Portland, OR**

Applicant entered into a Corrective Action Order with the Board on April 9, 2009. In this Order Applicant agreed to practice under a practice mentor for a period of one year under the conditions specified in the mentoring plan. The practice mentor shall submit written quarterly progress reports to the Board. Applicant shall complete her re-entry plan to include passing SPEX and documenting 58.5 hours of category I CME. Once the Applicant completes the terms of this Order, or becomes re-certified with the American Board of Family Medicine, Applicant can submit written documentation of her successful compliance to the Board and request that this Order be terminated. This is not a disciplinary action.

**\*BASKERVILLE, Mark John, MD; MD23614; Springfield, OR**

Licensee entered into a Stipulated Order with the Board on April 9, 2009. In this Order Licensee agreed to a reprimand and a two-year license suspension. Licensee will remain abstinent from the use of all intoxicants, controlled substances and psychoactive substances unless prescribed by his treating physician. After the passage of two years, and prior to submitting an application for an active license, Licensee shall undergo a multi-disciplinary evaluation. Licensee agreed to surrender his DEA registration. Licensee will present a re-entry plan that addresses his medical knowledge and clinical practice skills. Should the Board decide to activate his license, Licensee shall be placed on probation with several conditions. This Order includes an attachment entitled "Rulings on Motions to Strike and Proposed Order" written by an Administrative Law Judge on February 9, 2009.

**BERNARDO, PETER AUGUSTO, MD; MD17631; SALEM, OR**

The Board issued an Order Terminating Corrective Action Order on April 9, 2009. This Order terminated Licensee's January 12, 2006 Corrective Action Order.

**\*BOGART, Larry Frank, MD; MD20341; Roseburg, OR**

The Board issued an Order Terminating Stipulated Order on April 9, 2009. This Order terminated Licensee's September 23, 2004 Stipulated Order.

**\*CALCAGNO, JOHN ANTHONY, MD; MD14823; GRESHAM, OR**

The Board issued an Order Terminating Stipulated Order on April 9, 2009. This Order terminated Licensee's August 21, 2006 Stipulated Order.

**CROWLEY, ALICE (ROBIN) DIETER, PA; PA01223; Jordan Valley, OR**

The Board issued an Order Terminating Corrective Action Order on April 9, 2009. This Order terminates Licensee's April 12, 2007 Corrective Action Order.

**FREEMAN, Rees Guthrie, MD; MD13996; Roseburg, OR**

Licensee entered into a Corrective Action Order with the Board on April 9, 2009. In this Order Licensee agreed to retire his Oregon medical license and may not practice any form of medicine in Oregon. Should Licensee decide to return to active practice, the Board will conduct an investigation into his ability to safely practice medicine, to include a neurological evaluation and an evaluation of his medical competence.

**GLASSER, Lisa Marie, AC; AC01270; Eugene, OR**

The Board issued an Order Terminating Corrective Action Order on April 9, 2009. This Order terminates Licensee's February 5, 2009 Corrective Action Order.

**\*GUERREIRO, John Palma, MD; MD26933; Portland, OR**

Licensee entered into a Stipulated Order with the Board on April 9, 2009. In this Order Licensee agreed to a reprimand and was placed on probation with quarterly interviews with the Board. In addition, a medically trained chaperone shall be present for the entire duration of any examination, treatment, or interaction involving the pelvic or breast area of female patients 12-years of age or older. Licensee shall avoid any social contact with any female patient or immediate female family member of any patient outside the clinic setting. Licensee shall continue psychotherapy and successfully complete a professional boundary course. Licensee must provide a copy of this Order to all current health care employers.

**\*HARRIS, HENRY FREEMAN, MD; MD09151; LAKE OSWEGO, OR**

Licensee entered into a Stipulated Order with the Board on April 9, 2009. In this Order Licensee agreed to a reprimand and was placed on probation with quarterly interviews with the Board. Licensee also must remain abstinent from the use of all intoxicants, controlled substances and psychoactive substances unless prescribed by his treating physician. Licensee must enroll in the Board's Health Professionals Program and shall remain enrolled throughout his career. Licensee will not self-prescribe medications and will not prescribe for family members.

**\*HARTFORD, James Thomas, MD; MD06231; Tigard, OR**

The Board issued an Order Terminating Stipulated Order on April 9, 2009. This Order terminated Licensee's July 10, 2008 Stipulated Order.

**JACKSON, JOHN WILLIAM, MD; MD13335; MEDFORD, OR**

The Board issued an Order Terminating Corrective Action Order on April 9, 2009. This Order terminated Licensee's July 10, 2008 Corrective Action Order.

**\*LUTY, Jeffrey Alexander, MD; MD18850; Portland, OR**

Licensee entered into a Stipulated Order with the Board on April 9, 2009. In this Order Licensee agreed to surrender his Oregon medical license while under investigation. The Board will reopen the matter should Licensee ever reapply for any form of a medical license in Oregon. At that time, Licensee will also be expected to undergo a multi-disciplinary evaluation and provide verifiable proof of sobriety. Licensee will be required to submit a re-entry plan regarding his medical knowledge.

**MAKKER, Vishal James, MD; MD23879; Portland, OR**

The Board issued an Order Terminating Corrective Action Order on April 9, 2009. This Order terminated Licensee's October 12, 2006 Corrective Action Order.

**\*TEPLICK, STANLEY BRUCE, MD; MD19317; Beaverton, OR**

The Board issued an Order Terminating Stipulated Order on April 9, 2009. This Order terminated Licensee's March 3, 2005 Stipulated Order.

**\*WIGGINS, LLOYD HARVEY, MD; MD13214; CORVALLIS, OR**

The Board issued an Order Terminating Stipulated Order on April 9, 2009. This Order terminated Licensee's May 6, 2004 Stipulated Order.

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If you have any questions regarding this service, please call the Board at (971) 673-2700 or toll-free within Oregon at (877) 254-6263.

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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
MARK JOHN BASKERVILLE, MD ) STIPULATED ORDER  
LICENSE NO. MD23614 )

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Mark John Baskerville, MD (Licensee) is a licensed physician in the state of Oregon.

2.

The Board proposed taking disciplinary action pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); ORS 677.190(7) habitual or excessive use of intoxicants or controlled substances; ORS 677.190(14) gross or repeated acts of negligence, and ORS 677.190(25) violation of the federal Controlled Substance Act.

3.

Licensee signed an Interim Stipulated Order on February 21, 2008, voluntarily withdrawing from the practice of medicine pending completion of the Board's investigation. Licensee is board-certified in anesthesiology and emergency medicine. The acts and conduct alleged to violate the Medical Practice Act are:

3.1 According to Licensee, in early September 2007, Licensee began to divert intravenous meperidine (Demerol, Schedule II) and intravenous fentanyl (Schedule II) from his workplace for his own use. Licensee became opiate dependent. From September until November 30, 2007, Licensee frequently diverted meperidine and fentanyl from his place of work at health care settings in Eugene, Oregon, and injected himself intravenously with these

1 opiates during the work day as well as at home. In order to conceal his activity, Licensee  
2 substituted saline and/or water for the meperidine and fentanyl that he diverted from the hospital  
3 and then documented the saline as "waste." Licensee also falsified multiple controlled substance  
4 logs involving multiple patients to conceal his theft of narcotics.

5 3.2 In early November 2007, Licensee self-prescribed bupropion (Wellbutrin) and  
6 paroxetine (Paxil) in an effort to address his addictive cravings and feelings of depression.  
7 Licensee did not seek appropriate medical care for his opiate dependency. Licensee did not chart  
8 the prescriptions for himself.

9 3.3 Licensee also prescribed medications for his wife in her name and sometimes  
10 used these medications himself. He did not examine his wife or chart the prescriptions for his  
11 wife.

12 3.4 On May 8, 2008, Licensee informed the Board that he stole meperidine (Demerol,  
13 Schedule II) from his work place and brought supplies of this drug home with the stated intent to  
14 inject this opiate into his dog, Fitzgerald, who was diagnosed with and dying from cancer.  
15 Instead, Licensee said he subsequently self-injected this meperidine supply that he had stashed  
16 away. Licensee failed to inform the Board that his dog's pain was being managed by a  
17 veterinarian, who had prescribed meperidine for his dog on multiple occasions from May 25,  
18 2005 until November 1, 2007. The last prescription of meperidine that Licensee received from  
19 his dog's veterinarian occurred on November 1, 2007, (50 mg, 45 tablets each).

20 3.5 On November 30, 2007, Licensee injected himself with meperidine at about 7  
21 a.m., prior to commencing preparations for general anesthesia and surgery of Patient A, who was  
22 undergoing an operation at Sacred Heart Medical Center, in Eugene, Oregon. Licensee  
23 experienced a grand mal seizure in the operating room about 21 minutes after surgery began on  
24 Patient A. Licensee was taken to the emergency room in an unconscious state and another  
25 anesthesiologist was found to substitute for Licensee and to manage Patient A's anesthesia for  
26 the remainder of the surgery involving inguinal hernia repair. Licensee was found to have vials  
27 of meperidine and fentanyl in his pockets, and a functional intravenous catheter inserted into his

1 right leg. Licensee was found to have multiple needle track marks on his arm and ankle.  
2 Licensee also admitted to having orally taken meperidine tablets that had been prescribed for his  
3 dog. Licensee's hospital privileges were suspended shortly thereafter. Licensee's repeated oral  
4 and intravenous use of fentanyl and meperidine decreased his alertness, impaired his medical  
5 judgment and adversely affected his ability to make medical decisions. His use of this  
6 combination of opiates lowered his seizure threshold, thereby placing his surgical and hospital  
7 patients at serious risk of harm, including when he was on-call.

8 4.

9 License and the Board desire to settle this matter by entry of this Stipulated Order.  
10 Licensee understands that he has the right to a contested case hearing under the Administrative  
11 Procedures Act (chapter 183), Oregon Revised Statutes. Licensee fully and finally waives the  
12 right to a contested case hearing and any appeal therefrom by the signing of and entry of this  
13 Order in the Board's records. Licensee admits that he engaged in the conduct described in  
14 paragraph 3 and that this conduct violated ORS 677.190(1)(a), unprofessional or dishonorable  
15 conduct, as defined in ORS 677.188(4)(a); ORS 677.190(14), gross or repeated acts of  
16 negligence and ORS 677.190(25) violation of the federal Controlled Substance Act. Licensee  
17 understands that this Order is a public record and is reportable to the National Practitioner  
18 Databank.

19 5.

20 Licensee and the Board agree to resolve this matter by the entry of this Stipulated Order  
21 subject to the following sanctions and terms and conditions of probation:

22 5.1 Licensee is reprimanded.

23 5.2 Licensee's Oregon medical license is suspended for a minimum of two years,  
24 effective on the date this Order is signed by the Board Chair.

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1           5.3     Licensee will remain completely abstinent from the use of all intoxicants,  
2 controlled substances and psychoactive substances, unless prescribed by his treating physician  
3 who is fully informed of his history of substance abuse and dependence, and with prior notice  
4 provided to the Board.

5           5.4     Prior to submitting an application for license activation at the end of the two year  
6 suspension, Licensee will be expected to undergo an evaluation at a pre-approved multi-  
7 disciplinary center at his own expense, with Licensee signing all necessary releases to allow full  
8 communication between the center and the Board. Licensee also will have the obligation to  
9 demonstrate, to the Board's satisfaction, that he has maintained verifiable sobriety, providing  
10 documented proof that for at least two continuous years he has abstained from all intoxicants,  
11 controlled substances and psychoactive substances unless prescribed by a physician who is fully  
12 informed of his history of substance abuse and dependence. Documented proof will include the  
13 records that Licensee has voluntarily undergone substance abuse monitoring through random  
14 urine monitoring to the satisfaction of the Board's Compliance Officer. Licensee will likewise  
15 have the obligation to provide documented proof that he is in recovery and is safe to practice  
16 medicine.

17           5.5     Licensee will immediately surrender his DEA registration (if he has not already  
18 done so) and will not reapply for this without Board approval.

19           5.6     Consistent with paragraph 5.4 above, Licensee will have the obligation to present  
20 a re-entry plan that will satisfy the Board's mission to protect the public. Licensee's plan will  
21 address how he will achieve verified medical competency, to include updating his medical  
22 knowledge and clinical practice skills, and how he will practice in a supervised practice setting.

23           5.7     Should the Board decide to activate the license of Licensee to practice medicine;  
24 the license of Licensee will be placed on indefinite probation, subject to the following terms of  
25 probation:

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1 a. Licensee shall enroll in the Board's Health Professional's Program (HPP)  
2 and will consent to the disclosure of his complete HPP file to the Board upon request.  
3 All drug and alcohol test results conducted in the HPP program and information  
4 pertaining to possible relapse will be simultaneously reported to HPP and the Board.

5 b. Licensee will appear before the Board for quarterly probation interviews  
6 as directed by the Board.

7 c. Licensee will only practice in settings that are pre-approved by the Board.  
8 All requests regarding practice settings shall be submitted in writing and subject to  
9 review and approval by the Board through the Board's Medical Director and Compliance  
10 staff.

11 d. Licensee will not self-prescribe medications and will not prescribe for  
12 family members.

13 e. Licensee may request that these terms (paragraph 5.7 a-c) be held in  
14 abeyance if he is not practicing in Oregon.

15 5.8 Licensee shall obey all federal and Oregon State laws and regulations pertaining  
16 to the practice of medicine.

17 5.9 Licensee stipulates and agrees that any violation of the terms of this Order shall  
18 be grounds for further disciplinary action under ORS 677.190(18).

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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF: ) **RULINGS ON MOTIONS TO STRIKE**  
 ) **AND PROPOSED ORDER**  
**MARK J. BASKERVILLE, M.D.** )  
**Licensee** ) OAH Case No.: 800772  
 ) Agency Case No.: 2005-032  
**License No. MD23614**

**HISTORY OF THE CASE**

On July 21, 2008, the Oregon Board of Medical Examiners (Board) issued a Complaint and Notice of Proposed Disciplinary Action against Mark J. Baskerville, M.D. (Licensee). Licensee requested a hearing in a timely manner.

On October 20, 2008, the Board referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Robert L. Goss was assigned to preside at hearing. A prehearing conference was convened on December 12, 2008. Part of the purpose of the prehearing conference was to schedule oral argument on Licensee's Motion to Strike. Licensee filed his Motion on December 12, 2008, with accompanying exhibits. The Board submitted a Reply to Motions to Strike on January 5, 2009. Licensee submitted a Response to the Board's Reply to Licensee Motions to Strike on January 12, 2009.

Oral argument on Licensee's Motions to Strike was heard on January 29, 2009, at the Board office in Portland, Oregon. Licensee appeared through counsel, Thomas E. Cooney. The Board was represented by Senior Assistant Attorney General Warren G. Foote. No witnesses were called.

**ISSUES**

1. Whether ORS 677.655(3) grants Licensee immunity from Board sanction for violations of ORS 677.190(1)(a), in the manner of obtaining or self-administering intoxicants, drugs or controlled substances, or ORS 677.190(7) and (24).
2. If ORS 677.655(3) does grant that immunity, whether references to the above statutes and factual allegations relating to those statutes should be stricken from the Board's Complaint.

**EVIDENTIARY RULING**

Along with his original Motions to Strike, Licensee provided Exhibits A through D. No objection having been made, I will admit those exhibits into the record. The Board, in its Reply

to Licensee's Motions, discusses several exhibits contained in the Board's original exhibit packet (Exs. A1 through A15) submitted for the hearing scheduled for April 13 and 14, 2009. Licensee's Response to the Board's Reply also discussed Board exhibits from that packet. No objection having been made, I will admit Board Exhibits A1 through A15 into the record for purposes of this Ruling.

### FINDINGS OF FACT

1. Licensee is a licensed physician in the State of Oregon. (Ex. A11.)
2. In 2007, Licensee, then an anesthesiologist practicing primarily at Sacred Heart Medical Center in Eugene, Oregon, developed a chemical dependency over an approximately three month period from September through November 2007. (Exs. A4 and A5.)
3. Licensee began his chemical dependency when he injected himself with Fentanyl that he had diverted from work. Fentanyl is an opioid analgesic (Schedule II). (Exs. A4 and A5.)
4. After his initial Fentanyl injection, Licensee quickly became dependent on that drug, as well as Meperidine (Demerol), also an opioid (Schedule II). Once addicted, Licensee began diverting the drugs from Sacred Heart Medical Center, and administering the drugs to himself before, during and after work. (Exs. A4 and A5.)
5. On November 30, 2007, Licensee was the anesthesiologist to a patient undergoing surgery. Before the operation, Licensee injected himself with Demerol. One of the breakdown products of Demerol is Normeperidine, which can lower the body's seizure threshold over time. (Exs. A2, A4 and A5.)
6. While in the operating room, caring for the patient, Licensee suffered a seizure. (Exs. A3 and A5.)
7. While providing care to Licensee following the seizure, it was discovered that Licensee had needle tracks in his arms, an intravenous catheter in his right lower leg, and demerol and fentanyl vials in his pocket. (Ex. A3.)
8. Licensee was transported later that day to a drug treatment center for inpatient care by the Director of Anesthesia, Dr. John Jordan. Dr. Jordan contacted the Board's diversion program (Health Professionals Program (HPP)) that same day. (Ex. A3.)
9. Licensee subsequently signed a HPP evaluation agreement on December 11, 2007. Licensee entered into an approved five year enrollment diversion agreement with HPP, on February 15, 2008. (Ex. A2.)
10. Since November 30, 2007, Licensee has actively and continuously participated in a recovery program approved and monitored by HPP. Licensee agreed with HPP to not use his medical license without HPP's permission. Licensee has successfully maintained his sobriety during the entire course of his recovery. (Exs. A2 and A5.)

11. Licensee was terminated from his anesthesia group. Sacred Heart Medical Center terminated Licensee's medical staff and clinical privileges. The Board received notice of the chemical dependency events and the termination of Licensee's privileges on February 4, 2008. The Board immediately opened an investigation that ultimately led to the Complaint and Notice of Proposed Disciplinary Action at issue here. (Exs. A1, A2, A3 and A5.)

### CONCLUSIONS OF LAW

1. ORS 677.655(3) does not grant Licensee immunity from Board sanction for violations of ORS 677.190(1)(a) in the manner of obtaining or self-administering intoxicants, drugs or controlled substances, or ORS 677.190(7) and (24).

2. References to the above statutes and factual allegations relating to those statutes should not be stricken from the Board's Complaint.

### OPINION

For purposes of the following discussion, ORS 677.655(3) is the central statute at issue here, and provides:

Any licensee who in good faith voluntarily participates in an approved diversion program and successfully completes the program shall not be subject to disciplinary investigation or sanctions unless the licensee is suspected of a violation of this chapter, other than ORS 677.190 (1)(a), by the manner of obtaining or self-administration of intoxicants, drugs or controlled substances or a violation of ORS 677.190 (7) or (24).

The Board's Complaint lists four statutory violations as its bases for taking disciplinary action against Licensee: ORS 677.190(1)(a) (unprofessional or dishonorable conduct); ORS 677.190(14) (gross or repeated acts of negligence); ORS 677.190(7) (habitual or excessive use of intoxicants or controlled substances); and ORS 677.190(24) (violation of the Federal Controlled Substance Act.)

Licensee contends that ORS 677.655(3) grants him immunity from Board sanctions stemming ORS 677.190(7) and (24) and moves to strike any references to those statutes. Licensee also moves to strike certain factual allegations in the Complaint that Licensee contends involve the manner of obtaining or self-administration of intoxicants, drugs or controlled substances. Licensee is not asking that references to involving ORS 677.190(14) (gross or repeated acts of negligence) or involving ORS 677.190(1)(a) (unprofessional or dishonorable conduct) that do not involve the manner of obtaining or self-administration or use of intoxicants, be removed.

In effect, Licensee is arguing that the Board cannot seek sanctions against him under ORS 677.190(7) and (24), or violations of ORS 677.190(1)(a) that involve the obtaining and

self-administration of intoxicants, because ORS 677.655(3) provides him immunity from those sanctions.

Both the Board and Licensee agree that the above statute provides immunity from those enumerated sanctions. The main point of contention between the Board and Licensee is the extent of that immunity. Licensee maintains that the immunity is absolute if he has voluntarily and in good faith entered treatment and signed an agreement with HPP, before any action by the Board. The Board contends that the immunity is not absolute, but conditional, in that a Licensee must meet all the provisions of the statute (good faith voluntarily participates and completes a diversion program) before the immunity can apply.

Both Licensee and the Board also agree that the word "and" in the statute is conjunctive, in that a licensee must both participate in and complete the diversion agreement. In cases such as Licensee's, that diversion may take up to five years to complete. Licensee argues that requiring completion of the diversion under that scenario renders the immunity provision useless.

I read ORS 667.655(3) to clearly mean what it says, that a licensee must complete the diversion program before immunity can apply. As noted by counsel for the Board during oral argument, it has been the usual practice for the Board to defer to HPP when it learns that a licensee is in fact enrolled and in good standing in HPP. However the Board has in the past exercised its discretion in a limited number of cases to pursue sanctions against a licensee after they have begun to participate in a diversion agreement but before they have completed it. The Board has that discretion under the statute.

I recognize that the conditional nature of the immunity raises practical problems for licensees who are contemplating pursuing treatment for chemical dependency, in that a licensee could never be sure before fully completing the diversion agreement whether the Board would exercise its discretion and decide to pursue the sanctions at issue here. If the "safe harbor" contemplated by the immunity statute only applies to licensees that have fully completed diversion, some licensees could reasonably decide that the harbor is not really all that "safe" and decline to pursue treatment because the threat of those sanctions still exists. While that seems to be somewhat contrary to the spirit of the immunity statute, I still must conclude that the statute unambiguously requires completion of the diversion agreement before the immunity applies.

The Board also contends that Licensee's participation in the diversion agreement was not in "good faith", as required by the immunity statute. The Board contends that Licensee did not seek out treatment; rather, treatment came to him, precipitated by the seizure on November 30, 2007 that was caused by his own illegal activity. It was only in the face of impending loss of clinical privileges, which is a reportable offense, that Licensee availed himself of HPP enrollment.

Licensee counters that the "good faith" requirement relates to Licensee's "participation" in HPP, an "approved diversion program," and does not relate to his conduct prior to his participation.

Licensee's argument is more persuasive. The very nature of a chemical dependency brings with it some form of "illegal activity." It is the chemical dependency itself that drives a person to indulge in illegal activity in order to support that dependency. I also see nothing nefarious with a licensee that, at least in part, undergoes treatment in order to regain clinical or other privileges or to possibly avoid potential sanctions. It should be noted that, as we have learned here, Licensee actually may not avoid those sanctions.

Licensee was not forced to undergo the treatment outlined in his diversion agreement. The record is also replete with evidence that Licensee has been and is currently successful in his course of treatment under the diversion agreement. Licensee's participation in the diversion agreement was and is in good faith.

I must note that there is a statement made in the Factual Background portion of Licensee's Motions, to the effect that when Licensee entered treatment, and thereafter, a colleague and representative of HPP informed Licensee that he would be immune from any Board investigation or sanction. I have not been able to find support for that statement in the record, so I have not made it a Finding of Fact. However, for the sake of discussion, even if supported by the record, the statement would not persuade me that the Board was bound by such a representation. HPP does not have the power to grant immunity from Board sanctions. It is ORS 677.655(3) that grants the immunity, the Board only follows the statute, when it applies.

To sum up, Licensee is in good faith and voluntarily participating in an approved diversion agreement, however he has not successfully completed that agreement as of this date. Therefore, Licensee has not completed the conditions necessary to invoke the immunity contemplated by ORS 677.655(3). The Board has the authority and discretion to pursue the sanctions at issue here. Licensee's Motions 1 and 2 are denied.

Licensee in separate motions, moves to strike certain factual allegations in the Board's complaint that relate to the previously described statutory violations listed in ORS 677.655(3). Those motions are predicated on my concluding that Licensee has been granted immunity from the sanctions at issue here. As I have concluded that Licensee does not have that immunity, those specific motions (Motions 3 through 19) are also denied.

## ORDER

I propose the Oregon Board of Medical Examiners issue the following order:

Licensee Motions to Strike (1 through 19) are denied.

Robert L. Goss

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Senior Administrative Law Judge  
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: February 9, 2009

### EXCEPTIONS TO PROPOSED ORDER

This proposed order is the Administrative Law Judge's recommendation to the Oregon Board of Medical Examiners (BME). If you disagree with any part of this recommendation, you may make written objections, called "exceptions," to the recommendation and present written argument in support of your exceptions. Exceptions and argument must be filed with the Oregon Board of Medical Examiners not later than 10 days following the date of service of the proposed order at the following address: Oregon Board of Medical Examiners, 1500 SW First St., Suite 620, Portland, OR 97201.

a. The exceptions shall be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

- 1) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence in the record;
- 2) A necessary legal conclusion is omitted or is contrary to law or the BME's rules or written policies;
- 3) Prejudicial procedural error occurred.

b. The exceptions shall be numbered and shall specify the disputed findings, opinions or conclusions, identified by page and line number of the proposed order. The nature of the suggested error shall be specified and the alternative or corrective language provided.

c. If you file timely written exceptions with the BME, the BME may also consider oral argument on exceptions. If you wish to present oral argument to the BME, you must specifically request oral argument in your written exceptions. The BME will consider oral argument only on those points raised in the written exceptions.

### FINAL ORDER

After considering all the evidence, the proposed order and timely filed exceptions, if any, the BME will issue the final order in this case. This final order may adopt the proposed order

prepared by the Administrative Law Judge as the final order or modify the proposed order and issue the modified order as the final order (*see* OAR 137-003-0655).

### **APPEAL**

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 et seq.

**APPENDIX A**  
**LIST OF EXHIBITS CITED**

- Ex. A1: Reports to Board from John Jordan, MD, Brian Robinson, MD and William G. Moshofsky, MD..
- Ex. A2: Consultant's Reports.
- Ex. A3: Board's Memorandum of Interview.
- Ex. A4: Licensee's Letter to the Board.
- Ex. A5: Investigative Committee Interview of Licensee.
- Ex. A11: Licensee's Application for Renewal of License.

**CERTIFICATE OF MAILING**

On February 9, 2009, I mailed the foregoing Rulings on Motions to Strike and Proposed Order in OAH Case No. 800772.

By: First Class and Certified Mail

Certified Mail Receipt #7008 1300 0000 4648 3015

Thomas Cooney  
Attorney at Law  
Cooney & Crew, LLP  
4949 Meadows Rd Suite 460  
Lake Oswego OR 97035

By: First Class Mail

Gary Stafford  
Board of Medical Examiners  
1500 SW First Ave Ste 620  
Portland OR 97201

Warren Foote  
Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301

Pam Arcari  
Administrative Specialist  
Hearing Coordinator

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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
 )  
LARRY FRANK BOGART, MD ) ORDER TERMINATING  
LICENSE NO. MD20341 ) STIPULATED ORDER  
 )

1.

On September 23, 2004 Larry Frank Bogart, MD (Licensee) entered into a Stipulated Order with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. On August 21, 2008, Licensee submitted a written request to terminate this Order.

2.

Having fully considered Licensee's request and his successful compliance with the terms of this Order, the Board does hereby order that the September 23, 2004 Stipulated Order be terminated effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 9 day of April, 2009.

OREGON MEDICAL BOARD  
State of Oregon

~~DOUGLAS B. KIRKPATRICK, MD~~  
Board Chair





1 disclosed to Licensee that she had a mental health diagnosis, was suffering from anxiety,  
2 depression and insomnia, and was experiencing marital difficulties. In early August 2007,  
3 Patient A called Licensee and asked to meet with him outside the clinic. Licensee agreed to this  
4 and met with Patient A outside the clinical setting for social reasons on August 4, 2007. This led  
5 to further social contacts with her outside of the clinic.

6 3.2 Licensee and Patient A entered into a sexual relationship in early September  
7 2007, which continued for about four months. During the course of the sexual relationship,  
8 Patient A informed Licensee that her feelings of depression were intensifying. Licensee last  
9 authorized a refill of Patient A's prescription for zolpidem (Ambien, Schedule IV) on September  
10 6, 2007. On or about the end of November or early December 2007, Licensee transferred the  
11 care of Patient A and her children to another physician.

12 4.

13 Licensee and the Board desire to settle this matter by the entry of this Stipulated Order.  
14 Licensee understands that he has the right to a contested case hearing under the Administrative  
15 Procedures Act (chapter 183), Oregon Revised Statutes, and fully and finally waives the right to  
16 a contested case hearing and any appeal therefrom by the signing of and entry of this Order in the  
17 Board's records. Licensee understands that this Order is a disciplinary action and is reportable to  
18 the National Practitioners Databank. Licensee stipulates that he engaged in the conduct  
19 described in paragraph 3 and that this conduct violated: ORS 677.190(1)(a) unprofessional or  
20 dishonorable conduct, as defined in ORS 677.188(4)(a) and ORS 677.190(14) gross or repeated  
21 acts of negligence.

22 5.

23 Licensee and the Board desire to settle this matter by the entry of this Stipulated Order,  
24 subject to the following terms and conditions of probation:

25 5.1 Licensee is reprimanded.

26 5.2 Licensee is placed on probation. Licensee shall remain on probation for a period  
27 of ten years. Licensee shall report in person to the Board at each of its regularly

1 scheduled quarterly meetings at the scheduled times for a probationer interview unless  
2 ordered to do otherwise by the Board.

3 5.3 A medically trained chaperone shall be present for the entire duration of any  
4 examination, treatment, or interaction involving the pelvic or breast area of female  
5 patients 12-years of age or older. This includes anytime the pelvic or breast area is  
6 exposed for any reason. The presence of the chaperone shall be immediately documented  
7 in the patient chart with the chaperones name, date and time. The chaperone may not be  
8 a friend or family member of the patient.

9 5.4 Licensee shall avoid any social contact with any female patient or immediate  
10 female family member of any patient outside the clinic setting.

11 5.5 Licensee shall continue in psychotherapy with a mental health professional that is  
12 pre-approved by the Board's Medical Director. This mental health professional will  
13 provide the Board with quarterly written reports.

14 5.6 Licensee shall enroll in and successfully complete a professional boundary course  
15 pre-approved by the Board's Medical Director.

16 5.7 Licensee shall inform and provide a copy of this Order to all of his current  
17 employers in the health care field, and to any future employers in the health care field  
18 prior to reporting for his first day of work.

19 5.8 Licensee shall obey all federal, state and local laws, and all rules governing the  
20 practice of medicine in the state of Oregon.

21 5.9 Licensee stipulates and agrees that any deviation or violation from terms of this  
22 Order shall be grounds for discipline pursuant to ORS 677.190(18).

23 ///

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1 5.10 This Order becomes effective the date it is signed by the Board Chair.

2  
3 IT IS SO STIPULATED THIS 23rd day of March, 2009.

4 Signature Redacted on Copies

5  
6 JOHN PALMA GUERREIRO, MD

7  
8 IT IS SO ORDERED THIS 9 day of April, 2009.

9 OREGON MEDICAL BOARD

10 Signature Redacted on Copies

11 DOUGLAS B. KIRKPATRICK, MD  
12 Board Chair

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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
HENRY FREEMAN HARRIS, MD ) STIPULATED ORDER  
LICENSE NO. MD09151 )

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Henry Freeman Harris, MD (Licensee) is a licensed physician in the state of Oregon.

2.

On January 8, 2009, the Board issued a Complaint And Notice Of Proposed Disciplinary Action that proposed taking disciplinary action pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); and ORS 677.190(7) habitual or excessive use of intoxicants or controlled substances.

3.

Licensee practices internal medicine in Lake Oswego, Oregon. On October 5, 1985, the Board found that Licensee had diverted and self administered morphine (Schedule II). The Board subsequently revoked his license to practice medicine, but stayed that revocation and placed Licensee on probation for ten years. The Board terminated the terms of probation and restored Licensee's medical license on January 11, 1990. Licensee participated in the Health Professionals Program (HPP) from April 1991 through November 1996, at which time his agreement with HPP expired. Licensee, in contrast to HPP's advice, chose not to renew his agreement with them. Licensee's acts and conduct that violated the Medical Practice Act are:

3.1 Licensee has a history of substance dependence, self-treatment of chronic pain, and the diversion of medications. After termination of the probation imposed by the

1 Board, Licensee did not voluntarily participate in any drug monitoring or recovery program. He  
2 immediately resumed drinking alcohol. Licensee reported increasing chronic pain from  
3 degenerative joint disease that affected both knees, as well as lower back pain. After undergoing  
4 bi-lateral knee replacement surgery in the summer of 2005, Licensee was prescribed oxycodone  
5 (Schedule II) to address his chronic pain. On July 13, 2008, Board investigators visited Licensee  
6 at his clinic and conducted a urine screening test on Licensee that tested positive for certain  
7 prescribed controlled substances and ethyl glucuronide (a biomarker test for alcohol). Licensee  
8 has been diagnosed as opiate dependent and alcohol dependent.

9 3.2 On occasion in 2004 and 2005, Licensee was administered injections of a Schedule III  
10 medication at his physician's direction. He subsequently billed the cost of those injections to his  
11 insurance company, and then wrote off the deductible.

12 4.

13 Licensee and the Board desire to settle this matter by entry of this Stipulated Order. Licensee  
14 understands that he has the right to a contested case hearing under the Administrative Procedures Act  
15 (chapter 183), Oregon Revised Statutes. Licensee fully and finally waives the right to a contested case  
16 hearing and any appeal therefrom by the signing of and entry of this Order in the Board's records.  
17 Licensee admits that he engaged in the conduct described in paragraph 3 and that this conduct violated  
18 ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a) and ORS  
19 677.190(7) habitual or excessive use of intoxicants or controlled substances. Licensee understands that  
20 this Order is a public record and is reportable to the National Practitioner Databank.

21 5.

22 Licensee and the Board agree to resolve this matter by entry of this Stipulated Order subject to  
23 the following sanctions and terms and conditions of probation:

24 5.1 Licensee is reprimanded.

25 5.2 Licensee is placed on probation and shall report in person to the Board at least  
26

1 once a year at a scheduled time for a probation interview, unless otherwise directed by  
2 the Board or its Investigation Committee, and shall be subject to unannounced  
3 compliance inspections conducted at the discretion of the Board's Compliance Officer.

4 5.4 Licensee will remain completely abstinent from the use of all intoxicants,  
5 controlled substances and psychoactive substances, unless prescribed by his treating  
6 physician and pre-approved by the Health Professionals Program (HPP). This provider  
7 will be fully informed of Licensee's history of substance abuse and dependence.

8 5.5 Licensee shall enroll in the Board's Health Professionals Program and shall  
9 remain enrolled throughout his career. Licensee will fully comply with the terms of his  
10 HPP enrollment and requirements, and will consent to the disclosure of his complete HPP  
11 file to the Board upon request. All drug and alcohol test results conducted in the HPP  
12 program and information pertaining to possible relapse will be simultaneously reported to  
13 HPP and the Board.

14 5.6 Licensee will not self-prescribe medications and will not prescribe for family  
15 members.

16 5.7 Licensee shall obey all federal and Oregon State laws and regulations pertaining  
17 to the practice of medicine.

18 5.8 Licensee stipulates and agrees that any violation of the terms of this Order shall  
19 be grounds for further disciplinary action under ORS 677.190(18).

20 IT IS SO STIPULATED this 2<sup>n</sup> day of April, 2009.

21 Signature Redacted on Copies

22 HENRY FREEMAN HARRIS, MD

23 IT IS SO ORDERED this 9 day of April, 2009.

24 OREGON MEDICAL BOARD

25 Signature Redacted on Copies

26 DOUGLAS B. KIRKPATRICK, MD  
27 Board Chair

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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
)  
JAMES THOMAS HARTFORD, MD ) ORDER TERMINATING  
LICENSE NO. MD06231 ) STIPULATED ORDER  
)

1.

On July 10, 2008 James Thomas Hartford, MD (Licensee) entered into a Stipulated Order with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. On January 6, 2009, Licensee submitted a written request to terminate this Order.

2.

Having fully considered Licensee's request and his successful compliance with the terms of this Order, the Board does hereby order that the July 10, 2008 Stipulated Order be terminated effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 9 day of April, 2009.

OREGON MEDICAL BOARD  
State of Oregon

Signature Redacted on Copies

DOUGLAS B. KIRKPATRICK, MD  
Board Chair

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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
JEFFREY ALEXANDER LUTY, MD ) STIPULATED ORDER  
LICENSE NO. MD18850 )

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Jeffrey Alexander Luty, MD (Licensee) is a licensed physician in the state of Oregon.

2.

The acts and conduct alleged to violate the Medical Practice Act are:

2.1 Cocaine is an illegal controlled substance that is highly addictive. Licensee has an extensive history of cocaine dependence over the past decade. Crack cocaine became his drug of choice.

2.2 The Board has received information that warrants the conclusion that Licensee's cocaine dependence resulted in his failure to meet the standard of care in the following respect:

a. While practicing as an emergency room physician at Providence Seaside Hospital from January 1996 through August 2006:

i. Patient C, a 27-year-old female, presented at Providence Seaside ER on November 12, 2005 at 8:35 PM. She complained of abdominal pain that radiated around to her back and that this pain had been "on and off" since the birth of her last child in September of 2005. She also reported difficulty with urination and a "white discharge with urine." Her initial vital signs included a temperature of 99.1, a pulse of 100, blood pressure of 98/55, and respirations of 18. Licensee treated her with a tablet of Vicodin, followed by an IM injection of meperidine (Demerol,

1 75 mg). Licensee also ordered some laboratory tests that revealed an elevated  
2 white blood count of 13,800, blood in her urine, and a negative pregnancy test.  
3 At 11:15 PM, Patient C's temperature was 103, with a pulse of 131, blood pressure  
4 of 126/70 and respirations of 16. At 11:35 PM, Patient C's temperature was 99.8,  
5 with a pulse of 124, blood pressure of 100/56 and respirations of 16. Despite  
6 these abnormal vital signs, Licensee discharged Patient C and told her to return in  
7 the morning. Licensee failed to address Patient C's abnormal vital signs that were  
8 identified at 11:15 PM and 11:35 PM, did not conduct a pelvic examination, and  
9 failed to admit and provide effective treatment for this patient.

10 ii. Patient D, a 17-year-old female, presented at the Providence Seaside ER  
11 on May 1, 2004 with complaints of increasing back pain. Her vital signs were  
12 normal. Licensee ordered a urinalysis that revealed blood in the urine, which  
13 Licensee failed to address. Licensee inaccurately recorded in the chart that the  
14 urinalysis was negative. Licensee did not order a pregnancy test and did not  
15 record her last menstrual period.

16 b. While practicing as an ER physician through NES Healthcare Group at  
17 Mountain View Hospital in Madras:

18 i. Patient A, a 26-year-old female, presented at the ER at Mountain View  
19 Hospital on December 1, 2006 for a check of her blood pressure and complaints  
20 of a two week headache. She presented with a heart rate of 112 and her history  
21 included "cyst on her brainstem." Licensee did not order an imaging study, and  
22 discharged her with a prescription for Vicodin without conducting a scalp  
23 palpation or a pupil and fundi examination. Licensee failed to address Patient A's  
24 elevated heart rate, conducted an incomplete physical examination and did not  
25 evaluate her for signs of increased intracranial pressure in view of her health  
26 history.

1           ii.     Patient B, a 34-year-old male, was brought to the ER at Mountain View  
2           Hospital on December 10, 2006 by ambulance. He was unresponsive, with low  
3           oxygen saturations. Licensee attended Patient B while a Certified Registered  
4           Nurse Anesthetist (CRNA) was called to intubate Patient B. Licensee left the area  
5           while the CRNA intubated the patient and placed a nasogastric tube, and did not  
6           review an imaging study to confirm placement of the intubation. When Patient B's  
7           blood pressure dropped, Licensee (who had returned) was unsure of what  
8           medication to order. The CRNA ordered medications to address the hypotension.  
9           Licensee's failed to be present and available at all times for this critically ill patient  
10          and failed to address Patient B's hypotension.

11          c.     While working four shifts in the ER at Samaritan Hospital in Moses Lake,  
12          Washington in January 2007, Licensee's appeared disheveled, and his behavior was  
13          described to be "jumpy and hyperactive." The ER staff noticed that Licensee disappeared  
14          at odd times during his shift for extensive periods of time, and could not be located. His  
15          hospital privileges were subsequently terminated.

16          2.3     Licensee was arrested on June 5, 2007 for violating a restraining order in the  
17          matter commonly known as Marinier and Luty, Washington County Circuit Court Case No.  
18          C064423RO. Licensee disclosed to the officer making the arrest that he had recently used  
19          cocaine base and admitted to a long history of cocaine abuse escalating to almost daily use in  
20          the past year. Licensee was sentenced to 90 days of confinement for violating the restraining  
21          order. Licensee disclosed that he was enrolled in the Board's Health Professionals Program  
22          (HPP), so the behavior was reported to HPP. Under HPP monitoring, Licensee began to  
23          practice part time at Providence Tanasbourne Immediate Care Clinic in February 2008.  
24          Licensee used cocaine base on about April, 24, 2008, and then disclosed that use to HPP, which  
25          terminated him from the program for noncompliance. HPP also reported him to the Board.  
26          Licensee entered into an Interim Stipulated Order that was approved by the Board on May 22,

27

1 2008, in which Licensee voluntarily withdrew from the practice of medicine pending  
2 completion of the Board's investigation.

3 3.

4 License and the Board desire to settle this matter by entry of this Stipulated Order.  
5 Licensee understands that he has the right to a contested case hearing under the Administrative  
6 Procedures Act (chapter 183), Oregon Revised Statutes. Licensee fully and finally waives the  
7 right to a contested case hearing and any appeal therefrom by the signing of and entry of this  
8 Order in the Board's records. The Board finds that Licensee engaged in the conduct described in  
9 paragraph 2, and Licensee acknowledges that this conduct constitutes a violation of ORS  
10 677.190(1)(a), unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); ORS  
11 677.190(7) habitual or excessive use of intoxicants, drugs or controlled substances; ORS  
12 677.190(14), gross or repeated acts of negligence and ORS 677.190(25) violation of the federal  
13 Controlled Substance Act. Licensee understands that this Order is a public record and is  
14 reportable to the National Practitioner Databank.

15 4.

16 Licensee and the Board agree Licensee to resolve this matter by the entry of this  
17 Stipulated Order in which Licensee agrees to surrender his license under investigation subject to  
18 the following sanctions and terms:

19 4.1 Licensee surrenders his license under investigation.

20 4.2 Licensee shall obey all federal and Oregon State laws and regulations pertaining  
21 to the practice of medicine.

22 4.3 Licensee understands that the Board will reopen the investigation in the event  
23 Licensee should ever reapply for any form of a license to practice medicine in Oregon.  
24 Prior to submitting an application, Licensee will be expected to undergo an evaluation at  
25 a pre-approved multi-disciplinary center at his own expense, with Licensee signing all  
26 necessary releases to allow full communication between the center and the Board.

27 Licensee also will have the obligation to demonstrate, to the Board's satisfaction, that he

1 has maintained verifiable sobriety, providing documented proof that for at least two  
2 continuous years he has abstained from all intoxicants, controlled substances and  
3 psychoactive substances unless prescribed by a physician who is fully informed of his  
4 history of substance abuse and dependence. Documented proof will include the records  
5 that Licensee has voluntarily undergone substance abuse monitoring through random  
6 urine monitoring (the panel must always test for cocaine) and hair sample testing.  
7 Licensee will likewise have the obligation to provide documented proof that he is in  
8 recovery and is safe to practice medicine.

9 4.4 Consistent with paragraph 4.3 above, Licensee will have the obligation to present  
10 a re-entry plan that will satisfy the Board's need to protect the public. Licensee's plan will  
11 address how he will achieve verified medical competency, to include updating his  
12 medical knowledge and clinical practice skills, and how he will practice in a supervised  
13 practice setting.

14 4.5 Licensee stipulates and agrees that any violation of the terms of this Order shall  
15 be grounds for further disciplinary action under ORS 677.190(18).

16 4.6 This Order will be reported to the National Practitioner Databank.

17 IT IS SO STIPULATED this 6 day of April, 2009.

18  
19 Signature Redacted on Copies

20 JEFFREY A. LUTY, MD

21  
22 IT IS SO ORDERED this 9 day of April, 2009.

23 OREGON MEDICAL BOARD  
24 State of Oregon

25 Signature Redacted on Copies

26 DOUGLAS B. KIRKPATRICK, MD  
27 Board Chair



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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of )  
LLOYD HARVEY WIGGINS, MD ) ORDER TERMINATING  
LICENSE NO. MD13214 ) STIPULATED ORDER  
)

1.

On May 6, 2004 Lloyd Harvey Wiggins, MD (Licensee) entered into a Stipulated Order with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. On January 16, 2009, Licensee submitted a written request to terminate this Order.

2.

Having fully considered Licensee's request and his successful compliance with the terms of this Order, the Board does hereby order that the May 6, 2004 Stipulated Order be terminated effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 9 day of April, 2009.

OREGON MEDICAL BOARD  
State of Oregon

Signature Redacted on Copies

~~DOUGLAS B. KIRKPATRICK, MD~~  
Board Chair