

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICAL EDUCATION :
AND LICENSURE :

v. :

FILE NO. 81-ME-3179

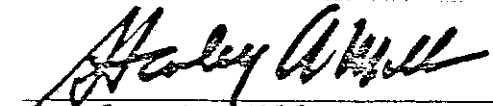
PAUL E. PEIRSEL, M.D. :

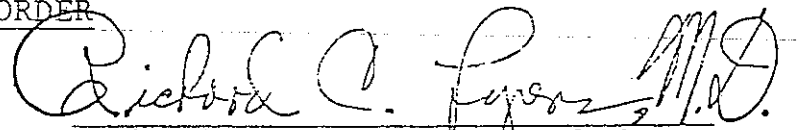
ORDER

AND NOW, this 18th day of June, 1982, the
suspension of the license to practice medicine and surgery of
Paul E. Peirsel, M.D., license number MD-017008-E, is hereby
terminated.

This Order is effective June 18, 1982.

BY ORDER


Stanley A. Miller, Commissioner
Professional and Occupational
Affairs


Richard C. Lyons, M.D., Chairman
State Board of Medical Education
and Licensure

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COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

BEFORE THE STATE BOARD OF MEDICAL EDUCATION AND LICENSURE

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF
THE LICENSE TO PRACTICE MEDICINE
LICENSE NO. MD-017008-E, ISSUED AUGUST 1, 1975

Federation of State Medical Boards
of the United States

TO

JUN 0 1 1962

PREV. CORRES. _____
ANS. _____ FILE _____
CHECK _____
BY _____

PAUL E. PEIRSEL, M.D.

ADJUDICATION AND ORDER

STANLEY A. MILLER, COMMISSIONER
PROFESSIONAL AND OCCUPATIONAL AFFAIRS

RICHARD C. LYONS, M.D., CHAIRMAN
STATE BOARD OF MEDICAL EDUCATION
AND LICENSURE

STATE CAPITAL
HARRISBURG, PENNSYLVANIA

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HISTORY

This case comes before the State Board of Medical Education and Licensure (hereinafter referred to as the Board) on its Citation and Notice of Hearing to Paul E. Feirsel, M.D., (hereinafter referred to as the Respondent), for violation of Section 701 of the Health Care Services Malpractice Act, Act of October 15, 1975 (P.L. 390, No. 111), as amended, 40 P.S. §1301.101 et seq. The Citation and Notice of Hearing were issued and served upon the Respondent in accordance with the Administrative Agency Law, Act of April 28, 1978 (P.L. 202, No. 53), as amended, 2 Pa. C.S. §101 et seq.

Section 701(f) of the Health Care Services Malpractice Act provides:

The failure of any health care provider to comply with any of the provisions of this Section or any other rules and regulations issued by the Director shall result in the suspension or revocation of the health care provider's license by the licensure board.

Board regulation 49 Pa. Code §17.223 provides:

Failure to comply with the requirements of the Health Care Services Malpractice Act (40 P.S. §1301.101-1301.1006), the regulations issued thereunder, and this subchapter shall result in the suspension or revocation of license after a formal hearing.

In pertinent part, section 701 of the Health Care Services Malpractice Act requires that a physician secure professional liability insurance in specified incident and annual aggregate amounts from an insurance company approved by the Insurance Commissioner or that he submit a self-insurance plan acceptable to the Insurance Commissioner, and that he pay an annual surcharge for participation in the Medical Professional Liability Catastrophe Loss Fund (hereinafter

referred to as the Fund) if he conducts more than 50% of his practice in the Commonwealth.

The Citation charged that the Respondent failed to comply with the professional liability insurance and surcharge requirements applicable to his practice. It also charged that he is not exempt from compliance.

Prior to the hearing the Board received a letter from the Respondent dated February 5, 1982. The letter did not contain a request for a continuance and was not responsive to the allegations set forth in the Citation except to the extent that it acknowledged Respondent's failure to maintain malpractice insurance.

A hearing on the charges contained in the Citation was held on February 9, 1982 in room 603 of the Transportation and Safety Building, Harrisburg, Pennsylvania. Assistant Counsel, Jeffrey T. Spangler, Esq., prosecuted the case on behalf of the Commonwealth. The Board was represented by Stanley A. Miller, Commissioner of Professional and Occupational Affairs. Kenneth E. Brody, Esq., Counsel to the Board, served as counsel to the Commissioner. The Respondent was not present nor was he represented by counsel.

During the course of the proceeding the Commonwealth moved that the factual averments of the Citation be deemed admitted pursuant to the provisions of regulation 1 Pa. Code §35.37 because the Respondent did not respond to the charges. The motion was granted and the factual averments of the Citation were deemed admitted. In granting the motion, it was noted that the Citation apprised the Respondent that he was required to respond to the allegations of the Citation within twenty (20) days of receipt of the Citation and that failure to file an Answer within the time allowed would be deemed a default and might result in relevant facts being considered admitted.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this case.
2. The Respondent was notified of the charges and given ample opportunity to be heard.
3. Findings of Fact 6 thru 11 establish that the Respondent has violated the Medical Practice Act and rules and regulations promulgated pursuant thereto in that he has failed to comply with insurance and surcharge requirements of section 701 of the Health Care Services Malpractice Act . Pertinent provisions of the Medical Practice Act and of the rules and regulations promulgated by the Board are as follows:

"Section 15. Reasons for refusal, revocation or suspension of license.

(a) The board shall have authority to refuse, revoke or suspend the license of a physician for any or all of the following reasons:

* * *

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board, previously entered by the board in a disciplinary proceeding."

"49 Pa. Code §17.211. Requirements of the Health Care Services Malpractice Act.

An applicant for licensure or a licensee applying for biennial renewal as required by the Health Care Services Malpractice Act (40 P.S. §§1301.101-1301.1006), and the rules and regulations pertaining thereto, must maintain the required amount of professional liability insurance or an approved self-insurance plan and must have paid the required fee and surcharges as set forth therein. . ."

4. Findings of Fact 6 thru 11 establish that the Respondent has violated the Health Care Services Malpractice Act in that he has failed to comply with insurance and surcharge requirements of section 701 of that act. Pertinent provisions of the Health Care Services Malpractice Act are as follows:

"Section 701. Professional Liability Insurance and Fund.

(a) Every health care provider as defined in this act, practicing medicine or podiatry or otherwise providing health care services in the Commonwealth shall insure his professional liability only with an insurer licensed or approved by the Commonwealth of Pennsylvania, or provide proof of self-insurance in accordance with this section.

(1)(i) A health care provider, other than hospitals, who conducts more than 50% of his health care business or practice within the Commonwealth of Pennsylvania shall insure or self-insure his professional liability in the amount of \$100,000 per occurrence and \$300,000 per annual aggregate, . . . and they shall be entitled to participate in the fund. . .

* * *

(2) A health care provider who conducts 50% or less of his health care business or practice within the Commonwealth shall insure or self-insure his professional liability in the amount of \$200,000 per occurrence and \$600,000 per annual aggregate and shall not be required to contribute to or be entitled to participate in the fund. . .

(d) There is hereby created a contingency fund for the purpose of paying all awards, judgments and settlements for loss or damages against a health care provider entitled to participate in the fund as a consequence of any claim for professional liability brought against such health care provider as a defendant or an additional defendant to the extent such health care provider's share exceeds his basic coverage insurance in effect at the time of occurrence as provided in subsection (a)(1). . .

(e)(1) The fund shall be funded by the levying of an annual surcharge on or after January 1 of every year on all health care providers entitled to participate in the fund. The surcharge shall be determined by the director appointed pursuant to section 702 and subject to the prior approval of the commissioner. . .

(2) Health care providers having approved self-insurance plans shall be surcharged an amount equal to the surcharge imposed on a health care provider of like class, size, risk and kind as determined by the director. . .

* * *

(f) The failure of any health care provider to comply with any of the provisions of this section or any of the rules and regulations issued

FINDINGS OF FACT

1. The Respondent is licensed to practice medicine in the Commonwealth of Pennsylvania and said license, numbered MD-017008-E, is currently registered. (N.T. 9-10, C-1, R-1).
2. The Citation and Notice of Hearing were forwarded to the Respondent by certified mail return receipt requested and the return receipt was returned to the prosecutor indicating that the Citation had been received on January 5, 1982. (N.T. 8; C-2).
3. The Citation apprised the Respondent that an Answer to the factual allegations of the Citation was required within twenty (20) days of receipt of that document and failure to file an Answer within the time allowed would be deemed a default with the consequence that all relevant facts alleged may be deemed admitted. (C-1).
4. The Respondent did not request a continuance and did not file an Answer except to the extent his letter of February 5, 1982 contained an acknowledgement that he has not secured malpractice insurance. (N.T. 5-8; R-1).
5. The Respondent did not appear at the hearing nor did any one else appear at the hearing in his behalf. (N.T. 5-8; R-1).
6. The Commonwealth moved that the factual averments of the Citation be deemed admitted pursuant to the provisions of regulation 1 Pa. Code §35.37 and the motion was granted. (N.T. 9-10).
7. The Respondent was engaged in the practice of medicine and surgery in the Commonwealth at times relevant to this proceeding. (N.T. 9-10; C-1, R-1).

8. The Respondent has not secured professional liability insurance in the required amount nor has he submitted an approved self-insurance plan to the Insurance Commissioner. (N.T. 9-10; C-1, C-3, R-1).

9. The Respondent has not paid an annual surcharge for participation in the Fund. (N.T. 9-10, C-1, C-3, R-1).

10. The Respondent has not complied with professional liability insurance responsibilities imposed upon health care providers by section 701 of the Health Care Services Malpractice Act and rules and regulations promulgated pursuant thereto. (N.T. 9-10; C-1, C-3, R-1).

11. The Respondent is not exempt from compliance with professional liability insurance responsibilities imposed upon health care providers by section 701 of the Health Care Services Malpractice Act and rules and regulations promulgated pursuant thereto. (N.T. 9-10; C-1, C-3, R-1).

health care provider's license by the licensure board."

5. Based upon the foregoing Findings of Fact and Conclusions of Law, the Board has the authority to impose the sanction set forth in its Order.

DISCUSSION

The Respondent despite adequate notice failed to appear at the hearing scheduled to consider evidence regarding his alleged violations of the Medical Practice Act and the Health Care Services Malpractice Act.

In his February 5, 1982 letter, he acknowledges that he has failed to satisfy professional liability insurance responsibilities imposed upon health care providers under Section 701 of the Health Care Services Malpractice Act. In consideration of his absence at the hearing and his failure to file an Answer otherwise responding to the allegations of the Citation, the hearing officer found it appropriate to grant the prosecuting attorney's motion that the facts alleged in the Citation be deemed admitted.

The Respondent's letter explains that he has confronted difficult financial and emotional times, that his practice is in severe financial distress and can no longer be maintained, and that he has filed for bankruptcy. It also advises that the Respondent plans to secure a salaried position at Somerset Community Hospital which would include paid malpractice insurance coverage to begin in March, 1982.

The Board sympathizes with the Respondent with respect to the problems he has encountered and endorses the approach he has announced to overcome the financial burdens he confronts in securing the required insurance.

The Board nevertheless, can not condone the Respondent's past violation of his professional responsibilities. Whatever difficulties he has encountered, the Board's obligation to protect the public's welfare and to deter other physicians from

similar conduct must be its paramount concern. Furthermore, permitting the Respondent to continue to practice medicine while he has not complied with his professional liability insurance responsibilities, will not insure the availability of funds to cover damages for his possible medical malpractice now, or in the future, and will therefore not serve the public's interest.

The Respondent must be removed from the practice of medicine until he has satisfied the professional liability insurance responsibilities applicable to his practice. For disciplinary reasons and for considerations of deterrence, in addition to making compliance a condition for regaining the right to practice medicine in the Commonwealth, the Respondent shall be further disciplined as set forth in the follow Order. ;

ORDER

AND NOW, this 13th day of May 1982, it is hereby Ordered that the license to practice medicine and surgery in the Commonwealth of Pennsylvania issued to Respondent, numbered MD-017008-E, is suspended.

After thirty (30) days of the suspension, the suspension shall be terminated if the Respondent comes into compliance with the professional liability insurance and surcharge responsibilities imposed upon him by section 701 of the Health Care Services Malpractice Act and the Respondent is able to secure certification of his compliance from the Fund.

Prior to the expiration of thirty (30) days of the suspension, the suspension shall be terminated if the Respondent is able to secure certification of his compliance from the Fund and if the Medical Director at Somerset Community Hospital advises, by notorized letter, that the Respondent has secured employment at Somerset Community Hospital as a physician.

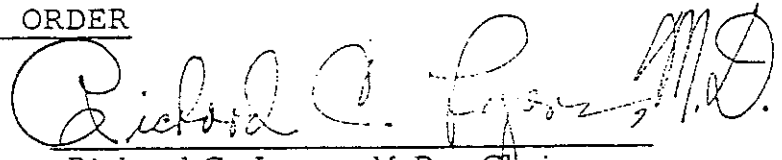
The Respondent must file, or have the Fund file, the certification of compliance with the Board. The suspension shall terminate upon the Board's issuance of an Order terminating the suspension.

This Order shall become effective on the 23rd day of May, 1982.

BY ORDER



Stanley A. Miller, Commissioner



Richard C. Lyons, M.D., Chairman
State Board of Medical Education
and Licensure