

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS
STATE OF GEORGIA

**Composite State Board
of Medical Examiners**

MAY 09 2008

GEORGIA COMPOSITE STATE
BOARD OF MEDICAL EXAMINERS,)
Petitioner,)
)
TOTADA SHANTHAVEERAPPA, M. D.)
)
)
Respondent)

DOCKET NUMBER

DOCKET NO.: 2006-0063

FINAL DECISION

An initial decision of the Administrative Law Judge, Michael M. Malihi, was filed on April 1, 2008 in the above-styled matter. An application for review was filed by the Petitioner. On April 16, 2008 an Order Extending Time For And Scheduling Review was filed by the Board. Pursuant to this Petition, a hearing was scheduled before the Composite State Board of Medical Examiners at 10:30 A.M. on May 9, 2008.

The parties were given notice of the hearing and the hearing was conducted. As a consequence of the hearing the Board finds as follows:

FINDINGS OF FACT

The Board accepts the decision of the Administrative Law Judge. The Board expressly accepts the Findings of Fact. In consideration of the arguments and testimony of the parties at the hearing below the Board finds that the instant case involves the Respondent's criminal conviction of a felony in United States District Court for the Northern District of Georgia.

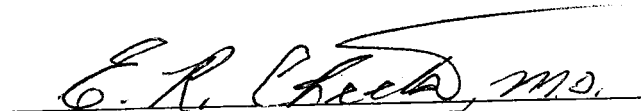
CONCLUSIONS OF LAW

The Board finds that there was sufficient evidence to impose disciplinary sanctions, and relies upon the provisions of O.C. G. A. 50-13-15 and Title 43, Chapter 34 in reaching this decision.

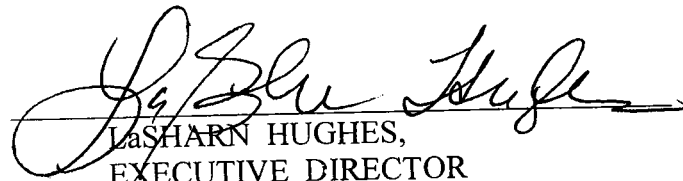
DECISION

The Board accepts the recommended decision of the Administrative Law Judge and makes the following decision. That the license of the Respondent, Totada Shanthaveerappa M. D. is revoked as of May 9, 2008.

SO ORDERED this 9th day of May, 2008



EDDIE R. CHEEKS, M.D.,
PRESIDENT,
COMPOSITE STATE BOARD OF
MEDICAL EXAMINERS



LASHARN HUGHES,
EXECUTIVE DIRECTOR
COMPOSITE STATE BOARD OF
MEDICAL EXAMINERS

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

STATE OF GEORGIA

**Composite State Board
of Medical Examiners**

IN THE MATTER OF:

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TOTADA SHANTHAVEERAPA, M.D.
License No. 14721,

DOCKET NO.

APR 16 2008

DOCKET NUMBER

20060063

Respondent.

ORDER EXTENDING TIME FOR AND SCHEDULING REVIEW

COMES NOW, the Composite State Board of Medical Examiners ("Board") and hereby enters an Order extending the time for and scheduling a review in the above-referenced matter. An Initial Decision in this matter was docketed with the Office of State Administrative Hearing on April 1, 2008. The Initial Decision was received by the Board and the Respondent on or about April 3, 2008. The Board received Respondent's request for a review of the Initial Decision on April 4, 2008. The request for review was filed within the thirty (30) days to request a review as provided by O.C.G.A. §50-13-17(a) and within the thirty (30) day period that the Board is permitted to modify an initial decision and hold a review as provided by O.C.G.A. §50-13-41(e)(1).

O.C.G.A. § 50-13-41(e)(1) provides that the Board "shall have a period of 30 days" from the docketing of an initial decision to reject or modify that decision, and that if the Board fails to reject or modify the decision within 30 days, the initial decision stands affirmed by operation of law. However, O.C.G.A. § 50-13-41(e)(2) provides that the Board may enter an order extending the deadline when "unusual and compelling circumstances render it impracticable" for the Board to complete its review within 30 days of the docketing of the initial decision. In this case, such unusual and compelling circumstances make it necessary for the Board to extend the time in which it has to review this matter and render a final decision.

The Board, which is composed of members who live all over the State of Georgia, has scheduled monthly meetings in Atlanta, Georgia. The next scheduled meeting of the Board at which the review can be held is May 9, 2008. In light of the Board's existing schedule the Board could not have conducted and completed its review of this matter within the initial thirty-day period.

Accordingly, the Board hereby enters this Order extending the time for review due to the impossibility of conducting the review within the first thirty (30) day period. Consistent with the intent of O.C.G.A. §50-13-41(e) to have a review within ninety (90) days after the docketing of the Initial Decision, and in order to afford the Respondent the right to a review of the Initial Decision, the Board hereby extends the time for review for sixty (60) days and hereby schedules the review of the Initial Decision of the Hearing Officer for **Friday, May 9, 2008, at 10:30 a.m.**, at 2 Peachtree Street, 36th Floor, Atlanta, Georgia. The review will be held pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. Ch. 50-13, and the Rules of the Joint Secretary, State Examining Boards, Chapter 295-13.

The Board hereby appoints the hearing officer designated below as the hearing officer for review.

NAME: Allen Meadors
ADDRESS: Suite 945, The Hurt Building, Atlanta, GA 30303
TELEPHONE: 404-521-3100

The hearing officer for review will be present at the review and shall be appointed as the agency representative for the limited purpose of presiding over the review proceedings and ruling on any procedural or evidentiary questions that arise during the course of the review. The hearing officer for review will draft the Board's Final Decision on the merits at the direction of the Board. The Board reserves the right to take the matter under advisement and continue the deliberations until a date certain if deemed necessary due to the Board's agenda or the

complexity of the issues.

This 4th day of April, 2008.

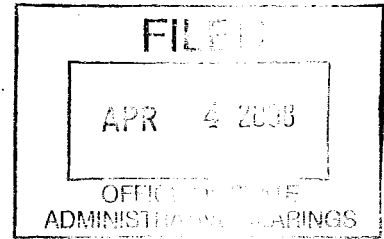
COMPOSITE STATE BOARD OF MEDICAL
EXAMINERS

EDDIE R. CHEEKS, M.D.
President

(BOARD SEAL)


LASHARN HUGHES
Executive Director

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



COMPOSITE STATE BOARD)
OF MEDICAL EXAMINERS,)
Petitioner)
)
vs.)
)
TOTADA SHANTHAVEERAPA, M.D.,)
Respondent.)

Docket No. OSAH-CSBME-
PHY-0821724-76-Malihi

DR. SHANTHA'S APPLICATION FOR
AGENCY REVIEW OF RECOMMENDED DECISION

Pursuant to O.C.G.A. § 50-13-17 and 50-13-41, the Respondent, Totada Shanthaveerappa, M.D. ("Dr. Shantha"), makes application for agency review of the Recommended Decision of the Judge Malihi dated April 1, 2008 (a copy of which is attached).

Dr. Shantha makes his application for the following reasons:

1. The Recommended Decision is (a) in violation of constitutional and statutory provisions, (b) made upon unlawful procedure, (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (d) affected by other error of law, and (e) arbitrary and capricious. O.C.G.A. § 50-13-19(h).

2. The Recommended Decision erroneously concluded and found that "Respondent committed fraud against the very profession that he was entrusted and expected by the public to preserve." [¶ 6] That finding and conclusion is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Dr. Shantha pled guilty to one count of fraudulently providing the incorrect

billing code to insurance companies which is generally characterized as "healthcare fraud." However, Dr. Shantha did not commit fraud against the medical profession as erroneously concluded in the Recommended Decision. That conclusion in the Recommended Decision reflects a fundamental misunderstanding of the one (and only) offense to which Dr. Shantha pled guilty.

3. The Recommended Decision acknowledges the undisputed and stipulated fact that Dr. Shantha made full restitution "to the victim insurance companies." He was not required to make restitution to the medical profession because he did not defraud the medical profession as erroneously found in the Recommended Decision.

4. While Dr. Shantha was placed on criminal probation by United States District Judge Richard W. Story, there was no fine imposed nor was Dr. Shantha required to perform any community service. The fact that Dr. Shantha was not sentenced to any period of incarceration, was not fined, and was not required to perform any community service reflects a fundamental misunderstanding by the ALJ of the outcome of the federal prosecution of Dr. Shantha. Judge Story explained at the sentencing hearing:

The circumstances under which the crime arose, I do think that, obviously, the Defendant was looking for a way to charge. I've been to enough doctors and I'm old enough that I've had enough ailments that I know doctors struggle with billing. I know that they - - I've had doctors say to me, I think we can get this through under this code, I think this fits, but the insurance company may reject it and if so, we may have to try a different code. Some of these things you just can't tell. I mean, there's an innocent aspect of that. But once you know it's not right and you continue to do it, then you're breaking the law clearly. There is no question there.

...
I am convinced that this is your life, that it is caring and giving to people,
that it is the care of people and the medical practice that you have.

[Dr. Shantha Exhibit 7 at 89, 94]

5. The reliance in the Recommended Decision on the fact Dr. Shantha is on criminal probation for five years overlooks the statements of Judge Story (in Exhibit 7), and the Judgment (attached to the Joint Stipulation) that Dr. Shantha's probation places no limits whatsoever on his ability to practice medicine or to reapply for his medical license. Thus, the Recommended Decision reflects a fundamental misunderstanding of the outcome of the federal prosecution of Dr. Shantha.

6. Inexplicably, the ALJ wrote his Recommended Decision before reviewing the hearing transcript (which he stated he would do). Thus, his precipitous Decision is arbitrary and capricious, was made on an unlawful procedure, and is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record

7. For the same reason, the Recommended Decision violates OSAH Rule 27 which requires the ALJ to "review and evaluate all the evidence" in his Recommended Decision. Exhibit 7 introduced by Dr. Shantha - the transcript from Dr. Shantha's sentencing hearing - explained that Dr. Shantha pled guilty to defrauding insurance companies. He did not plead guilty to fraud against the medical profession. Thus, the Recommended Decision is affected by other error of law.

8. The Recommended Decision did not take into account that while Dr. Shantha "is a recently convicted felon," "the punishment should fit the offender and not

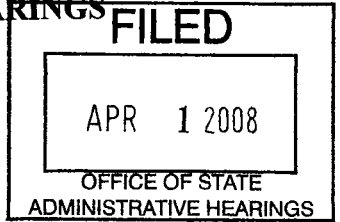
merely the crime." *Todd v. State*, 228 Ga. 746, 753 (1972). That rule of law is based on the Due Process Clause. *Williams v. New York*, 337 U.S. 241, 252 (1949). Dr. Jim H. McNatt, the Board's Medical Director, testified that the Board considers the unique facts of each case - one size does not fit all. Thus, the Recommended Decision is in violation of constitutional and statutory provisions.

This 4th day of April, 2008.


ANTHONY L. COCHRAN
Counsel for Respondent

CHILIVIS, COCHRAN, LARKINS
& BEVER, LLP
3127 Maple Drive, N.E.
Atlanta, Georgia 30305
(404) 233-4171
alc@cclblaw.com

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS



STATE OF GEORGIA

**COMPOSITE STATE BOARD
OF MEDICAL EXAMINERS,
Petitioner**

vs.

**TOTADA SHANTHAVEERAPA, M.D.,
Respondent.**

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**Docket No. OSAH-CSBME-
PHY-0821724-76-Malihi**

RECOMMENDED DECISION

The Composite State Board of Medical Examiners (“Petitioner” or “Board”) initiated this matter for the purpose of sanctioning Respondent’s medical license. Specifically, Petitioner seeks the revocation of Petitioner’s medical license. The hearing was held on March 27, 2008.

FINDINGS OF FACT

The following material facts are not disputed.

1.

Respondent currently holds a license to practice medicine in the State of Georgia and was licensed at all times relevant to the matters asserted here.

2.

On or about December 21, 2005, Respondent was indicted by the United States Attorney for the Northern District of Georgia on charges including, but not limited to, money laundering, healthcare fraud, the treatment of patients with Dinitrophenol (“DNP”) and Ukraine, neither of which drug has been approved by the federal government for use in the United States, and the misbranding of DNP. On or about December 27, 2005, the

United States District Court for the Northern District of Georgia entered an Order Setting the Conditions of Release for Respondent pursuant to which order Respondent was ordered not to engage in or assist in the practice of medicine during the pretrial release period.

3.

On or about December 23, 2005, the Board voted to summarily suspend Respondent's license to practice medicine in Georgia because Respondent had been indicted by the United States Attorney for the Northern District of Georgia. Respondent did not request an expedited hearing due to the pending criminal matter. Respondent's license has been suspended since December 23, 2005.

4.

In response to the grand jury indictment, Respondent pled guilty to one count of healthcare fraud in October of 2007. All other counts of the First Superseding Indictment were dismissed. On or about January 25, 2008, the United States District Court for the Northern District of Georgia entered a criminal judgment in Case No. 1:05-CR-612-01-RWS finding Respondent guilty of violating 18 U.S.C. § 1347 (healthcare fraud) and sentencing Respondent to five years of probation. The judgment also required Respondent to pay a special assessment and to make restitution in the amount of \$380,966.00 to the victim insurance companies, which Respondent has done.

II. Conclusions of Law

1.

This case involves an action by the Board to sanction the license of Respondent. Therefore, the burden of proof is on the Board. OSAH Rule 616-1-2-.07. The standard of proof is by a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

The Board is authorized to and has a duty to control and regulate the practice of medicine and this power includes the suspension, revocation, and restriction of licenses to engage in the practice of medicine. See generally O.C.G.A. Title 43, Chapter 34.

3.

Under O.C.G.A. §§ 43-1-19 and 43-34-37, Petitioner is granted the authority to sanction the license of a person licensed by the board upon a finding that the person has been convicted of any felony or of any crime involving moral turpitude.

O.C.G.A. § 43-1-19(a) provides that:

A professional licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(6) Engaged in unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed

any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title.

4.

Likewise, O.C.G.A. § 43-34-37(a) provides:

The board shall have authority to refuse to grant a license to an applicant or to discipline a physician licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(3) Been convicted of a felony in the courts of this state or any other state, territory, country or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law, without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication or guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction; the conviction of a crime involving moral turpitude shall be evidence of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection. For the purpose of this chapter, a conviction or plea of guilty or of nolo contendere to a charge or indictment by either federal or state government for income tax evasion shall not be considered a crime involving moral turpitude;

(11) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

5.

O.C.G.A. § 43-34-37(b)(1) provides:

When the Board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this code section, the board may take any one or more of the following actions:

(E) Revoke any license.

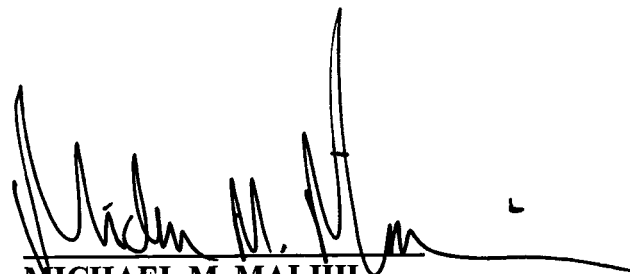
Here, Respondent has a license to practice medicine in the State of Georgia. He pled guilty to one count of federal healthcare fraud in October, 2007. Respondent will be on probation for five years. Many witnesses testified on behalf of Respondent. In addition, Respondent presented seven letters in support of his request for a renewed license to practice medicine in Georgia.¹ Clearly, Respondent enjoys many friends, family members, former patients, and colleagues who admire him as an excellent member of the community and a smart and caring physician. It is also apparent that Respondent is an accomplished member of the scientific community. He has treated numerous patients, written several books and numerous articles, and has been granted many patents for his inventions. He has served on a medical school faculty and supervised various medical departments.

Despite his many accomplishments, it cannot be ignored that Respondent is a recently convicted felon. The nature of the offense is also troubling. Respondent committed fraud against the very profession that he was entrusted and expected by the public to preserve. The Court has also considered that Respondent is on criminal probation and will remain in that status for five years.

¹ The letters were excluded at the hearing as hearsay evidence. After the hearing, Respondent submitted a motion for reconsideration of the ruling on the admissibility of the letters. Although this Court is not convinced that the letters are admissible, the letters were read and considered. The Court also reviewed and considered a letter that Petitioner submitted after the hearing on April 1, 2008. The letter was attached to a motion to introduce newly discovered evidence.

Considering the entirety of the evidence presented, the Court recommends that Respondent's license to practice medicine in Georgia should be revoked.

SO ORDERED, this 5th day of April, 2008.



MICHAEL M. MALIHI
Administrative Law Judge

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

STATE OF GEORGIA

**Composite State Board
of Medical Examiners**

IN THE MATTER OF:

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FEB 27 2008

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TOTADA SHANTHAVEERAPPA, M.D.

*

DOCKET NUMBER

License No.14721,

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DOCKET NO.

2006 0063

*

Respondent.

*

MATTERS ASSERTED AND STATUES AND RULES INVOLVED

Pursuant to O.C.G.A. § 50-13-13, the Board hereby provides Respondent with the matters asserted and the statues and rules involved for purposes of disciplinary action against Respondent and his license. The matters asserted below, if correct, constitute sufficient grounds for the imposition of sanctions against Respondent's license to practice medicine.

MATTERS ASSERTED

1.

Respondent currently holds a license to practice medicine in the State of Georgia and was licensed at all times relevant to the matters asserted herein.

2.

On or about December 21, 2005, Respondent was indicted by the United States Attorney for the Northern District of Georgia on charges including, but not limited to, money laundering, health care fraud, the treatment of patients with Dinitrophenol ("DNP") and Ukraine, neither of which drugs has been approved by the federal government for use in the United States, and the misbranding of DNP. On or about December 27, 2005, the United States District Court for the Northern District of Georgia entered an Order Setting Conditions of Release for Respondent pursuant to which order Respondent was ordered not to engage in or assist in the practice of medicine during the pretrial release period.

3.

On or about December 23, 2005, the Board voted to summarily suspend Respondent's license to practice medicine in Georgia based upon the Board's having received reliable information that Respondent had been indicted by the United States Attorney for the Northern District of Georgia on charges including, but not limited to, money laundering, health care fraud, the treatment of patients with DNP and Ukraine, neither of which drugs had been approved by the federal government for use in the United States and the misbranding of DNP and reliable information that Respondent had treated a patient with doses of drugs that posed an unreasonable and significant risk to the patient. Respondent did not request an expedited hearing in this matter. Respondent's license has been suspended since December 23, 2005.

4.

In response to the grand jury indictment, Respondent pled guilty to one count of healthcare fraud in October of 2007. On or about January 25, 2008, the United States District Court for the Northern District of Georgia entered a criminal judgment in Case No. 1:05-CR-612-01-RWA finding Respondent guilty of violating 18 U.S.C. § 1347 (healthcare fraud) and sentencing Respondent to five years of probation. Said judgment also required Respondent to pay a special assessment and to make restitution in the amount of \$380, 966.00 to the victim insurance companies, which Respondent has done.

STATUTES AND RULES INVOLVED

Sanction of Respondent's license is sought pursuant to O.C.G.A. § 43-34-37(a), which provides that the board shall have authority to refuse to grant a license to an applicant or to discipline a physician licensed under that chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

- (3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall a conviction of an offense which if committed in this state would be deemed

a felony under either state or federal law, without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether adjudication of guilt or sentence is withheld or not entered thereon;

(7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimal standards of acceptable and prevailing medical practice or by rule of the board;

Furthermore, sanction of the Respondent's license is sought pursuant to the following provisions of O.C.G.A. § 43-1-19, as amended:

(a) A state examining board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(3) Been convicted of any felony or any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of this United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the

fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

Pursuant to O.C.G.A. § 43-34-37(b)(1), when the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

- (A) Refuse to grant a license to an applicant;
- (B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the licensee;
- (C) Suspend any license for a definite period;
- (D) Limit or restrict any license;
- (E) Revoke any license; or
- (F) Condition the penalty, or withhold formal disposition, upon the physician's submission to the care, counseling, or treatment of physicians or other professional persons, and the completion of such care, counseling, or treatment, as directed by the board.

O.C.G.A. § 43-1-19(d) provides that when a state examining board finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not

be disclosed to any person except the licensee;

- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or
- (7) Impose a fine not to exceed \$500.00 for each violation.

COMPOSITE STATE BOARD
OF MEDICAL EXAMINERS

EDDIE R. CHEEKS, M.D.
President

COUNSEL:
AMELIA W. BAKER
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 657-5758