

FILE

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

**IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST
HUGH McFARLANE CASTELL, MD, RESPONDENT**

No. 02-95-081

INFORMAL SETTLEMENT

COMES NOW the Iowa Board of Medical Examiners (the Board) and Hugh McFarlane Castell, MD (the Respondent), and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into the following Informal Settlement of the contested case currently on file against the Respondent:

- 1) The Respondent was issued license number 17010 to practice medicine and surgery in Iowa on October 14, 1964.
- 2) A Statement of Charges was filed against the Respondent on September 19, 1996. The Statement of Charges awaits hearing.
- 3) The Board has jurisdiction over the parties and subject matter of the Statement of Charges.
- 4) The Respondent admits the allegations contained in the Statement of Charges.
- 5) Upon the Board's approval of this Informal Settlement, the Respondent shall surrender his Iowa medical license. The license surrender shall be pursuant to the provisions of

INFORMAL SETTLEMENT
Hugh McFarlane Castell, MD
No. 02-95-081

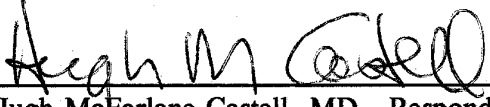
Iowa Code section 148.8. The Respondent shall forward the original license certificate to the Board office not more than ten (10) days following the Board's approval of this Informal Settlement.

6) Any petition filed by the Respondent seeking reinstatement of licensure shall be made pursuant to the provisions of Iowa Code section 148.9 and 653 IAC 12.50(36).

7) This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration. By entering into this Informal Settlement the Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to the terms of this Informal Settlement.


8) This Informal Settlement constitutes the resolution of a contested case proceeding and is subject to approval by the Board. If the Board does not approve this Informal Settlement it shall be of no force or effect to either party.

9) The Board's approval of this Informal Settlement shall constitute a **FINAL ORDER** of the Board.



Hugh McFarlane Castell, MD, Respondent

Subscribed and sworn to before me on 12/7/96 1996.

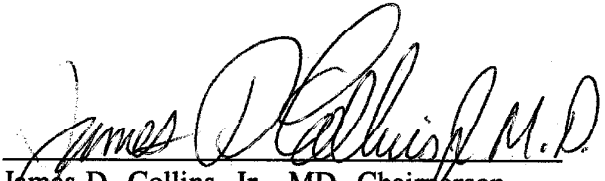


Notary Public, State of Washington
Theresa L. Arasin



INFORMAL SETTLEMENT
Hugh McFarlane Castell, MD
No. 02-95-081

This Informal Settlement is approved by the Board on 12/31, 1996.


James D. Collins, Jr., MD, Chairperson
Iowa Board of Medical Examiners

DMC/* 11-18-96

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BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

HUGH McFARLANE CASTELL, MD, RESPONDENT

No. 02-95-081

STATEMENT OF CHARGES

COMES NOW Ann M. Martino, PhD, Executive Director of the Iowa Board of Medical Examiners (the Board), on September, 19, 1996, and at the direction of the Board, files this Statement of Charges against Hugh McFarlane Castell, MD (the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. That James D. Collins, Jr., MD, Chairperson; Laura J. Stensrud, Vice Chairperson; Teresa A. Mock, MD, Secretary; James M. Caterine, MD; Eddie D. DeHaan, MD; Mary C. Hodges; Dale R. Holdiman, MD; Shirley A. Meisenheimer; Donna M. Norman, DO; and Allen J. Zagoren, DO, are the duly appointed, qualified and acting officers and members of the Board.

2. That the Respondent was issued license number 17010 to practice medicine and surgery in the State of Iowa on October 14, 1964.

3. That the Respondent's license is valid and will next expire on March 1, 1998.

4. That on or about December 9, 1994, the Respondent entered into a voluntary agreement with the medical licensing authorities of the state of Washington. The voluntary

STATEMENT OF CHARGES
Hugh McFarlane Castell, MD
No. 02-95-081

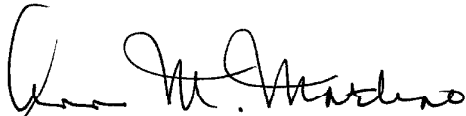
agreement resulted in restrictions being placed on the Respondent's state of Washington medical license. A copy of the agreement is attached as Exhibit A.

5. That the Board is authorized to take action against the Respondent pursuant to the provisions of section 148.12 of the 1995 Code of Iowa, which states in part:

148.12 - Voluntary agreements. The medical examiners, after due notice and hearing, may issue an order to revoke, suspend, or restrict a license to practice medicine and surgery ... if the medical examiners determine that a physician licensed to practice medicine and surgery ... has entered into a voluntary agreement to restrict the practice of medicine and surgery ... in another state ...

WHEREFORE the undersigned charges that pursuant to the provisions of section 148.12 of the 1995 Code of Iowa, the Board is authorized to revoke, suspend or restrict the Respondent's Iowa medical license. The undersigned prays that the Board enter an order fixing a time and place of hearing for the Statement of Charges. The undersigned further prays that upon final hearing, the Board enter its findings of fact and decision to revoke, suspend or restrict the Respondent's Iowa medical license, and for such other relief as the Board deems just in the premises.

IOWA BOARD OF MEDICAL EXAMINERS



Ann M. Martino, PhD, Executive Director
1209 East Court Avenue
Des Moines, IA 50319-0180
Phone 515-281-5171

DMC/* 09-16-96 a9\Castell2.CS

COPY

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of Disciplinary)	
Action Concerning)	NO. 94-03-0062MD
)	
)	STIPULATION AND
Hugh M. Castell, M.D.,)	RETIRED STATUS AGREEMENT
)	
Respondent.)	
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The Medical Quality Assurance Commission (formerly the Medical Disciplinary Board), by and through Ann Marie Neugebauer, Department of Health Staff Attorney, and Hugh M. Castell, M.D., Respondent, individually and by and through his counsel of record Amy Forbis, stipulate to the following:

I. PROCEDURAL STIPULATION

- 1.1 Hugh M. Castell, M.D., was a physician duly licensed to practice medicine and perform surgery in the State of Washington at all times relevant to this action.
- 1.2 On June 10, 1994, the Commission summarily suspended Respondent's license to practice in Washington pursuant to RCW 18.130.050(7) and issued a Statement of Charges regarding the professional practice of Respondent with respect to having sexual contact with a patient and failure to obey a prior Board order.

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RETIRED STATUS AGREEMENT - 1
(3000090.MDB - Replaces All Previous - 7/92)

ORIGINAL

Exhibit A

12-16-94 A-1

- 1.3 The Statement of Charges alleges that Respondent violated subparagraphs (1), (4), (9), (13), and (24) of RCW 18.130.180 and subparagraphs (1) and (11) of RCW 18.72.030.
- 1.4 Respondent understands that the State is prepared to proceed to a hearing upon the merits of the Statement of Charges.
- 1.5 Respondent understands that he has the right to defend himself against the allegations in the Statement of Charges by presenting evidence in his behalf at said hearing.
- 1.6 Respondent understands that, should the State in fact prove at hearing the allegations in the Statement of Charges, the Board has the power and authority to impose sanctions per RCW 18.130.160 and/or RCW 18.72.230.
- 1.7 Respondent and the Board agree to expedite the resolution of this matter by means of a Stipulation and Retired Status Agreement.
- 1.8 Respondent waives the opportunity for a hearing on the Statement of Charges and Order of Summary Suspension based on the entry of the following Retired Status Agreement.
- 1.9 Respondent acknowledges that said Stipulation and Retired Status Agreement is not binding unless and until it is accepted by the Medical Quality Assurance Commission.
- 1.10 Respondent acknowledges that should this Stipulation and Retired Status Agreement be accepted it will be subject to the reporting requirements of RCW 18.72.201 and/or 18.130.110 and interstate/national reporting including, but not limited to, the National Practitioner Data Bank per 45 CFR 60.

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1.11 WAIVER OF OBJECTION: Respondent is informed and understands that:

- a. At the presentation of the Stipulation and Retired Status Agreement the Commission may ask the parties for information regarding the facts of this case. The parties have the right to be present, ask and answer questions and make argument to the Commission regarding the appropriateness of the Stipulation and Retired Status Agreement.
- b. Respondent waives any objection to the participation on a hearing panel of all or some of the Commission members who hear the Stipulation presentation in the event that the Stipulation is rejected and this matter proceeds to a hearing.

II. STIPULATED FACTS

The Respondent does not contest that:

- 2.1 On or about December 17, 1993, respondent and the Board entered into a stipulation and agreed order (hereinafter "Board order") that resolved a statement of charges alleging sexual contact with several patients. Under paragraph 4.12 of the Board order, its effective date was no later than December 27, 1993.
- 2.2 From 1976 through March, 1994, respondent provided care and treatment for Patient No. 1, a female patient identified in the confidential statement attached to the Statement of Charges. Patient No. 1 was not a subject of the Board order; nor has the Department of Health previously charged respondent with unprofessional conduct concerning Patient No. 1.
- 2.3 From 1982 to October, 1993, respondent had a sexual relationship with Patient No. 1, consisting primarily of oral copulation in respondent's office. From October, 1993 thro

March, 1994, respondent and Patient No. 1 engaged in hugging and kissing in respondent's office.

2.4 Paragraph 4.2(d) of the Board order required the following:

Respondent shall videotape all sessions with female patients. The videotape controls shall be handled by a receptionist or other office worker from a remote location, other than in the room in which respondent provides therapy. All videotapes shall be archived until the Board performs a practice review. All videotapes shall be made available to the Board or its representative for the purposes of a practice review or compliance hearing.

2.5 Respondent either did not begin videotaping until February 14, 1994, or if he did begin videotaping before that date, he did not archive and save the videotapes as required by the Board order. Nevertheless, respondent was seeing female patients between the effective date of the Board order and February 14, 1994.

2.6 Although respondent saw Patient No. 1 almost on a daily basis from the effective date of the Board order through March, 1994. Respondent did not start videotaping Patient No. 1 until March 7, 1994.

2.7 Respondent did not have the videotape controls handled on a regular basis by his own office staff, but rather staff from a neighboring dentist's office.

2.8 Respondent engaged in hugging and kissing with Patient No. 1 off camera after he began videotaping her sessions in March, 1994. Respondent would either turn off the camera or engage the patient in the waiting room. Respondent specifically instructed Patient No. 1 not to request hugs on camera.

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2.9 Paragraph 4.2(e) of the Board order requires the following

Respondent shall provide written notice to all current and future female patients of the existence of and the restrictions imposed by this Board order. Each female patient shall sign a copy of the notice indicating that she has received and read the same. The signed copies shall be archived in a separate file from the patients ordinary charts and records and made available to the Board or its representative for the purposes of a practice review or compliance hearing.

2.10 Respondent saw Patient No. 2, a female patient identified on the confidential schedule attached to the Statement of Charges, on or about January 12, 1994, January 27, 1994, and March 15, 1994. The Department of Health conducted a practice review of respondent's practice on April 4, 1994. At that time, respondent had no signed notification sheet on file for Patient No. 2.

2.11 Respondent saw Patient No. 3, a female patient identified the confidential schedule attached to the Statement of Charges, on or about December 27, 1993 and January 3, 1994. The Department of Health conducted a practice review of respondent's practice on April 4, 1994. At that time, respondent had no signed notification sheet on file for Patient No. 3.

2.12 Respondent gave Patient No. 4, a female patient identified on the confidential schedule attached to the Statement of Charges, a prescription refill on or about February 14, 1994. The Department of Health conducted a practice review of respondent's practice on April 4, 1994. At that time, respondent had no signed notification sheet on file for Patient No. 4.

2.14 Respondent saw Patient No. 5, a female patient identified on the confidential schedule attached to the Statement of Charges, on or about January 27, 1994 and March 21, 1994. The Department of Health conducted a practice review of respondent's practice on April 4, 1994. The date on the patient notification sheet indicated that the patient did not sign it until March 21, 1994.

2.15 Respondent saw Patient No. 1 on almost a daily basis from the effective date of the Board order through March, 1994. The date on the notification sheet indicates that Patient No. 1 signed it on March 7, 1994.

2.16 Patient No. 1 contends that at the time respondent had her sign the notification sheet, he told her that it was a consent to videotape in order to allow another practitioner to view the tapes and consult with respondent about Patient's No. 1's multiple personality disorder. Patient No. 1 signed the notification without being aware of the Board order or its conditions.

III. STIPULATED CONCLUSIONS OF LAW

Based on the above Procedural and Factual Stipulations, the parties stipulate to the following Conclusions of Law:

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 The above facts, if proved at a hearing, constitute a commission of unprofessional conduct as defined by subparagraphs (1), (4), (9), (13) and (24) of RCW 18.130.180 and subsections (1) and (11) of RCW 18.72.030.

3.3 The above facts, if proved at a hearing, constitute ground for professional discipline under RCW 18.130.160 or RCW 18.72.230.

IV. RETIRED STATUS AGREEMENT

Respondent, Hugh Castell, M.D., hereby advises the Commission that he has retired from medical practice effective June, 1994 and that has no plans to resume practice.

In consideration for termination of Commission action, Respondent hereby agrees to the following:

- A. Respondent's retirement shall be permanent.
- B. If Respondent wishes to resume practice in this state, Respondent shall petition the Commission in writing. Respondent shall appear personally before the Commission, upon notice duly given, at which time evidence in support of, or in opposition to, the petition may be presented for the Commission's consideration. For the purposes of the petition, Respondent agrees to submit to a psychiatric and/or psychological examination by a physician or psychologist of the Commission's choice, and agrees to make those records, records from any litigation commenced by his patients against him (if requested by the Commission or its staff), and any or all records from his own health care providers, available to the Commission for review, at least 60 days prior to any hearing on reinstatement. The Medical Quality Assurance Commission has sole discretion to grant or deny Respondent's petition. If the Commission reinsta

Respondent's license, it may impose conditions it deems necessary to protect the public.

- C. Respondent may petition the Commission for permission to practice in this state no sooner than ten years from the date this Stipulation and Retired Status Agreement is signed by the Commission.
- D. Respondent shall notify the Commission if he plans to resume practice or apply for licensure in any other jurisdiction. The Commission may release any information relating to the current Commission action to the proper licensing authorities in any jurisdiction in which he plans to practice or in which he applies for licensure.
- E. The Commission may take action relating to this investigation, including issuing a Statement of Charges in this matter, if Respondent fails to comply with the terms of this Retired Status Agreement and Order.

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F. Respondent understands that pursuant to RCW 18.130.180(9) and RCW 18.130.050(14) a violation of this Retired Status Agreement and Order is grounds for disciplinary action under RCW 18.130.160 and other action under RCW 18.130.050.

V. DECLARATION

I, Hugh M. Castell, M.D., declare under penalty of perjury of the laws of the state of Washington that I have read the above Retired Status Agreement in its entirety; that my counsel of record, Amy Forbis, has fully explained the legal significance and consequences thereof; that I am under no constraints or undue influence; that I fully understand the provisions and in witness thereof I affix my signature this 9 day of ~~DECEMBER~~, 1994.


SEATTLE, WASHINGTON
City, State

Hugh M Castell
Hugh Castell, M.D., Respondent

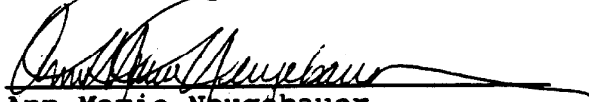
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II. ORDER

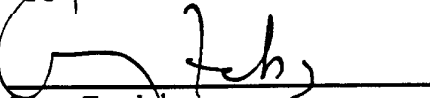
The Commission hereby accepts the Retired Status Agreement above. Respondent is ORDERED to comply with its terms. It is FURTHER ORDERED that the disciplinary proceedings are terminated. IT IS FURTHER ORDERED that this Retired Status Agreement and Order shall be reported pursuant to RCW 18.130.110, RCW 18.72.201, and interstate/national reporting requirements including, but not limited to, 45 CFR 60, the National Data Bank. It is FURTHER ORDERED that this Retired Status Agreement and Order shall become effective ten (10) days from the date it is signed by the Commission or upon service of the Agreement on the Respondent, which ever date is sooner.


J. S. ANSELL
PANEL Chair
Date: Dec. 16, 1994

Presented by:


Ann Marie Neugebauer
Department of Health Staff Attorney
WSBA #16395

Approved as to Form:


Amy Forbis
Attorney for Respondent
WSBA #13779


Hugh M. Castell, M.D.,
Respondent