

**BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the Matter of the Proposed Discipline of JAMES H. PEAK, M.D., License No. 7535.	Case No. 2011-MED-LIC-116 FINAL ORDER
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Based upon the Stipulation between Licensee and the Department, and good cause appearing therefor:

IT IS HEREBY ORDERED that the parties' stipulation is approved, adopted, incorporated, and made a part of, the Board's Final Order.

By a preponderance of the evidence,

THE BOARD ENTERS THE FOLLOWING FINDINGS OF FACT:

On December 7, 2011, Dr. Peak was convicted in the United States District Court of one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B), *United States of America vs. James A. Peak*, Case No. CR11-89-BLG-JBS. A copy of the United States Attorney's Offer of Proof and the Court's Judgment in a Criminal Case are attached as Exhibits

Final Order

In Re James H. Peak, M.D., Case No. 2011-MED-LIC-116

A and B, respectively.

This conduct amounts to unprofessional conduct.

Based on these findings of fact,

IT IS HEREBY ORDERED that James H. Peak, M.D. is adjudged to have violated statutes and regulations under the jurisdiction of the Montana Board of Medical Examiners warranting sanctions under Mont. Code Ann. § 37-1-312. Specifically, the Board concludes that James H. Peak, M.D. committed the following sanctionable violations:

Admin. R. Mont. § 24.156.625. The following is unprofessional conduct for a licensee or license applicant:

(1)(a): "Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending."

As required by Mont. Code Ann. § 37-1-312(2), the Board has first considered the sanctions that are necessary to protect and compensate the public. Having considered the concerns of the public, and the rehabilitation of the licensee,

THE BOARD ENTERS THE FOLLOWING ORDER:

A. Dr. Peak's license to practice medicine in Montana is indefinitely suspended. Mont. Code Ann. § 37-1-312(1)(b). As required by Mont. Code Ann. § 37-1-312(4). Dr. Peak will immediately tender his Montana medical license to:

LaVelle Potter, Compliance Specialist
Montana Board of Medical Examiners
PO Box 200513
Helena MT 59601-0513

B. Dr. Peak will not be eligible to petition for reactivation of his license for 2 years from the date of the Final Order.

C. To being eligible to petition the Board to lift the suspension and return to the active practice of medicine, Dr. Peak must have the advocacy of the

Final Order

Montana Professional Assistance Program, undergo all recommended evaluations, successfully complete all recommended treatment and be fully compliant with all resultant aftercare contracts.

D. Dr. Peak acknowledges and understands that he will be subject to lifetime supervision by the Montana Professional Assistance Program, or its successor, in order to practice medicine in the state of Montana.

E. Dr. Peak must scrupulously adhere to the terms of his Montana Professional Assistance Program Continuing Care Agreement as it may be amended from time-to-time in the professional judgment of the program or its successor. Any violation of this term shall be deemed a material breach of this stipulation and grounds for a new unprofessional conduct complaint under Mont. Code Ann. §37-1-316(8).

F. To be eligible to return to a restricted practice of medicine, Dr. Peak shall be required to petition the Board of Medical Examiners and present sufficient proofs and to comply with certain conditions as may be required by the Board in its discretion at the time of his petition for reinstatement.

G. Dr. Peak must make arrangements for the security and maintenance of patient records and provide a mechanism for timely responses to patients' requests for their records.

H. To petition for reinstatement in the future, Dr. Peak must, in the interim, regularly renew his license and comply with all continuing education requirements (if any) each year else his suspended license will terminate and he would not then be eligible for reinstatement in any circumstance and would have to apply for licensure as a new applicant.

DATED this 18 day of May, 2012.


Chair, Adjudication Panel
Board of Medical Examiners

CERTIFICATE OF SERVICE

I certify that I served a true and accurate copy of the fully executed *STIPULATION and FINAL ORDER* by U.S. mail, postage prepaid, upon the Licensee at the following address as follows:

James H. Peak, M.D.
2075 Foye Circle
Billings, MT 59102


AND

James H. Peak, 11410-046
FDC SEATAC
FEDERAL DETENTION CENTER
PO Box 13900
Seattle, WA 98198

And by hand delivery upon Department Counsel:

Michael L. Fanning
Special Assistant Attorney General
DEPARTMENT OF LABOR AND INDUSTRY
Office of Legal Services
301 South Park Avenue
PO Box 200513
Helena, MT 59620-0513

DATED this 24th day of May, 2012.



Department of Labor and Industry

MARCIA HURD
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**ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

**UNITED STATES OF
AMERICA,**

Plaintiff,

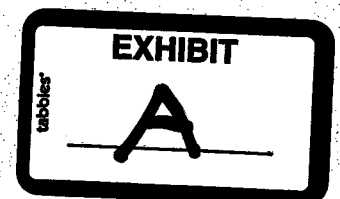
vs.

JAMES H. PEAK,

Defendant.

CR 11-89-BLG-JDS

OFFER OF PROOF



Plaintiff, United States of America, by and through its counsel of record, Marcia Hurd, Assistant U.S. Attorney for the District of Montana, hereby files its Offer of Proof.

THE CHARGE

The defendant, James Peak, is charged by Information with Possession of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B).

PLEA AGREEMENT

There is a plea agreement in this case; Peak will plead guilty to the Information as charged.

ELEMENTS OF THE CHARGE TO WHICH HE WILL PLEAD

In order for the defendant to be found guilty of the charge of Possession of Child Pornography, as charged in the Information, in violation of 18 U.S.C. § 2252A(a)(5)(B), the United States must prove each of the following elements beyond a reasonable doubt:

First, that defendant knowingly possessed any material which defendant knew contained visual depictions of minors engaged in sexually explicit conduct;

Second, defendant knew the visual depictions contained in the material contained minors engaged in sexually explicit conduct;

Third, defendant knew that production of such visual depictions involved use of minor in sexually explicit conduct; and

Fourth, that each visual depiction had been either

- (a) mailed or shipped or transported in interstate or foreign commerce by any means, including by computer, or
- (b) produced using material that had been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer.

PENALTY

The charge in the Information carries a penalty of 10 years imprisonment, \$250,000 fine, and five years up to lifetime supervised release.

ANTICIPATED EVIDENCE

If this case were tried in United States District Court, the United States would prove the following:

In February of 2011, James Peak contacted the Billings FBI office to report that he had received a mailing offering child pornography for sale. The FBI relayed Peak's contact information to U.S. Postal Inspector Wes Beaty, who made arrangements to meet with Peak in Billings to discuss the matter. During that interview, Peak admitted

that he had a collection of child pornography and child erotica in movie format at his residence in Billings that he had received via the U.S. mail and that it was an interest he had fought for many years. Peak described how he basically led one life at work and a separate life at home; how he would collect and then destroy that collection numerous times over the years; and how he was relieved to finally be able to talk to someone about it. Peak consented to a search of his residence and was extremely helpful in identifying and collecting all the items, including printing credit card statements which confirmed his purchases of the offending movies.

Agent Beaty reviewed all of the items turned over by Peak and found numerous movies that he had ordered that contained passages of child pornography. While the passages did satisfy the definition of child pornography, the child pornography was not of the graphic nature found in most cases. Further, there was absolutely nothing on his computer, and no evidence that Peak had used the internet to look for or save any child pornography.

Following his interview, Peak voluntarily surrendered his medical license, notified the hospital and clinic, and immediately entered and

successfully completed a 90-day inpatient treatment program in Texas. While in treatment, Peak passed a polygraph examination confirming that he had not engaged in any hands-on conduct with children. Within a day of his return, Peak enrolled in sexual offender treatment in Billings, and is currently attending regular AA and Sex Addicts Anonymous meetings.

The testimony and evidence at trial would include that of law enforcement agents and forensic examiners, as well as the child pornography images and movies themselves.

DATED this 15th day of August, 2011.

MICHAEL W. COTTER
United States Attorney

/s/ Marcia Hurd
MARCIA HURD
Assistant U.S. Attorney
Attorney for Plaintiff

UNITED STATES DISTRICT COURT FILED BILLINGS DIV.

Billings Division, District of Montana 2011 DEC 8 PM 1 22

UNITED STATES OF AMERICA)

v.)

JAMES H. PEAK)

JUDGMENT IN A CRIMINAL CASE

PATRICK E. DUFFY, CLERK

BY

Case Number: CR-11-89-BLG-JDS-01

USM Number: 11410-046

Jay Lansing

Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) 1 of Information

pleaded nolo contendere to count(s)

which was accepted by the court.

was found guilty on count(s)

after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:2252A(a)(5)(B)	Possession of child pornography	February 2011	1 of Information

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) is are dismissed on the motion of the United States.

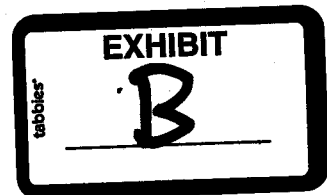
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 7, 2011 Date of Imposition of Judgment

Signature of Judge

Jack D. Shanstrom, Senior U.S. District Judge Name and Title of Judge

December 8, 2011 Date



DEFENDANT: James H. Peak
CASE NUMBER: CR-11-89-BLG-JDS-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

12 months and one day.

The court makes the following recommendations to the Bureau of Prisons:
That defendant be designated to a federal facility that offers mental health and sex offender treatment and that defendant participate in such treatment due to the nature of the offense.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: James H. Peak
CASE NUMBER: CR-11-89-BLG-JDS-01

Judgment—Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
Lifetime.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: James H. Peak
CASE NUMBER: CR-11-89-BLG-JDS-01

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, the defendant shall not commit any Federal, state, or local crime, and shall not possess a controlled substance. The defendant shall be prohibited from owning, using, or being in constructive possession of firearms, ammunition, or other destructive devices while on supervision and any time after the completion of the period of supervision unless granted relief by the Secretary of the Treasury. The defendant shall cooperate in the collection of DNA as directed by the United States Probation Officer. The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act.

Further, the defendant shall comply with the standard conditions of supervised release as recommended by the United States Sentencing Commission, and which have been approved by this Court. The defendant shall also comply with the following special condition(s):

1. The defendant shall submit his person, residence, place of employment, or vehicle, to a search, conducted by a United States Probation Officer, based on reasonable suspicion of contraband or evidence in violation of a condition of release. Failure to submit to search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to the condition.
2. The defendant shall participate in substance abuse testing, to include not more than 104 urinalysis tests and not more than 104 breathalyzer tests annually during the period of supervision. The defendant is to pay all or part of the costs of testing as determined by the United States Probation Officer.
3. The defendant shall participate in and complete a program of substance abuse treatment as approved by the United States Probation Office, until the defendant is released from the program by the probation officer. The defendant is to pay part or all of the cost of this treatment, as determined by the United States Probation Officer.
4. The defendant shall enter and complete a sex offender treatment program as directed by and until released by the United States Probation Office. The defendant shall abide by the policies of the program to include physiological testing. The defendant is to pay all or part of the costs of treatment as directed by United States Probation.
5. The defendant shall not be allowed to do the following without prior written approval of United States Probation: reside in the home, residence, or be in the company of any child under the age of 18; go to or loiter near school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18; or date or socialize with anybody who has children under the age of 18.
6. The defendant shall not possess or use any computer or other device with access to any on-line computer service without the prior written approval of the probation officer. The defendant shall allow the probation officer to make unannounced examinations of his computer, hardware, and software, which may include the retrieval and copying of all data from his computer. The defendant shall allow the probation officer to install software to restrict the defendant's computer access or to monitor the defendant's computer access. The defendant shall not possess encryption or steganography software. The defendant shall provide records of all passwords, Internet service, and user identifications (both past and present) to the probation officer and immediately report changes. The defendant shall sign releases to allow the probation officer to access phone, wireless, Internet, and utility records.
7. The defendant shall comply with Sexual Offender Registration requirements for convicted offenders in any state in which the defendant resides.
8. The defendant shall submit his person, and any property, house, residence, place of employment, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, to a search at a reasonable time and a reasonable manner, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervision or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
9. The defendant shall not possess camera phones or electronic devices that could be used for covert photography.
10. All employment must be approved in advance in writing by the United States Probation Office. The defendant shall consent to third-party disclosure to any employer or potential employer.
11. The defendant shall not possess any materials depicting sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A)(i)-(v), including visual, auditory, telephonic, or electronic media, and computer programs or services. He shall not patronize any place where such material or entertainment is available. The defendant shall not utilize 900 or adult telephone numbers or any other sex-related numbers.
12. The defendant shall allow the probation officer, at any reasonable time, to make periodic unannounced examinations of his computer, hardware, and software, which may include the retrieval and copying of all data from his computer.
13. The defendant shall maintain a complete, current inventory of his computer access, including but not limited to any bills pertaining to computer access, telephone bills used for modem access, or other charges accrued in the use of a computer, and submit those documents whenever requested by the probation officer.
14. The defendant shall not possess encryption or steganography software.
15. The defendant shall consent to third-party disclosure to any employer or potential employer concerning any computer-related restrictions that are imposed upon him, unless excused by the probation officer.
16. The defendant shall provide a complete record of all passwords, Internet service providers, and user identifications (both past and present) to the probation officer and shall not make any changes without the prior approval of the probation officer.
17. The defendant shall submit all monthly Internet service bills to the probation officer and shall sign the necessary consent form to allow the probation officer to access Internet service provider records.
18. The defendant shall not use or have installed any programs specifically and solely designed to encrypt data, files, folders, or volumes on any media. The defendant shall, upon demand, immediately provide the probation officer with any and all passwords required to access data compressed or encrypted for storage by any software.
19. The defendant shall sign the necessary consent form to allow the probation officer to verify utility and telephone access (services) and bills (both past and present) to his residence.
20. The defendant shall allow the probation officer to install, at any reasonable time, on his computer, or any computer used by him (except a computer owned by his employer and not located in his residence), filtering software to prevent him from having access to prohibited web sites. The defendant shall not attempt to remove or otherwise defeat such systems and shall allow the probation officer to examine such computer and receive data from it at any reasonable time.
21. The defendant shall allow the probation officer to install, at any reasonable time, on any computer used by him (except a computer owned by his employer and not located in the defendant's residence), any hardware or software systems to monitor his computer use and to examine the data and software applications and to retrieve data from such activities.
22. The defendant shall not possess or use any computer or other device with access to any on-line computer service without the prior approval of the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private computer network. The defendant shall not have access to a modem during his term of supervision without the prior approval of the probation officer.
23. The defendant shall not purchase, possess, use, distribute or administer marijuana, or obtain or possess a medical marijuana card or prescription. This condition supersedes standard condition number 7 with respect to marijuana only.

DEFENDANT: James H. Peak
 CASE NUMBER: CR-11-89-BLG-JDS-01

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
TOTALS	\$ 100.00		\$		\$

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____
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- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: James H. Peak
CASE NUMBER: CR-11-89-BLG-JDS-01

Judgment — Page 6 of 6

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
Payment of criminal monetary penalties are due during imprisonment at the rate of not less than \$25.00 per quarter, and payment shall be through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk, United States District Court, Federal Building, Room 5405, 316 North 26th St., Billings, MT 59101.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

RECEIVED
MONTANA
BUSINESS STANDARDS

**BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the Matter of the Proposed Discipline of JAMES H. PEAK, M.D., License No. 7535.	Case No. 2011-MED-LIC-116 STIPULATION
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The Business Standards Division of the Department of Labor and Industry of the state of Montana (Department), through its legal counsel, Michael L. Fanning and James H. Peak, M.D. (Licensee), stipulate and agree as follows:

STIPULATION

1. *Montana Licensure.* Licensee is licensed as a medical doctor by the state of Montana Board of Medical Examiners, holding Montana license 7535, which is currently inactive.

Licensee's license will expire on March 31, 2013.

2. *Board's Duty.* The Montana Board of Medical Examiners has a statutory obligation to protect the public health, welfare and safety under Mont. Code Ann. §§ 37-1-131, 37-1-307, and Admin. R. Mont. § 24.156.625.

3. *Jurisdiction and Waiver of Contested Case Hearing Rights.* Licensee admits the jurisdiction of the Board of Medical Examiners over the subject matter of the above-entitled proceeding. Licensee desires to avoid unnecessary expenditure of time and other valuable resources in resolving the issues in this action. Therefore, Licensee specifically and affirmatively waives a contested case hearing and all rights to appeal under the Montana Administrative Procedure Act, and elects to resolve this matter on the terms and conditions set forth in this stipulation.

4. *Voluntary Action.* Licensee acknowledges that Licensee has read and understands each term of this Stipulation and the Notice of Proposed Board Action issued in this matter. Licensee acknowledges that Licensee enters into this Stipulation voluntarily, and without reservation. Licensee acknowledges that no promise, other than those contained in this stipulation, and no threat has been made by the Department or by any member, officer, agent or representative of the Department to induce Licensee to enter into this Stipulation. Further, Licensee specifically acknowledges that he understands that he has a right to legal counsel in this matter and affirmatively waives that right and chooses to proceed without an attorney.

5. *Department's Contentions and Respondent's Admissions.* The Department contends as set forth in the Assertion of Facts section of the *Notice of Proposed Board Action and Opportunity for Hearing*. In digest form, those assertions of fact allege that on December 7, 2011, Dr. Peak was convicted in the United States District Court of one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B), *United States of America vs. James A. Peak*, Case No. CR11-89-BLG-JBS. A copy of the United States Attorney's Offer of Proof and the Court's Judgment in a Criminal Case are attached as Exhibits A and B, respectively.

Stipulation

Licensee admits the facts alleged in this paragraph and acknowledges those facts support disciplinary action by the Board pursuant to Admin. R. Mont. §24.156.625(1)(a).

6. *Final Compromise and Settlement.* The Department and the Licensee agree that this Stipulation shall be a final compromise and settlement of grounds for discipline as a result of Licensee's conduct.

7. *Incorporation into Final Order.* The Department and the Licensee agree that this Stipulation shall be incorporated and made a part of the Final Order issued by the Montana Board of Medical Examiners.

8. *Public Documents and Reportability.* The Department and the Licensee agree that this stipulation and the attached Final Order are public documents. Licensee understands that this disciplinary action will be reported to data banks as required by law.

9. *Agreed Sanction.* The parties agree that the Board's Adjudication Panel should enter a Final Order consistent with the following:

A. Dr. Peak's license to practice medicine in Montana is indefinitely suspended. Mont. Code Ann. § 37-1-312(1)(b). As required by Mont. Code Ann. § 37-1-312(4). Dr. Peak will immediately tender his Montana medical license to:

LaVelle Potter, Compliance Specialist
Montana Board of Medical Examiners
PO Box 200513
Helena MT 59601-0513

B. Dr. Peak will not be eligible to petition for reactivation of his license for 2 years from the date of the Final Order.

C. To being eligible to petition the Board to lift the suspension and return to the active practice of medicine, Dr. Peak must have the advocacy of the Montana Professional Assistance Program, undergo all recommended evaluations,

Stipulation

successfully complete all recommended treatment and be fully compliant with all resultant aftercare contracts.

D. Dr. Peak acknowledges and understands that he will be subject to lifetime supervision by the Montana Professional Assistance Program, or its successor, in order to practice medicine in the state of Montana.

E. Dr. Peak must scrupulously adhere to the terms of his Montana Professional Assistance Program Continuing Care Agreement as it may be amended from time-to-time in the professional judgment of the program or its successor. Any violation of this term shall be deemed a material breach of this stipulation and grounds for a new unprofessional conduct complaint under Mont. Code Ann. §37-1-316(8).

F. To be eligible to return to a restricted practice of medicine, Dr. Peak shall be required to petition the Board of Medical Examiners and present sufficient proofs and to comply with certain conditions as may be required by the Board in its discretion at the time of his petition for reinstatement.

G. Dr. Peak must make arrangements for the security and maintenance of patient records and provide a mechanism for timely responses to patients' requests for their records.

H. To petition for reinstatement in the future, Dr. Peak must, in the interim, regularly renew his license and comply with all continuing education requirements (if any) each year else his suspended license will terminate and he would not then be eligible for reinstatement in any circumstance and would have to apply for licensure as a new applicant.

10. *Inadmissibility.* In the event the Board of Medical Examiners, in its discretion, does not approve this settlement, this Stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Licensee agrees that should the Board reject this Stipulation, and if this case proceeds to hearing, Licensee will assert no claim that the Board of Medical Examiners was prejudiced by its review and discussion of this Stipulation or of any records relating to this stipulation.

Stipulation

Note: This agreement is subject to final approval by the Montana Board of Medical Examiners.



Michael L. Fanning
Department Counsel
Montana Board of Medical Examiners

Apr 13, 2012
DATE



James H. Peak, M.D.
Licensee

4/9/12
DATE

Stipulation

In Re James H. Peak, M.D., Case No. 2011-MED-LIC-116

Michael L. Fanning
Special Assistant Attorney General
DEPARTMENT OF LABOR & INDUSTRY
Office of Legal Services
301 South Park Avenue
PO Box 200513
Helena, MT 59620-0513
Telephone: (406) 841-2054
Fax: (406) 841-2313
E-mail: *mfanning@mt.gov*

**BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the Matter of the Proposed Discipline of JAMES H. PEAK, M.D., License No. 7535.	Case No. 2011-MED-LIC-116 NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING
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TO: James H. Peak, M.D.
2075 Foye Circle
Billings, MT 59102

James H. Peak, 11410-046
FDC SEATAC
FEDERAL DETENTION CENTER
PO Box 13900
Seattle, WA 98198

PLEASE TAKE NOTICE THAT:

On May 20, 2011, August 19, 2011, and January 20, 2012, the Screening Panel of the Montana Board of Medical Examiners (Screening Panel) of the state of Montana considered the complaint against James H. Peak, M.D., in Case No. 2011-MED-LIC-116. The Screening Panel reviewed documentation regarding the above disciplinary action and found reasonable cause to believe that James H. Peak, M.D. has violated a statute or rule justifying disciplinary sanctions to be imposed against its Montana license. The Board of Medical Examiners (Board) has such

authority pursuant to Mont. Code Ann. §§37-1-307, 37-1-316, and Admin. R. Mont. §24.156.625.

The Screening Panel has reason to believe that James H. Peak, M.D. committed one or more of the following violations of the Montana Code Annotated and the Montana Administrative Regulations:

Admin. R. Mont. § 24.156.625 In addition to those forms of unprofessional conduct defined in 37-1-316 , MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 3, MCA:

(1)(a): "Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending."

THEREFORE, pursuant to Mont. Code Ann. § 37-1-307, the Board proposes to impose against you one or more of the sanctions authorized under Mont. Code Ann. § 37-1-312.

REASONS FOR ACTION

There is reasonable cause to believe that the following assertions will be proven and will justify the imposition of sanctions against the license of James H. Peak, M.D.

FACTUAL ASSERTIONS

1. James H. Peak, M.D. is licensed by the Montana Board of Medical Examiners to practice as a medical doctor, holding Montana license 7535, which is currently inactive.

Licensee's license will expire on March 31, 2013.

2. On February 17, 2011, the Board of Medical Examiners' Board office received correspondence from Mark Rumans, M.D., Physician in Chief of the Billings Clinic, informing the Board that it had indefinitely suspended Dr. Peak's privileges at Billings Clinic as of

February 10, 2011, due to “an addiction disorder and possessing illicit materials.” Dr. Rumans followed-up with a second letter dated March 11, 2011, advising “Dr. Peak remains on an indefinite leave.”

3. In response to those reports, staff prepared a Board-generated complaint against Dr. Peak. The complaint was sent to Dr. Peak and he responded to the complaint on March 31, 2011. Dr. Peak stated that he was referred to Michael Ramirez of the Montana Physicians Assistance Program (MPAP). At the time of his response, Dr. Peak was currently under a MPAP contract and was undergoing inpatient treatment at the Sante’ Center for Healing in Texas.

4. On May 20, 2011, the Screening Panel reviewed the complaint and response. Michael Ramirez was present. Mr. Ramirez confirmed that on February 18, 2011, Dr. Peak was referred for extended residential evaluation and treatment at the Sante’ Center for Healing where he was making progress. Mr. Ramirez also stated that he did not believe the Sante’ Center's report would be available for review by the Panel until at least July. Dr. Peak agreed to sign a formal “no practice agreement” with MPAP, barring his return to the practice of medicine without MPAP approval. The Screening then moved to table the complaint until the Sante’ Center's report was available.

5. Board staff received notice from the Billings Clinic on June 20, 2011, that effective April 28, 2011, Dr. Peak had resigned from the Billings Clinic.

6. This matter was then placed on the agenda for the August 19, 2011 Screening Panel. Michael Ramirez, MPAP, was present. Mr. Ramirez reported that Dr. Peak intended to plead guilty to a felony count of possession of child pornography, but sentencing had not occurred. The Screening Panel moved to table the complaint until there was a criminal judgment and the full report from Sante’ Center was available.

7. The matter returned to the Screening Panel on January 20, 2012. By that time, the Panel had collected the Sante' Center report and records from Dr. Peak's criminal prosecution. By information dated August 15, 2011, the United States Attorney charged Dr. Peak with one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B), *United States of America vs. James A. Peak*, Case No. CR11-89-BLG-JBS. Also on August 15, 2011, the government filed an Offer of Proof. The government's offer of proof provided:

In February of 2011, James Peak contacted the Billings FBI office to report that he had received a mailing offering child pornography for sale. The FBI relayed Peak's contact information to U.S. Postal Inspector Wes Beaty, who made arrangements to meet with Peak in Billings to discuss the matter. During that interview, Peak admitted that he had a collection of child pornography and child erotica in movie format at his residence in Billings that he had received via the U.S. mail and that it was an interest he had fought for many years. Peak described how he basically led one life at work and a separate life at home; how he would collect and then destroy that collection numerous times over the years; and how he was relieved to finally be able to talk to someone about it. Peak consented to a search of his residence and was extremely helpful in identifying and collecting all the items, including printing credit card statements which confirmed his purchases of the offending movies.

Agent Beaty reviewed all of the items turned over by Peak and found numerous movies that he had ordered that contained passages of child pornography. While the passages did satisfy the definition of child pornography, the child pornography was not of the graphic nature found in most cases. Further, there was absolutely nothing on his computer, and no evidence that Peak had used the internet to look for or save any child pornography.

Following his interview, Peak voluntarily surrendered his medical license, notified the hospital and clinic, and immediately entered and successfully completed a 90-day inpatient treatment program in Texas. While in treatment, Peak passed a polygraph examination confirming that he had not engaged in any hands-on conduct with children. Within a day of his return, Peak enrolled in sexual offender treatment in Billings, and is currently attending regular AA and Sex Addicts Anonymous meetings.

Offer of Proof, p. 3-5.

8. Following his sentencing on December 7, 2011, Board staff obtained a copy of the United States District Court's Judgment in a Criminal Case. The court adjudged Dr. Peak

guilty of one count of possession of child pornography and ordered him imprisoned for one year and a day with a recommendation for placement in a facility offering mental health and sex offender treatment. Upon his release from prison, Dr. Peak will be placed on lifetime supervised release subject to: a prohibition from possessing weapons, submission of a DNA sample, and compliance "with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et. seq.*) . . . or any state sex offender registration agency in which he . . . resides . . . or was convicted" Further, Dr. Peak will be subject to a lengthy list of standard conditions of supervision and special conditions of supervision.

9. At the January 20, 2012, meeting, the Screening Panel found reasonable cause to believe one or more statutes and rules were violated and moved to initiate disciplinary action against Dr. Peak's Montana medical license. Accordingly, the Screening Panel of the Board of Medical Examiners directed that this formal *Notice of Proposed Board Action and Opportunity for Hearing* be served upon James H. Peak, M.D. pursuant to Mont. Code Ann. § 37-1-309.

ASSERTIONS OF LAW

The following is unprofessional conduct for a licensee or license applicant:

* * *

Admin. R. Mont. § 24.156.625(1)(a): "Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending."

As a result of the above information, the Screening Panel of the Board of Medical Examiners heard the above matter, determined that there is reasonable cause to believe that James H. Peak, M.D. violated a statute or rule justifying disciplinary sanctions to be imposed against his Montana license, and moved to serve this formal *Notice of Proposed Board Action and Opportunity for Hearing*.

UNIFORM PROFESSIONAL LICENSING AND REGULATION PROCEDURE

You are advised that the law provides:

Mont. Code Ann. § 37-1-309 Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to Mont. Code Ann. § 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within thirty days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. **A request for a hearing must be in writing and received in the offices of the department within twenty days after the licensee's receipt of the notice.** Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

Mont. Code Ann. § 37-1-312 Sanctions -- stay --costs --stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
- (b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of Mon. Code Ann. § 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

Mont. Code Ann. § 2-4-631(3) Licenses. Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and

incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

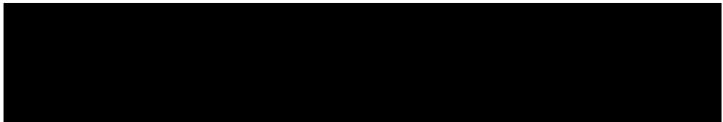
STATEMENT OF RIGHTS

You are entitled to a hearing, promptly instituted and determined, as provided for by the Montana Administrative Procedure Act (Mont. Code Ann. § 2-4-601, and following, including Mont. Code Ann. § 2-4-631) and by Mont. Code Ann. § 37-1-121(1). You have a right to be represented by an attorney at such hearing and during related proceedings. *If you desire to have a hearing and to resist the proposed action taken under the jurisdiction of the Board, you must so advise Becky Carter, Compliance Unit Supervisor, Business Standards Division, Department of Labor and Industry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, in writing within TWENTY DAYS of your receipt of this notice.*

POSSIBILITY OF DEFAULT

Failure to give notice or to advise the Board of your request for a hearing within the time specified will result in the entry of a default order pursuant to Mont. Code Ann. § 37-1-309, and the Board may enter a decision on the basis of the facts available to it without additional prior notice to you.

DATED this 4th day of April 2012.


Michael L. Fanning
Special Assistant Attorney General
DEPARTMENT OF LABOR & INDUSTRY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing *NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING* was sent by certified mail # 7003 1010 0000 9239 1857, postage prepaid, to the Licensee at the following address as follows:

James H. Peak, M.D.
2075 Foye Circle
Billings, MT 59102

AND sent by certified mail # 7003 1010 0000 9239 1864, postage prepaid, to the Licensee at the following address as follows:

James H. Peak, 11410-046
FDC SEATAC
FEDERAL DETENTION CENTER
PO Box 13900
Seattle, WA 98198

DATED this 4th day of April 2012.



Department of Labor and Industry