

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:)	
)	
Jerry Richard Lithman, MD,	)	CONSENT ORDER
)	
Respondent)	

This matter is before the North Carolina Medical Board ("Board") on information and belief that Jerry Richard Lithman, M.D. ("Dr. Lithman"), committed unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) by failing to conform to the accepted and prevailing standards of medical practice. Dr. Lithman admits and the Board finds and concludes that:

Whereas the Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Article 1 of Chapter 90 of the North Carolina General Statutes and the rules and regulations promulgated thereto; and

Whereas Dr. Lithman is a physician licensed by the Board on or about October 15, 1988, license number 33084; and

Whereas, at the times relevant hereto, Dr. Lithman practiced psychiatry in Durham, North Carolina; and

Whereas the Board conducted an investigation of Dr. Lithman's prescribing to Patient A including a report from the

North Carolina Controlled Substance Reporting Service ("NCCSRS") showing 117 separate entries for Patient A over a period of 16 months, with prescriptions for Diazepam, Hydrocodone, Oxycodone, Oxycodone ER, Temazepam, Alprazolam and Tussionex liquid; and

Whereas the Board submitted the medical records reflecting Dr. Lithman's documented diagnosis and treatment of Patient A to an outside reviewing expert; and

Whereas the outside reviewing expert opined that Dr. Lithman's diagnosis, treatment and documentation of Patient A failed to conform to the standards of acceptable and prevailing medical practice in that Dr. Lithman: (1) failed to document the utilization of safeguards such as urine drug screens to monitor patient compliance to minimize the potential for the abuse and diversion of controlled substances; (2) failed to document assessment of liver function tests to rule out acetaminophen-induced liver toxicity; (3) significantly escalated Patient A's opioid treatment without documentation of the reason for escalation; and (4) prescribed overlapping refills of opioids to Patient A without documentation for the reason for early renewal of the prescriptions; and

Whereas, as a result of concerns addressed by the reviewing expert, the Board obtained the records of four additional patients of Dr. Lithman (referred to herein as Patients B

through E) and submitted those records to a second reviewing expert; and

Whereas the second reviewing expert opined that Dr. Lithman's failed to provide legible and adequate documentation to support the diagnosis and treatment of Patients B through E in violation of the standards of acceptable and prevailing medical practice; and

Whereas the second reviewing expert retained by the Board also opined that Dr. Lithman's individual medications prescribed to Patients B through E appeared to be properly dosed in each case; and

Whereas the second expert reviewer also noted on multiple occasions that they were unable to determine a course of treatment due to poor legibility and limited quantity of patient progress notes, and obtained a majority of information from notes other than those documented by Dr. Lithman.

Whereas Dr. Lithman's conduct, as alleged above, constitutes unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession within the meaning of N.C. Gen. Stat. § 90-14(a)(6), which is grounds for the Board to annul, suspend, revoke,

condition, or limit Dr. Lithman's license to practice medicine and surgery issued by the Board; and

Whereas Dr. Lithman contends that his care for the above described patients was appropriate and consistent with applicable standards of care or practice; however, Dr. Lithman acknowledges that the Board has evidence from which it could conclude otherwise; and

Whereas Dr. Lithman acknowledges and agrees that the Board has jurisdiction over him and over the subject matter of this case; and

Whereas Dr. Lithman knowingly waives his right to any hearing and to any judicial review or appeal in this case; and

Whereas Dr. Lithman acknowledges that he has read and understands this Consent Order and enters into it voluntarily; and

Whereas Dr. Lithman desires to resolve this matter without the need for more formal proceedings; and

Whereas the Board has determined that it is in the public interest to resolve this case as set forth below;

Now, therefore, with Dr. Lithman's consent, it is ORDERED that:

1. Dr. Lithman is hereby REPRIMANDED for the above described conduct concerning documentation of care.

2. Dr. Lithman's license to practice medicine is placed on PROBATION for SIX (6) MONTHS with the following conditions:

a. Within six (6) months of the date of this Consent Order, Dr. Lithman shall attend a course addressing medical record keeping and identification and evaluation of potential signs of patient abuse or patient misconduct conduct. Dr. Lithman shall request approval by the Board's Medical Director of the course prior to attending the course. Additionally, Dr. Lithman shall submit proof of completion of the required course within thirty (30) days of completing the course to the Compliance Department of the Board.

b. Within four months of executing this Consent Order, Dr. Lithman shall engage a physician ("Preceptor") with appropriate qualifications to review Dr. Lithman's medical records for patients he is treating with narcotic medication for psychiatric issues and chronic pain. The Preceptor selected for this role must be approved in writing by the Medical Director of the Board prior to beginning the review process. Dr. Lithman shall meet with this Preceptor a minimum of two times each month to discuss his diagnosis, treatment and documentation of patients he is treating with narcotic medication for psychiatric issues

and chronic pain. The Preceptor shall each month review and evaluate a minimum of ten (10) patient interactions of patients he is treating with narcotic medication for psychiatric issues and chronic pain. The patients to be reviewed are to be selected by the Preceptor after Dr. Lithman provides a list of all patients he treated the preceding month with narcotic medication for chronic pain obtained from the North Carolina Controlled Substance Reporting Service. Dr. Lithman will provide the Preceptor with the patient charts for the ten patients selected by the Preceptor. The Preceptor shall every two months, for a period of six months, submit to the Board's Compliance Department a report summarizing his or her review of the prescribing and documentation practices of Dr. Lithman.

c. Dr. Lithman shall comply with the Board's Position Statement titled, "Medical Record Documentation".

d. Dr. Lithman shall comply with the Board's Position Statement titled, "Policy for the Use of Controlled Substances for the Treatment of Pain".

e. Dr. Lithman shall comply with the Board's Joint Position Statement titled, "Joint Statement on Pain Management and End-of-Life Care".

f. If he has not done so already Dr. Lithman shall register with the North Carolina Controlled Substance Reporting Service.

3. At the end of Dr. Lithman's probationary term, Dr. Lithman shall meet with the Board or members of the Board at any times requested by the Board.

4. Dr. Lithman shall obey all laws. Likewise, he shall obey all rules or regulations involving the practice of medicine.

5. Dr. Lithman shall notify the Board in writing of any change in his residence or practice addresses within ten (10) days of the change.

6. This Consent Order shall take effect immediately upon its execution by both Dr. Lithman and the Board and it shall continue in effect until specifically ordered otherwise by the Board.

7. Dr. Lithman hereby waives any requirement under any law or rule that this Consent Order be served on him.

8. Dr. Lithman acknowledges and agrees that failure to comply with any of the terms of this Consent Order shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be grounds for the Board to summarily suspend Dr. Lithman's license to practice medicine or,

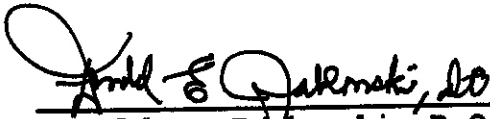
after any required notice and hearing, for the Board to annul, suspend, or revoke his license, or to deny any application he might make in the future or then have pending for a license, or to activate the suspension of his license for the length of time specified in this Consent Order.

9. No provision, finding, or admission of this consent order shall constitute an admission or finding for any purpose other than for this and any other proceeding before the North Carolina Medical Board.

10. Upon execution by Dr. Lithman and the Board, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof. Additionally, it will be reported to persons, entities, agencies, and clearinghouses, as required and permitted by law, including but not limited to the National Practitioners Data Bank and the Health Integrity and Protection Data Bank.

By Order of the North Carolina Medical Board this the 15th,
October,
day of ~~September~~, 2010.

NORTH CAROLINA MEDICAL BOARD

By: 
Donald E. Jablonski, D.O.
President

October 9

Consented to this the 12 day of ~~September~~, 2010.

[Signature]

Jerry Richard Lithman, M.D.

State of North Carolina

County of Guilford

I, David M Lane, a Notary Public for the above named County and State, do hereby certify that Jerry Richard Lithman, M.D., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal
This the 12 day of ~~September~~, 2010.
October 9

David M Lane

Notary Public

(SEAL)

My Commission expires: 11-16-2013



BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:)	
	)	ORDER OF PARTIAL SUMMARY
Jerry Richard Lithman, M.D.,	)	SUSPENSION OF LICENSE
	)	(N.C. Gen. Stat. § 150B-3(c))
Respondent.)	

This matter is before the North Carolina Medical Board ("Board") pursuant to N.C. Gen. Stat. § 150B-3(c) and upon information that Jerry Richard Lithman, M.D. ("Dr. Lithman") committed unprofessional conduct, by his departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession and that he is unable to practice medicine safely because of his failure to conform to the standards of the medical professional, specifically the prescribing of controlled substances. In support of this Order of Partial Summary Suspension of License, the Board finds the following:

1. During the times relevant herein, Dr. Lithman practiced psychiatry in Durham, North Carolina.

2. In July 2011, the Board received a complaint from a physician working in the University of North Carolina Hospital Emergency Department. The physician reported that she had treated a patient of Dr. Lithman's ("Patient A") who was acutely

psychotic with the most prominent symptom being a delusional parasitosis. The physician reported that Patient A was being prescribed large quantities of opiates by Dr. Lithman and characterized the care Patient A received from Dr. Lithman as "outrageously inappropriate" and may "have caused and or worsened the psychosis." When the physician attempted to contact Dr. Lithman, she learned that he was out of town. Dr. Lithman did not return her phone messages.

3. In September 2011, the Board received a complaint from a high school social worker who expressed concerns about a high school student ("Patient B") who was being prescribed 6mg of Xanax and 60 mg of Vyvanse at least twice per day by Dr. Lithman. During conversations with school officials, Patient B slurred his words and would occasionally fall asleep in the middle of a conversation. The nurse at the school contacted the pharmacy where Patient B filled his prescriptions and the pharmacist indicated that Dr. Lithman prescribed large quantities of controlled substances to Patient B's family and would often authorize early refills of the controlled substances at the request of the family. It was also reported to the Board that Patient B had expressed concerns about recent troubles with selling his pills. On a separate occasion, Patient B reported that he had blood in his urine. The school refused to further administer Patient B's medications. Dr. Lithman subsequently

issued a letter stating that there "was no risk in giving the medications to [Patient B]."

4. In September 2011, the Board received a complaint from a Maine pharmacist indicating that a graduate student and patient of Dr. Lithman's ("Patient C") had received prescriptions for alprazolam, oxycodone, hydrocodone, vyvanse, valium, and adderall which she had filled at eleven different pharmacies in the Augusta, Maine area.

5. In December 2011 and again in January 2012, the Board received information from two local pharmacists expressing concerns about the high quantities of narcotic pain medications and other controlled substances being prescribed by Dr. Lithman to his patients. Among the concerns expressed to the Board was that Dr. Lithman frequently authorized early refills when they checked with him at the request of patients. The pharmacists voiced a specific concern about the prescribing of Oxycodone.

6. One of the local pharmacist expressed particular concern regarding the controlled substances being prescribed to Patient D. Dr. Lithman prescribed 360 Oxycodone HCL 15mg tablets to Patient D on November 17, 2011, and then prescribed 720 Oxycodone HCL 30mg tablets on November 19, 2011.

7. The Board obtained the medical records of Patients A through D. The records of Patients A through D were then

submitted for review by an expert in the field of clinical and forensic psychiatry.

8. The reviewing expert concluded that Dr. Lithman's prescribing practices and documentation of his care of Patients A through D failed to conform to the standards of acceptable and prevailing medical practice in North Carolina.

9. Patient A was diagnosed by Dr. Lithman as suffering from depression, anxiety, and alcohol and cocaine dependence. Dr. Lithman prescribed Hydrocodone, Adderall, Ritalin, Wellbutrin and Prozac for Patient A.

10. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient A failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. Specifically, the reviewing expert expressed concern that Patient A's records showed multiple instances of early refills for benzodiazepine medication, which the patient received continuously, along with the stimulants and opioids. In addition, the screening and diagnosis for possible ongoing substance abuse and that the volume of medication prescribed failed to conform to the standards of acceptable and prevailing medical practice.

11. With regard to Patient B, Dr. Lithman treated Patient B for attention deficit disorder, hyperactive type, reading rate

disorder, and trauma due to a sexual assault. Patient B was treated with a variety of controlled substances, including Daytrana, Zoloft, Concerta, Cymbalta, Prozac, Buspar, Vyvanse and Dextroamphetamine.

12. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient B failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. The reviewing expert noted that at the time of Dr. Lithman's initial evaluation of Patient B in October 2006, there was not a mental status examination, diagnosis, or treatment plan documented. Screening and diagnosis for possible substance abuse failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. In addition, an appropriate history and physical and/or mental examination were not performed; Dr. Lithman's notes were illegible or difficult to read; and justification for some of the treatments was not documented.

13. Patient C presented to Dr. Lithman with a history of depression, anxiety, and attention deficit disorder. Dr. Lithman prescribed Vyvanse, Cymbalta, Roxicodone, Xanax, Hydrocodone, Oxycodone, and Adderall to Patient C.

14. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient C failed to conform to the standards of acceptable

and prevailing medical practice in North Carolina. Specifically, the reviewing expert noted that the volume of medication prescribed was excessive considering the amount and strength of medication prescribed. In addition, there was inadequate documentation that the patient understood the risks versus benefits of the treatment regimen. The reviewing expert also commented that the types of therapeutic interventions chosen were substantially more likely to cause harm than benefit and the justifications for treatments and changing treatments were inadequate.

15. Dr. Lithman treated Patient D for chronic abdominal pain, opioid dependence, and depression. Patient A was being treated with Xanax, Diazepam, Oxycodone and a cough medicine containing Hydrocodone.

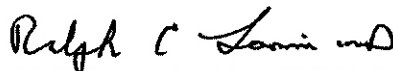
16. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient D failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. Specifically, the reviewing expert noted that there was no assessment or treatment plan in Dr. Lithman's initial assessment of Patient D. Patient D filled prescriptions multiple times per month of different types and formulations of opiate medications in eleven of twelve months. The reviewing expert also commented that many of Dr. Lithman's notes pertaining to Patient D were

either illegible, difficult to read, or did not adequately address the medical-psychiatric issues being treated.

For the foregoing reasons, the North Carolina Medical Board finds and concludes that the public health, safety, or welfare requires emergency action. The Board therefore ORDERS, pursuant to N.C. Gen. Stat. § 150B-3(c), that Dr. Lithman's license to practice be PARTIALLY SUSPENDED such that Dr. Lithman MAY NOT PRESCRIBE CONTROLLED SUBSTANCES as defined by the United States Drug Enforcement Administration and the Controlled Substance Act effective thirty days from the date of this Order.

This the 4th day of June, 2012.

NORTH CAROLINA MEDICAL BOARD

By: 
Ralph C. Loomis, M.D.
President

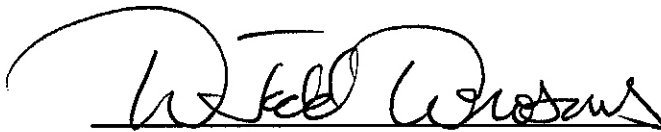
CERTIFICATE OF SERVICE

I, the undersigned attorney for the North Carolina Medical Board, hereby certify that I have served a copy of the foregoing Order of Summary Suspension on the Attorney for Respondent by depositing a copy with the United States Postal Service, postage paid, and via electronic mail to the following:

Michael C. Allen, Esq.
Cranfill Sumner & Hartzog, LLP
5420 Wade Park Boulevard, Suite 300
Raleigh, NC 27607

Jerry Richard Lithman, M.D.
St 1515 W NC Hwy 54, Suite 210
Durham, NC 27707-5576

This the 4th day of June, 2012.

A handwritten signature in black ink, appearing to read "D. Todd Brosius", written over a horizontal line.

D. Todd Brosius
Board Attorney

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ CVS _____

IN RE: JERRY R. LITHMAN, M.D.

**MOTION TO STAY PARTIAL SUMMARY
SUSPENSION OF MEDICAL LICENSE**

[OTHR]

NOW COMES Jerry Richard Lithman, M.D., through counsel and pursuant to N.C. Gen. Stats. § 90-14.8(a) and §90-14.9, and moves this Court for an order staying the North Carolina Medical Board's Order of Partial Summary Suspension of License, dated June 4, 2012. In support of this motion, Dr. Lithman shows the Court as follows:

1. Dr. Lithman is a psychiatrist who practices in Durham, North Carolina, and who has been licensed to practice medicine by the North Carolina Medical Board ("the Board") since October 15, 1988. Dr. Lithman also has been Board Certified in Psychiatry by the American Board of Psychiatry and Neurology since January 30, 1981.

2. As evidenced by his affidavit attached to this motion as Exhibit A, Dr. Lithman's psychiatric practice involves the provision of care, treatment, and supervision to many patients whose clinical conditions require them to take controlled substances as a significant component of their medical management.

3. On June 4, 2012, the Board issued an Order of Partial Summary Suspension of License ("Board's Order") in accordance with N.C. Gen. Stat. § 150B-3(c). A copy of the Board's Order is attached to this motion as Exhibit B. Prior to the filing of this Motion, Dr. Lithman provided notice to the Board regarding his intent to seek relief from this Court staying the operation of the Board's Order.

4. In its Order, the Board accuses Dr. Lithman of engaging in unprofessional conduct and contends that he is unable to practice medicine safely because he has failed to conform to the standards of the medical profession. In support of its Order, the Board identified four patients of Dr. Lithman, patients "A" through "D," whose care and treatment were investigated by the Board.

5. As evidenced both by Dr. Lithman's affidavit (Exhibit A) and the Board's Order (Exhibit B), none of the "complaints" discussed in the Board's Order were made by physicians possessing similar training and experience to Dr. Lithman. Instead, these complaints were made by pharmacists, non-physicians, and emergency room physicians.

6. The Board's Order of Partial Summary Suspension does not specifically allege that any current or former patient of Dr. Lithman has been injured or harmed in any way as a result of any conduct of Dr. Lithman, including any conduct in prescribing controlled substances to any of his patients.

7. As evidenced by his affidavit attached hereto as Exhibit A, Dr. Lithman knows of no physical or emotional harm that his prescribing of controlled substances ever has caused to any of his patients, including but not limited to those patients discussed in the Board's Order.

8. Under the terms of the Board's Order, Dr. Lithman's authority to prescribe controlled substances will be suspended indefinitely beginning July 4, 2012. Courts long have held that a professional license to practice medicine is a property interest subject to procedural due process protections. See, e.g., In re Magee, 87 N.C.App. 650, 654, 362 S.E.2d 564, 566-67 (1987).

9. As evidenced by his affidavit attached hereto as Exhibit A, Dr. Lithman submits that summarily terminating his ability to prescribe controlled substances, beginning July 4, 2012,

may cause patients to fail to secure alternate medical care arrangements and, consequently, many such patients may experience medication withdrawal reactions and significant deterioration in their medical conditions, including but not limited to possible suicide attempts.

10. On June 18, 2012, Dr. Lithman served upon the North Carolina Medical Board a Request for Reconsideration of its Order of Partial Summary Suspension, pursuing his appropriate administrative remedy. A copy of Dr. Lithman's Request for Reconsideration is attached to this motion as Exhibit C. (Exhibits Withheld Secondary to Presence of Confidential Health Information, Exhibits Available for In Camera Review). In his Request for Reconsideration, Dr. Lithman submitted additional medical records and other information to the Board for its review and consideration.

11. As of the time of the filing of this Motion, Dr. Lithman has received no reply from the Board indicating whether it will grant or deny his Request for Reconsideration or allow further proceedings in which Dr. Lithman may protect his procedural due process rights and challenge the Board's Order to partially suspend his medical license before such suspension goes into effect on or about July 4, 2012. To date, the Board has not given Dr. Lithman any opportunity to confront the specific allegations contained in the Board's Order or to challenge the Board's summary decision to partially suspend his medical license.

12. Absent an order from this Court staying the Board's Order of Partial Summary Suspension of his medical license, Dr. Lithman's capacity to protect his patients from physical and psychological harm will be severely undermined. Additionally, Dr. Lithman's inability to prescribe controlled substances to his patients will effectively forestall him from continuing to provide meaningful care to his current patient population.

13. Although N.C. Gen. Stat. § 150B-3(c) authorizes the Board to summarily suspend a medical license before the Board initiates formal administrative proceedings, the statute also requires the Board's proceedings to be "promptly commenced and determined." Since issuing its Order of Partial Summary Suspension on June 4, 2012, the Board has not given any notice to Dr. Lithman of initiation of administrative proceedings. Because Dr. Lithman has had no opportunity to confront the allegations made in the Board's Order, and the operation of the Board's Order risks causing physical and psychological harm to patients, Dr. Lithman submits that this Court should stay the Board's Order until all administrative proceedings before the North Carolina Medical Board have been commenced and determined. In doing so, this Court can act to protect the procedural due process rights of Dr. Lithman and avoid creating an unnecessary risk to the health and well-being of Dr. Lithman's patients.

14. In addition, as referenced in Dr. Lithman's Affidavit (Exhibit A), Dr. Lithman's care has recently been evaluated by Dr. Philip Hillsman, an expert approved by the North Carolina Medical Board, who authors opinions significantly different than those articulated as the basis for the Medical Board's Order of Partial Summary Suspension. Accordingly, application of a "whole record" analysis supports the need for Dr. Lithman to have a meaningful opportunity to respond to these concerns.

WHEREFORE, Dr. Lithman prays this Court to stay the North Carolina Medical Board's order of partial summary suspension of his license to practice medicine until the Board issues a Notice of Charges and Hearing and has allowed Dr. Lithman to exercise his rights to due process at a hearing before the North Carolina Medical Board in which he may challenge the allegations contained in the North Carolina Medical Board's Order of Partial Summary Suspension.

This the 25th day of June, 2012.

CRANFILL SUMNER & HARTZOG LLP

BY: 

MICHAEL C. ALLEN

N.C. State Bar No. 26417

P.O. Box 27808

Raleigh, NC 27611-7808

Telephone: (919) 828-5100

Facsimile: (919) 828-2277

Attorney for Jerry R. Lithman, M.D.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached *Motion to Stay Partial Summary Suspension of Medical License* on all of the parties to this cause by electronic mail and by depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:

D. Todd Brosius, Esq.
North Carolina Medical Board
PO Box 20007
Raleigh, NC, 27619-0007

This the 25th day of June, 2012.

CRANFILL SUMNER & HARTZOG LLP

BY: 

MICHAEL C. ALLEN
N.C. State Bar No. 26417
P.O. Box 27808
Raleigh, NC 27611-7808
Telephone: (919) 828-5100
Facsimile: (919) 828-2277
Attorney for Jerry R. Lithman, M.D.

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ CVS _____

IN RE: JERRY R. LITHMAN, M.D.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring a Motion to Stay Partial Summary Suspension of Medical License for hearing on Wednesday, June 27th in Wake County Superior Court, Wake County Courthouse, Raleigh, North Carolina, at 2:00 p.m., or as soon thereafter as it may be heard.

This the 25th day of June, 2012.

CRANFILL SUMNER & HARTZOG LLP

BY: 

MICHAEL C. ALLEN

N.C. State Bar No. 26417

P.O. Box 27808

Raleigh, NC 27611-7808

Telephone: (919) 828-5100

Facsimile: (919) 828-2277

Attorney for Jerry R. Lithman, M.D.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached *Notice of Hearing* on all of the parties to this cause by electronic mail and by depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:

D. Todd Brosius, Esq.
North Carolina Medical Board
PO Box 20007
Raleigh, NC, 27619-0007

This the 25th day June 2012.

CRANFILL SUMNER & HARTZOG LLP

BY: 

MICHAEL C. ALLEN
N.C. State Bar No. 26417
P.O. Box 27808
Raleigh, NC 27611-7808
Telephone: (919) 828-5100
Facsimile: (919) 828-2277
Attorney for Jerry R. Lithman, M.D.

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:)	
)	
Jerry Richard Lithman, M.D.,	)	NOTICE OF CHARGES
	)	AND ALLEGATIONS;
Respondent.	)	NOTICE OF HEARING

The North Carolina Medical Board ("Board") has preferred and does hereby prefer the following charges and allegations:

1. The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Article 1 of Chapter 90 of the North Carolina General Statutes.

2. Respondent, Jerry Richard Lithman, M.D. ("Dr. Lithman"), is a physician licensed by the Board on or about October 15, 1988, license number 33084.

3. During the times relevant herein, Dr. Lithman practiced psychiatry in Durham, North Carolina.

4. In July 2011, the Board received a complaint from a physician working in the University of North Carolina Hospital Emergency Department. The physician reported that she had treated a patient of Dr. Lithman's ("Patient A") who was acutely psychotic with the most prominent symptom being a delusional parasitosis. The physician reported that Patient A was being prescribed large quantities of opiates by Dr. Lithman and characterized the care

Patient A received from Dr. Lithman as "outrageously inappropriate" and may "have caused and or worsened the psychosis." When the physician attempted to contact Dr. Lithman, she learned that he was out of town. Dr. Lithman did not return her phone messages.

5. In September 2011, the Board received a complaint from a high school social worker who expressed concerns about a high school student ("Patient B") who was being prescribed 6mg of Xanax and 60 mg of Vyvanse at least twice per day by Dr. Lithman. During conversations with school officials, Patient B slurred his words and would occasionally fall asleep in the middle of a conversation. The nurse at the school contacted the pharmacy where Patient B filled his prescriptions and the pharmacist indicated that Dr. Lithman prescribed large quantities of controlled substances to Patient B's family and would often authorize early refills of the controlled substances at the request of the family.

6. It was also reported to the Board that Patient B had expressed concerns about recent troubles with selling his pills. On a separate occasion, Patient B reported that he had blood in his urine. The school refused to further administer Patient B's medications. Dr. Lithman subsequently issued a letter stating that there "was no risk in giving the medications to [Patient B]."

7. In September 2011, the Board received a complaint from a Maine pharmacist indicating that a graduate student and patient of Dr. Lithman's ("Patient C") had received prescriptions for

alprazolam, oxycodone, hydrocodone, vyvanse, valium, and adderall which she had filled at eleven different pharmacies in the Augusta, Maine area.

8. In December 2011 and again in January 2012, the Board received information from two local pharmacists expressing concerns about the high quantities of narcotic pain medications and other controlled substances being prescribed by Dr. Lithman to his patients. Among the concerns expressed to the Board was that Dr. Lithman frequently authorized early refills when they checked with him at the request of patients. The pharmacists voiced a specific concern about the prescribing of Oxycodone.

9. One of the local pharmacist expressed particular concern regarding the controlled substances being prescribed to Patient D. Dr. Lithman prescribed 360 Oxycodone HCL 15mg tablets to Patient D on November 17, 2011, and then prescribed 720 Oxycodone HCL 30mg tablets on November 19, 2011.

10. The Board obtained the medical records of Patients A through D. The records of Patients A through D were then submitted for review by an expert in the field of clinical and forensic psychiatry.

11. The reviewing expert concluded that Dr. Lithman's prescribing practices and documentation of his care of Patients A through D failed to conform to the standards of acceptable and prevailing medical practice in North Carolina.

12. Patient A was diagnosed by Dr. Lithman as suffering from depression, anxiety, and alcohol and cocaine dependence. Dr. Lithman prescribed Hydrocodone, Adderall, Ritalin, Wellbutrin and Prozac for Patient A.

13. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient A failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. Specifically, the reviewing expert expressed concern that Patient A's records showed multiple instances of early refills for benzodiazepine medication, which the patient received continuously, along with the stimulants and opioids. In addition, the screening and diagnosis for possible ongoing substance abuse and that the volume of medication prescribed failed to conform to the standards of acceptable and prevailing medical practice.

14. With regard to Patient B, Dr. Lithman treated Patient B for attention deficit disorder, hyperactive type, reading rate disorder, and trauma due to a sexual assault. Patient B was treated with a variety of controlled substances, including Daytrana, Zoloft, Concerta, Cymbalta, Prozac, Buspar, Vyvanse and Dextroamphetamine.

15. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient B failed to conform to the standards of acceptable and

prevailing medical practice in North Carolina. The reviewing expert noted that at the time of Dr. Lithman's initial evaluation of Patient B in October 2006, there was not a mental status examination, diagnosis, or treatment plan documented. Screening and diagnosis for possible substance abuse failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. In addition, an appropriate history and physical and/or mental examination were not performed; Dr. Lithman's notes were illegible or difficult to read; and justification for some of the treatments was not documented.

16. Patient C presented to Dr. Lithman with a history of depression, anxiety, and attention deficit disorder. Dr. Lithman prescribed Vyvanse, Cymbalta, Roxicodone, Xanax, Hydrocodone, Oxycodone, and Adderall to Patient C.

17. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient C failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. Specifically, the reviewing expert noted that the volume of medication prescribed was excessive considering the amount and strength of medication prescribed. In addition, there was inadequate documentation that the patient understood the risks versus benefits of the treatment regimen. The reviewing expert also commented that the types of therapeutic interventions chosen were substantially more likely to

cause harm than benefit and the justifications for treatments and changing treatments were inadequate.

18. Dr. Lithman treated Patient D for chronic abdominal pain, opioid dependence, and depression. Patient A was being treated with Xanax, Diazepam, Oxycodone and a cough medicine containing Hydrocodone.

19. The reviewing expert concluded that Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient D failed to conform to the standards of acceptable and prevailing medical practice in North Carolina. Specifically, the reviewing expert noted that there was no assessment or treatment plan in Dr. Lithman's initial assessment of Patient D. Patient D filled prescriptions multiple times per month of different types and formulations of opiate medications in eleven of twelve months.

The reviewing expert also commented that many of Dr. Lithman's notes pertaining to Patient D were either illegible, difficult to read, or did not adequately address the medical-psychiatric issues being treated.

20. With regard to Patients A through D by failing to adequately diagnose and treat those patients, failing to obtain and adequately record information in those patients' medical record, failing to develop a proper treatment plan for Patients A through D, and by prescribing controlled substances without establishing a medical need for such medication, Dr. Lithman engaged in

unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession within the meaning of N.C. Gen. Stat. § 90-14(a)(6), which is grounds for the Board to annul, suspend, revoke, condition, or limit Dr. Lithman's license to practice medicine and surgery issued by the Board.

NOTICE TO DR. LITHMAN

Pursuant to N.C. Gen. Stat. § 90-14.2, it is hereby ordered that a hearing on the foregoing Notice of Charges and Allegations will be held before the Board, or a panel thereof, at 8:00 a.m., Thursday, August 16, 2012, or as soon thereafter as the Board or panel thereof may hear it, at the offices of the Board at 1203 Front Street, Raleigh, North Carolina, to continue until completed. The hearing will be held pursuant to N.C. Gen. Stat. § 150B-40, 41, and 42, and N.C. Gen. Stat. § 90-14.2, 14.4, 14.5, and 14.6. You may appear personally and through counsel, may cross-examine witnesses and present evidence in your own behalf.

You may, if you desire, file written answers to the charges and complaints preferred against you within 30 days after the service of this notice.

The identities of Patients A through D are being withheld from public disclosure pursuant to N.C. Gen. Stat. § 90-8. However, this information will be provided to you upon your request.

Pursuant to N.C. Gen. Stat. § 150B-40(c)(5), it is further ordered that the parties shall arrange a pre-hearing conference at which they shall prepare and sign a stipulation on pre-hearing conference. The pre-hearing stipulation shall be submitted to the undersigned no later than seven days prior to the hearing date.

The right to be present during the hearing of this case, including any such right conferred or implied by N.C. Gen. Stat. § 150B-40(d), shall be deemed waived by a party or his counsel by voluntary absence from the Board's office at a time when it is known that proceedings, including deliberations, are being conducted, or are about to be conducted. In such event, the proceedings, including additional proceedings after the Board has retired to deliberate, may go forward without waiting for the arrival or return of counsel or a party.

This the 9th day of July, 2012.

NORTH CAROLINA MEDICAL BOARD

By: Ralph C. Loomis
Ralph C. Loomis, M.D.
President

FILED

STATE OF NORTH CAROLINA
WAKE COUNTY

2012 JUL 16 PM 4:07

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 008942

WAKE COUNTY, C.S.C.

JERRY RICHARD LITHMAN, M.D.,

Petitioner,

v.

NORTH CAROLINA MEDICAL BOARD,

Respondent.

ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned Judge presiding over the 27 June 2012 Session of Wake County Superior Court upon Petitioner's Motion to Stay Partial Summary Suspension of License pursuant to §§ 90-14.8 and 90-14.9 of the North Carolina General Statutes. Petitioner seeks a stay of an Order of Partial Summary Suspension dated June 4, 2012, pending a hearing before the North Carolina Medical Board.

WHEREFORE, having reviewed and considered the pleadings, memoranda, and arguments of counsel for the parties, the undersigned makes the following findings:

1. Petitioner Jerry Richard Lithman, M.D. ("Petitioner") is a physician licensed by Respondent North Carolina Medical Board ("Medical Board") since 15 October 1988 to practice medicine.

2. The Medical Board was established by the North Carolina General Assembly "to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina." N.C. Gen. Stat. § 90-2.

3. On 4 June 2012, the North Carolina Medical Board entered an Order of Partial Summary Suspension. In its Order, the Medical Board made several findings relating to Dr.

Lithman's prescribing of medications to four patients including medications regulated pursuant to the Controlled Substances Act. The Medical Board also found and concluded that the public health, safety, or welfare required emergency action. As a result of its findings and conclusions, the Medical Board ordered that Petitioner's license be partially summarily suspended such that Dr. Lithman may not prescribe controlled substances as defined by the United States Drug Enforcement Administration and the Controlled Substance Act effective thirty days from the date of the 4 June 2012 Order.

4. Petitioner filed a Motion to Stay Partial Summary Suspension of License with this Court on 25 June 2012.

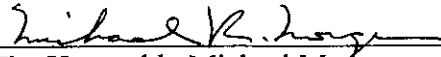
5. The Medical Board has made the requisite finding pursuant to N.C. Gen. Stat. § 150B-3(c) that "the public health, safety, or welfare requires emergency action."

6. Counsel for the Medical Board has indicated that a hearing on the Order of Partial Summary Suspension can be heard by the Medical Board on August 16, 2012, thus satisfying Petitioner's right to a prompt post-deprivation hearing.

WHEREFORE, it is ORDERED that:

1. Petitioner's Motion is DENIED.
2. Prior to and during consideration of this motion, documents were submitted to the Court by counsel in which confidential or sensitive patient health information was disclosed and or discussed, and the entire Court file is, exclusive of this Order, therefore SEALED to protect the confidential and/or sensitive patient information.

It is so ordered, this the 16th day of July, 2012.


The Honorable Michael Morgan
Presiding Superior Court Judge

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In Re:)	
)	
	)	FINDINGS OF FACT,
Jerry Richard Lithman, M.D.	)	CONCLUSIONS OF LAW, AND
	)	ORDER OF DISCIPLINE
Respondent.)	

This matter was heard by the North Carolina Medical Board ("Board") pursuant to N.C. Gen. Stat. §§ 90-14.2 and 90-14.7, on August 16-17, 2012. D. Todd Brosius represented the Board. The Respondent Jerry Richard Lithman, M.D. ("Dr. Lithman") was represented by Michael C. Allen and Joseph B. Adams.

Based upon the evidence presented and the arguments of counsel, the Board enters the following:

FINDINGS OF FACT

1. The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Article 1 of Chapter 90 of the North Carolina General Statutes.

2. Dr. Lithman is a physician licensed by the Board on or about October 15, 1988, license number 33084.

3. Dr. Lithman entered into a Consent Order with the Board in October 2010. That Consent Order reprimanded Dr. Lithman and required him to attend a continuing medical education course

addressing medical record keeping and identification and evaluation of potential signs of patient abuse or patient misconduct. The Consent Order also required Dr. Lithman to engage a preceptor to discuss his diagnosis, treatment, and documentation for those patients he was treating with narcotic medication for psychiatric issues and chronic pain.

4. As part of the Consent Order, Dr. Lithman agreed to comply with the Board's position statements on "Medical Record Documentation," "Policy for the Use of Controlled Substances for the Treatment of Pain," and "Joint Statement on Pain Management and End-of-Life Care."

5. In July 2011, the Board received a complaint from a physician working in the University of North Carolina Hospital Emergency Department. The physician reported that she had treated a patient of Dr. Lithman's ("Patient A") who was acutely psychotic with the most prominent symptom being a delusional parasitosis (belief that she was being infested by parasites). The physician reported that Patient A was being prescribed large quantities of opiates by Dr. Lithman and characterized the care Patient A received from Dr. Lithman as "outrageously inappropriate" and may "have caused and or worsened the psychosis."

6. In September 2011, the Board received a complaint from a high school social worker who expressed concerns about a high school student ("Patient B") who was being prescribed Xanax and Vyvanse by Dr. Lithman. The complaint alleged that during conversations with school officials, Patient B slurred his words and would occasionally fall asleep in the middle of a conversation.

7. It was also reported to the Board that Patient B had expressed concerns about recent troubles with selling his pills. On a separate occasion, Patient B reported that he had blood in his urine. The school refused to further administer Patient B's medications. Dr. Lithman subsequently issued a letter stating that there "was no risk in giving the medications to [Patient B]."

8. In September 2011, the Board received a complaint from a Maine pharmacist indicating that a graduate student and patient of Dr. Lithman's ("Patient C") had received prescriptions for alprazolam, oxycodone, hydrocodone, Vyvanse, Valium, and Adderall, which she had filled at eleven different pharmacies in the Augusta, Maine area.

9. In December 2011 and again in January 2012, the Board received information from two local pharmacists expressing concerns about the high quantities of narcotic pain medications

and other controlled substances being prescribed by Dr. Lithman to his patients. Among the concerns expressed to the Board was that Dr. Lithman frequently authorized early refills when they checked with him at the request of patients. The pharmacists voiced a specific concern about the prescribing of Oxycodone.

10. One of the local pharmacist expressed particular concern regarding the controlled substances being prescribed to Patient D.

11. The Board obtained the medical records of Patients A through D. The records of Patients A through D were then submitted for review by an expert in the field of clinical and forensic psychiatry.

12. The reviewing expert concluded that Dr. Lithman's prescribing practices and documentation of his care of Patients A through D failed to conform to the standards of acceptable and prevailing medical practice in North Carolina.

13. After completing its investigation, the Board found and concluded that the public health, safety or welfare required emergency action and the Board issued an Order of Partial Summary Suspension of License on June 4, 2012, to go into effect on July 4, 2012.

14. The Order of Partial Summary Suspension of License prohibited Dr. Lithman from prescribing controlled substances as

defined by the United States Drug Enforcement Administration and the Controlled Substances Act.

15. On June 25, 2012, Dr. Lithman filed a Motion to Stay Partial Summary Suspension of License in Wake County Superior Court.

16. At a hearing on June 27, 2012, Dr. Lithman's Motion to Stay was denied by the presiding Wake County Superior Court Judge.

17. On July 9, 2012, the Board issued a Notice of Charges and Allegations and a Notice of Hearing scheduled for August 16, 2012.

18. At the August 16, 2012 hearing before the Board on this matter, the Board presented testimony from:

- a. An expert in the area of psychiatry;
- b. An expert in the area of pain medicine;
- c. The pharmacist who had complained about Dr. Lithman's prescribing to Patient D;
- d. The Board investigator who investigated the complaints against Dr. Lithman; and
- e. The Board's compliance coordinator.

19. At the August 16, 2012 hearing before the Board on this matter, Dr. Lithman presented testimony from:

- a. An expert in the area of psychiatry and addiction medicine;
- b. Patient D's referring physician who was also a patient of Dr. Lithman's;
- c. A psychologist who referred patients to Dr. Lithman and was also a patient of Dr. Lithman's;
- d. Patient D;
- e. Patient B's father who was also a patient of Dr. Lithman's; and
- f. Dr. Lithman himself.

20. After review of the evidence presented at the hearing, the Board finds that by failing to adequately diagnose and treat Patients A through D, failing to obtain and adequately record information in those patients' medical records, failing to develop a proper treatment plan for Patients A through D, and by prescribing controlled substances without establishing a medical need for such medication, Dr. Lithman's diagnosis, treatment, and documentation of the care he provided to Patient A, B, C, and D failed to conform to the standards of acceptable and prevailing medical practice in North Carolina.

21. The Board further finds that Dr. Lithman authorized prescriptions for controlled substances after July 4, 2012, in violation of the Order of Partial Summary Suspension of License.

Based upon the foregoing Findings of Fact, the Board enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Dr. Lithman and this subject matter.

2. By failing to conform to the standards of acceptable and prevailing medical practice in North Carolina in his diagnosis, treatment and documentation of his care of Patients A through D, Dr. Lithman engaged in unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession within the meaning of N.C. Gen. Stat. § 90-14(a)(6), which is grounds for the Board to annul, suspend, revoke, condition, or limit Dr. Lithman's license to practice medicine and surgery issued by the Board.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board enters the following:

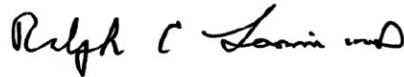
ORDER

1. Dr. Lithman's North Carolina medical license is hereby INDEFINITELY SUSPENDED, beginning October 1, 2012. Dr. Lithman may not apply for reinstatement of his medical license prior to October 1, 2013. During the period of time between the entry of

this Order of Discipline and October 1, 2012, Dr. Lithman shall wind down his medical practice. The Order of Partial Summary Suspension of License issued by the Board on June 4, 2012, shall remain in effect during the wind-down period. During this wind-down period, Dr. Lithman shall practice within standards of acceptable and prevailing medical practice. Furthermore, Dr. Lithman shall provide written notice to his patients and staff, provide his patients with a copy of their medical records and make referrals, when appropriate, to other physicians.

This the 5th day of September, 2012.

NORTH CAROLINA MEDICAL BOARD



By:

Ralph C. Loomis, M.D.
Board President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2012 OCT 3 2 05
12 CVS 13362

In Re:

JERRY RICHARD LITHMAN, M.D.

Respondent

)
)
)
)
)
)

WAKE COUNTY, C.S.C.
**ORDER DENYING MOTION
FOR STAY**

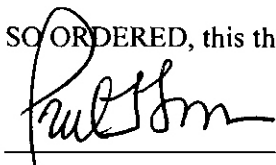
THIS MATTER came on for hearing before the undersigned Superior Court Judge on October 3, 2012. The matter before the court is the respondent's motion and application for a stay of the order that was entered by the Board of Medical Examiners on September 5, 2012 which suspended the respondent's license to practice medicine. The respondent was present and represented by Michael Allen of the Wake County bar. The Board of Medical Examiners was represented by Todd Brosious of the Wake County bar.

At the outset, the court finds that it has subject matter jurisdiction over this matter. The respondent has complied with the statutory filing and notice requirements set forth in Article 1 of Chapter 90 of the North Carolina General Statutes and the board had the opportunity to be heard.

The court has reviewed the record and materials submitted by counsel and considered the arguments of counsel. In reaching this decision the court has considered the likelihood of irreparable harm to the respondent without the stay; the likelihood of harm to the public with the stay; the likelihood of harm to the Board of Medical Examiners with the stay; the petitioners' likelihood of success on the merits; and the public interest in regulating the practice of medicine.

Based upon the totality of all the evidence and circumstances presented to the court, the respondent's motion and application for a stay of the order entered by the Board of Medical Examiners on September 5, 2012 which suspended the respondent's license to practice medicine is DENIED.

SO ORDERED, this the 4th day of October, 2012.



Paul G. Gessner
Resident Superior Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on the parties listed below by mailing and/or hand-delivering a copy thereof to each of said parties, addressed, postage prepaid, as follows:

Michael C. Allen
Cranfill, Sumner & Hartzog
PO Box 27808
Raleigh, NC 27611

D. Todd Brosius
North Carolina Medical Board
1203 Front St.
Raleigh, NC 27609

This, the 5th day of October, 2012.



Terri Stewart
Trial Court Coordinator
Wake County Superior Court Judges' Offices

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In Re:	)	12 CV 013362
)	
	)	WITHDRAWAL OF
	)	NOTICE OF APPEAL TO THE
Jerry Richard Lithman, M.D.	)	SUPERIOR COURT OF WAKE COUNTY
)	
Respondent.)	

Now comes Respondent Jerry Richard Lithman, M.D. by and through undersigned counsel, and hereby Withdraws his Notice of Appeal to the Superior Court of Wake County, filed on or about September 20, 2012, appealing the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER of by the North Carolina Medical Board on or about September 5, 2012.

This the 9th day of October, 2012.

CRANFILL, SUMNER & HARTZOG, LLP

BY: 

Michael C. Allen
State Bar No. 26417
Attorney for Respondent
P.O. Box 27808
Raleigh, NC 27611-7808
919-828-5100

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached document on all of the parties to this cause by:


- ☐ Hand delivering a copy hereof to the attorney for each said party addressed as follows:
- ☒ Electronic mail to the attorney for each said party as follows:
- ☒ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:
- ☐ Telecopying a copy hereof to the attorney for each said party as follows:

D. Todd Brosius
NC Medical Board
1203 Front St.
Raleigh, NC 27609-7533

This the 9th day of October, 2012.

CRANFILL, SUMNER & HARTZOG, LLP

BY:



Michael Allen
State Bar No. 26417
P.O. Box 27808
Raleigh, NC 27611-7808
919-828-5100

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED
12 CYS 13362
2012 DEC 31 PM 2:41

JERRY RICHARD LITHMAN, M.D.,

Petitioner,

v.

NORTH CAROLINA MEDICAL BOARD,

Respondent.

WAKE COUNTY, C.S.C.

BY _____

ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned Judge presiding over the 7 December 2012 Session of Wake County Superior Court upon Petitioner's Motion to Withdraw Withdrawal of Appeal. Having filed a Withdrawal of Appeal, Petitioner seeks an Order allowing him to reinstitute his appeal.

WHEREFORE, having reviewed and considered the pleadings, memoranda, and arguments of counsel for the parties, the undersigned makes the following findings:

1. Petitioner Jerry Richard Lithman, M.D. ("Petitioner") is a physician licensed by Respondent North Carolina Medical Board ("Medical Board") since 15 October 1988, to practice medicine.

2. The Respondent Medical Board was established by the North Carolina General Assembly "to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina." N.C. Gen. Stat. § 90-2.

3. On 5 September 2012, the North Carolina Medical Board entered an Order of Discipline indefinitely suspending Petitioner's medical license and prohibiting him from applying to reactivate his license for at least one year.

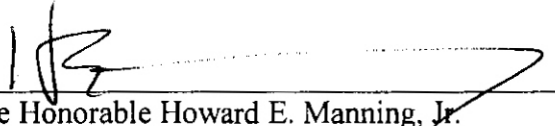
4. Petitioner filed a Notice of Appeal on 18 September 2012. Petitioner also filed a Motion and Application for Stay on 26 September 2012, seeking to stay the effect of the Respondent Medical Board's Order of Discipline while the Petitioner's appeal was pending. The Motion and Application for Stay was denied by this Court on 4 October 2012.

5. Petitioner filed a Withdrawal of Appeal on October 9, 2012. On 16 October 2012, Petitioner filed a Motion to Withdraw Withdrawal of Appeal, seeking to reinstitute his appeal.

WHEREFORE, it is ORDERED that:

1. Petitioner's Motion is GRANTED. Petitioner shall be allowed to pursue his appeal of the Board's Order of Discipline.
2. The Respondent Medical Board's Order of Discipline will remain in effect while his appeal is pending. During that time, Petitioner cannot practice medicine or issue prescriptions.
3. Pursuant to N.C. Gen. Stat. §150B-47, Respondent Medical Board shall file a certified record of the proceedings under review within 30 days of entry of this Order.

It is so ordered, this the 31 day of December, 2012.


The Honorable Howard E. Manning, Jr.
Presiding Superior Court Judge



**NORTH CAROLINA
MEDICAL BOARD**

William A. Walker, MD
President

Paul S. Camnitz, MD
President-Elect

Cheryl L. Walker-McGill, MD
Secretary/Treasurer

FILED

2013 JAN 30 PM 4:01

WAKE COUNTY, N.C.

BY _____

Re: Jerry Richard Lithman, M.D. v. N.C. Medical Board,
Wake County, 12 CVS 13362

The attached pages are certified to be a true copy of the official record in accordance with N.C. Gen. Stat. § 150B-42 of the contested case proceedings held before the North Carolina Medical Board ("Board") regarding the disciplinary matter brought by the Board against Jerry Richard Lithman, M.D. The medical records that constituted Petitioner's Exhibit 1 have been provided in digital format on a CD. If there is any objection to the Court receiving these documents in this format, the Board will promptly provide a paper copy of those medical records. The above-referenced record and other documents have been kept under my custody and control.

This, the 30th day of January, 2013.

R. David Henderson
Executive Director

SEAL

R. David Henderson
Executive Director

1203 Front Street
Raleigh, North Carolina 27609-7533

Mailing:
P.O. Box 20007
Raleigh, North Carolina 27619-0007

Telephone: (919) 326-1100
Fax: (919) 326-1131
Email: info@ncmedboard.org
Web: www.ncmedboard.org