

BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF NORTH DAKOTA

Commission on Medical
Competency,

Complainant,

vs.

Thomas M. Peterson, M.D.,

Respondent.

C O M P L A I N T

Complainant respectfully shows to the Board as follows:

I.

The Commission on Medical Competency is authorized pursuant to N.D.C.C. Chapter 43-17.1 to conduct investigations related to the practice of any physician licensed to practice in this state and file a formal complaint against any licensed physician with the State Board of Medical Examiners.

II.

Respondent, Thomas M. Peterson, M.D., is a physician licensed to practice medicine in the state of North Dakota.

III.

Respondent has engaged in the performance of dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public, or in the alternative, Respondent has engaged in the practice of advertising for the practice of medicine in an untrue or deceptive manner within the meaning of N.D.C.C. § 43-17-31(6) or (11), specifically:

Respondent caused publication of an advertisement indicating that offices of competing psychiatrists were closed because of

a natural disaster with the implication that services would not be available from such competing offices for a period of four to eight weeks.

WHEREFORE, Complainant respectfully requests:

The license of Respondent, Thomas M. Peterson, M.D., authorizing him to practice medicine in the state of North Dakota shall be revoked or other appropriate action taken, by reason of Respondent's conduct pursuant to the provisions of N.D.C.C. § 43-17-30.1.

Dated at Bismarck, North Dakota, this 21st day of August, 1997.

COMMISSION ON MEDICAL COMPETENCY

By: 

JOHN M. OLSON ID#03053
SPECIAL ASSISTANT ATTORNEY GENERAL

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STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
)	
Thomas M. Peterson, M.D.)	
Respondent.)	

.....

On August 21, 1997, a complaint was filed with the North Dakota State Board of Medical Examiners ("Board") by John M. Olson, special assistant attorney general, attorney for the Commission on Medical Competency ("Commission"). The Complaint is titled *Commission on Medical Competency, Complainant, vs. Thomas M. Peterson, M.D., Respondent*. The complaint alleges as grounds for administrative action violations of N.D.C.C. § 43-17-31(6) or (11). It specifically alleges that the "Respondent caused publication of an advertisement indicating that offices of competing psychiatrists were closed because of a natural disaster with the implication that services would not be available from such competing offices for a period of four to eight weeks." It requests revocation or other appropriate action against the respondent's license authorizing him to practice medicine in the state of North Dakota.

On February 4, 1998, the Board requested the designation of an administrative law judge ("ALJ") from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to this matter. On February 6, 1998, the undersigned ALJ was duly designated.

The ALJ held four prehearing conferences on this matter. On March 12, 1998, the ALJ issued a Notice of Hearing scheduling a hearing on the matter for May 28, 1998, in Grand Forks, North Dakota. *See* Prehearing Conference Summary, Discovery Deadline, Notice of Third Prehearing Conference, Notice of Hearing.

The hearing was held as scheduled. The Respondent was present at the hearing along with his attorney, Ms. Mary K. Martin, St. Paul, Minnesota. Mr. Jack Marcil, Fargo, also appeared as local counsel in this matter representing the respondent; however, Ms. Martin actually represented the respondent throughout the proceedings and filed the Respondent's post-hearing briefs. The Commission was represented by Mr. Olson. The Commission called five witnesses, including the Respondent, and the original complainant to the Commission, Dr. Kerbeshian. The Respondent called five other witnesses. Eighteen exhibits were offered and admitted. The exhibits with red exhibit stickers, Exhibits 1-3, 5, 8, and 9 were offered by the Commission. The exhibits with blue exhibit stickers, Exhibits 4, 6, 7, and 10-18 were offered by the Respondent. Exhibits 14 and 15 are video cassettes about the Grand Forks flood. Exhibits 16-18 are confidential exhibits sealed in a brown envelope and marked "Confidential." The confidential exhibits relate to phone call messages and a clinic form. The confidential exhibits may be reviewed by the Board but shall then be resealed. They are not for public scrutiny. The hearing was tape recorded. There are seven hearing tapes.

The Respondent and the Commission filed post-hearing briefs received by the ALJ on June 30, 1998. The Respondent also filed a reply brief received by the ALJ on July 13, 1998. Based on the evidence presented at the hearing and the briefs of the parties, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Dr. Thomas M. Peterson, M.D., the Respondent in this matter (hereinafter "Dr. Peterson") is a psychiatrist in Grand Forks, North Dakota. He is currently licensed by the Board. He has been licensed by the Board since 1991. *See* Exhibits 1 and 2. Dr. Peterson is currently engaged in the private practice of medicine, specializing in psychiatric care of individuals located in the region which includes northeastern North Dakota and northwestern Minnesota, with several other psychiatrists at the Center for Psychiatric Care ("CPC") in Grand Forks.

2. The flood of 1997 devastated the Grand Forks and East Grand Forks areas in April 1997. During the latter days of April 1997, both cities were entirely evacuated. Of course, included in the evacuation were all psychiatric offices existing in Grand Forks, the one major hospital with its associated psychiatric clinical service, as well as the offices of CPC, the Northeast Human Services Center, and the private office of psychiatrist, Dr. Ashok Bansal.

3. Testimony from psychiatrists, Drs. Peterson, Kerbeshian, Kirsch, and Bansal, indicated that all their offices were included among those which were evacuated and that the evacuation resulted in the suspension of routine psychiatric services in the region. Dr. Kerbeshian was evacuated to Crookston, Minnesota, while Drs. Kirsch and Bansal left the area with their families for a short period of time. Dr. Peterson stayed in the area, on the west side of the river, in North Dakota, residing temporarily outside the evacuated territory.

4. Drs. Kirsch and Bansal testified that although they temporarily left the region, they made arrangements with staff or other people who stayed in the area for the handling of patients and issues related to their individual medical practices. Dr. Bansal evacuated his family first to Minneapolis, then to Chicago, and then to Washington, D.C. He had all of his office calls

forwarded to his secretary who lives in Larimore, North Dakota. It was her responsibility to communicate any concerns or issues regarding patient care directly to Dr. Bansal. Dr. Kirsch evacuated her family out of the city and temporarily relocated to Florida where she handled a number of calls and concerns resulting from her public psychiatric practice at the Northeast Human Services Center.

5. Dr. Peterson, with other members of his practice, provided emergency psychiatric services at the Grand Forks Air Force Base (hereinafter "GFAFB") and at the home of another CPC physician, Dr. Erickson, (the temporary location of the CPC), both located outside of the evacuated city of Grand Forks.

6. Dr. Kerbeshian set up a temporary practice at Crookston, Minnesota.

7. Dr. Peterson testified that he did not know the whereabouts of Drs. Kirsch and Bansal during the early days of the evacuation. He did testify that he knew that Dr. Kerbeshian was in Crookston and, in fact, he had telephone conversations with him.

8. Dr. Kerbeshian was in contact with patients and others through the United Hospital command center (which included Grand Forks Clinic), which was first located on the outskirts of Grand Forks and, then, at the GFAFB.

9. The flood in the Grand Forks area was much more serious than anyone had predicted. The flood waters rose higher and faster than anyone had predicted, leaving the evacuated community in a complete state of disarray. Plans made by such entities as the Grand Forks clinic, the United Hospital, and the Northeast Human Services Center turned out to be inadequate. All aspects of daily life were disrupted, including but not limited to water, sewer, transportation, telephone, and electricity services.

10. Dr. LaVaun McCann, president of the Grand Forks Clinic, the largest physician group in Grand Forks, coordinated emergency medical services during the flood. She was involved at the command center at GFAFB. The provision of medical services was an east side/west side effort, with the east side of the river being covered out of Crookston and the west side of the river being covered out of GFAFB. Dr. McCann talked specifically with Dr. Peterson to have the CPC cover the west side for emergency psychiatric services and Dr. Kerbeshian to cover the east side for emergency psychiatric services. Grand Forks Clinic had no psychiatrists on staff at that time. When anyone at the GFAFB asked about psychiatric care they were referred to CPC.

11. The command center at GFAFB was set up with new telephone numbers to handle calls for all physicians, clinics, and hospitals. Accessibility to the command center was limited by the number of lines for only one to two days.

12. In response to Dr. McCann's request, Dr. Peterson immediately set about coordinating emergency psychiatric services for the duration of the flood. He and his partners at CPC tried to find out where their colleagues were, set up a 24-hour phone call schedule, performed rounds at emergency shelters, and established a 24-hour phone line. CPC temporary phone lines were set up at the home of Dr. Erickson to take calls.

13. Dr. Peterson attempted to locate all the other Grand Forks psychiatrists so that calls from their patients could be forwarded to them. To some extent, other providers recognized Dr. Erickson's home as an emergency headquarters, too. NEHSC brought its medication cards to Dr. Erickson's home to facilitate the provision of emergency services. Dr. Kerbeshian agreed to have Dr. Peterson cover for him on the west side of the river

14. Dr. Peterson testified that he, together with Dr. Erickson, sensed the emergency of the situation and felt compelled to publicly disseminate information concerning psychiatric care.

15. As a result, during the flood, Dr. Peterson caused to be published for two weeks between April 23 and May 7, 1997, in the Grand Forks Herald, the Crookston, Minnesota, Daily Times, and the Valley Shopper (Thief River Falls, Minnesota) the following:

Due to the catastrophic flood almost every regular psychiatric office and therapy clinics are temporarily closed. These include the offices of the Center for Psychiatric Care (Keith Erickson, MD, Patrick Goodman, MD, Steven Hill, MD, Thomas Peterson, MD, and Anne Cushing, ARNP), Northeast Human Services (Debra Kirsch, MD, Antonio Mimay, MD and many other clinicians), Jacob Kerbeshian, MD, Ashok Bansal, MD, and those of many other mental health professionals including in the upper Red River Valley. Arrangements are being made to meet the needs of existing clients.

Center for Psychiatric Care, Northeast Human Service Center, the Institute for Rural Mental Health and others are working feverishly to open centers to see those in need. For the next four to eight weeks Center for Psychiatric Care psychiatrists will be providing care to all clients new and old for the above providers affected by the flood. We understand first hand the emotional and financial stresses this disaster has placed on us collectively. Therefore, for the next four to eight weeks, for those who have some type of insurance, insurance only (no co-payment or added personal costs) will be accepted as payment in full for psychiatric services. For those without any insurance affected by the flood, psychiatric care will be provided at no charge.

Call the Center for Psychiatric Care Information Center for appointments, information, or help of any kind: (701) 775-2500. We will schedule appointments and appointment sites as soon as possible.

For more information contact: Thomas Peterson, Clinic Director, Center for Psychiatric Care. (701) 775-2500. P.O. Box 14545, Grand Forks, ND 58208-4545.

Exhibit 3.

16. Although Dr. Peterson intended the above (the quoted language in FOF # 15) to be published as a public service announcement or press release, and not a paid advertisement,

it was, in fact, published as a paid advertisement, billed to Dr. Peterson. (Hereinafter the information quoted in FOF # 15 will be referred to as "the advertisement.") Dr. Peterson actually wrote the advertisement, but it was Tamara Erickson, Dr. Erickson's wife, who was temporarily involved working at the CPC temporary offices, who contacted the newspapers and arranged for its release. The advertisement was quickly written by Dr. Peterson and sent immediately by Ms. Erickson to the press late in the afternoon of Wednesday, April 23, 1997. Ms. Erickson testified that she treated it as a press release. She said that she put it in what she thought was press release form with "For Immediate Release" written at the top.

17. Dr. Peterson was not aware that he would be billed for the advertisement, but someone from the Grand Forks Herald called him and said that the Herald would not print the advertisement unless it was paid for like an advertisement. Dr. Peterson gave the Herald permission to run the advertisement as an advertisement. Dr. Peterson paid the Herald for the advertisement.

18. Approximately, May 1, 1997, after Dr. Kerbeshian called about it, the CPC support staff called the Grand Forks Herald to discontinue the advertisement but it wasn't discontinued immediately.

19. After he learned about the fact that other psychiatrists were upset about the advertisement, Dr. Peterson offered to other psychiatrists to run a notice in the newspaper that the offices of other psychiatrists were now open. No one took him up on his offer.

20. There is no evidence that anyone except the involved psychiatrists complained about the advertisement.

21. Drs. Kirsch, Bansal, and Kerbeshian all testified that they had not given permission to Dr. Peterson to run the advertisement or to run any type of press release or other release of information indicating that they would be absent from the community and unable to care for their patients for four to eight weeks. Dr. Peterson testified that he did not discuss running the advertisement with Drs. Kirsch, Bansal, and Kerbeshian.

22. Drs. Kirsch, Bansal, and Kerbeshian all testified that they were displeased or upset with the advertisement. *See Exhibits 5 and 9*, letters from Drs. Kerbeshian and Bansal to Dr. Peterson.

23. Drs. Kirsch, Bansal, and Kerbeshian all testified that they resumed somewhat normal clinical practices approximately at the end of the first week of May 1997.

24. Just as the Grand Forks flood had been much more serious than anyone had predicted, in the days immediately following it things changed quickly, again. The flood waters receded more quickly than anyone had predicted just days earlier, and people began to return to the city much more quickly than had been anticipated. Dr. Peterson returned and learned that the CPC officers were not flooded, and the CPC physicians were able to return to their offices on or about May 1, 1997. NEHSC likewise was able to resume operations earlier than had been anticipated, and Drs. Bansal and Kerbeshian returned to their offices at about the same time.

25. Many, including some Grand Forks psychiatrists, were grateful for the emergency psychiatric care provided by Dr. Peterson and others at the GFAFB immediately after the flood.

26. Prior to the flood, Grand Forks psychiatrists shared a call rotation at the hospital and sometimes covered for each other on evenings and weekends

27. The testimony and other evidence does not show that Dr. Peterson and his group at CPC did anything during the flood but refer the patients of other psychiatrists. There is no evidence that any psychiatrists lost patients as a result of the advertisement during the flood.

28. When asked at the hearing if he would change any of the wording of the advertisement, now, Dr. Peterson said that he wished that he had used the word “cover” or “covering” because “that’s what we were doing.” He said that he thought that Dr. McCann was talking about CPC covering for all the psychiatrists in Grand Forks. He said it was only “our intent to help.” He said that “our motivation was to help people during the disaster.” He said that CPC did not intend to solicit.

29. At the time the advertisement was released to the press, Dr. Peterson reasonably believed that all psychiatric facilities in Grand Forks may be flooded and that the flood may last from four to eight weeks. He reasonably believed that Dr. Kerbeshian was covering for the emergency psychiatric needs of patients on the east side of the river, in Crookston, that he could not locate Drs. Kirsch, Bansal, and Mimay, and that the CPC was covering for the emergency psychiatric needs of patients on the west side of the river, out of the GFAFB and the CPC temporary headquarters. However, at the time the advertisement was released to the press, he could not have reasonably believed that the CPC would be “providing care to all clients new and old for [all] the above providers affected by the flood.” Exhibit 3. He could not have reasonably believed that the psychiatrists that he could not then locate would be unavailable for providing services to their patients for “the next four to eight weeks.” *Id.* He could not have reasonably believed that CPC could accept “insurance only (no co-payment or added personal costs) . . . as payment in full for psychiatric services” as payment for all those requiring psychiatric services

during the flood. *Id.* He could not have reasonably believed that CPC could provide at no charge psychiatric care “[f]or those without any insurance affected by the flood.” *Id.* He could not have reasonably believed that some Grand Forks psychiatrists might never return to Grand Forks as a result of the flood. Testimony of Dr. Peterson. Also, Dr. Peterson did not state in the advertisement his intent to connect patients with their established psychiatrists.

30. At the time he wrote the advertisement, Dr. Peterson was tired, troubled, and worried. He testified, and it can be inferred from the evidence, that he may not have been functioning as effectively and efficiently as normally. In hindsight, it may be said that Dr. Peterson used poor judgment in writing the advertisement.

COMMENTARY ON FINDINGS OF FACT

The overriding factor in this matter is the flood and what it did to places, things, and people. There is no evidence, except in the advertisement itself, of an intent upon the part of Dr. Peterson to advertise information about the provision of psychiatric services as a result of the flood or to do anything regarding the provision of psychiatric services for purposes other than to help people in need of psychiatric services during an emergency. Dr. Peterson only agreed to have the information in Exhibit 3 published as an advertisement when he realized that it could not be published but as a press release. However, he did agree to have it published as an advertisement.

The advertisement did have important, appropriate information in it. However, it also had inappropriate information in it. It also did not say some things that it should have said. Even Dr. Peterson acknowledged at the hearing that if he could write the advertisement over again, he would write it differently.

The gist of the complaint and the potential harm or injury in the advertisement is in the language of the advertisement itself. Some of it was not true at the time and Dr. Peterson could not have reasonably believed it to be true, even under the circumstances in which it was written. It is understandable that other psychiatrists would be upset and angry about it, even considering the circumstances under which it was written. However, one must never lose sight of those circumstances. At the time it was written, the circumstances were terrible for all residents of Grand Forks, including for all its psychiatrists, *e.g.* Dr. Peterson. Therefore, even though this matter is not about the flood, it is about an advertisement that was written under circumstances which were affected by the flood. Yet, it is a deceptive advertisement that was written by a competing psychiatrist regarding other competing psychiatrists. It should have been written, if at all, with more thought and care, but it was not. Dr. Peterson, personally, cannot be entirely blamed for the advertisement. The flood shares some of the blame.

CONCLUSIONS OF LAW

1. N.D.C.C. § 43-17-31 states, in part, as follows:

43-17-31. Grounds for disciplinary action. Disciplinary action may be imposed against a physician upon any of the following grounds:

6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.

11. The advertising for the practice of medicine in an untrue or deceptive manner.

2. Under N.D.C.C. ch. 28-32, the Commission has the burden of proof, *i.e.* to prove its complaint, to prove violation of the statutes alleged to be violated, by the preponderance or greater weight of the evidence. N.D.C.C. § 28-32-19.

3. The words and phrases contained in the statutes applicable in this matter are easily understood. N.D.C.C. § 1-02-02 states, “[w]ords used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.”

4. The advertisement was advertising for the practice of medicine under N.D.C.C. § 43-17-31(11). Although it was not initially, intentionally written as an advertisement, it was published as an advertisement and confirmed as such in response to a publisher’s inquiry, and paid for as such. It certainly included information about the practice of medicine in North Dakota, *i.e.* about the practice of psychiatric medicine in Grand Forks, during a specific time period. Moreover, regardless of the initial or ultimate intent of Dr. Peterson, it was understood as advertising. However, intent to advertise or to publish what would be strictly construed as an advertisement is not an element of N.D.C.C. § 43-17-31(11).

5. Advertising is defined as “the action of calling something to the attention of the public esp. by paid announcements.” Webster’s New Collegiate Dictionary, at 18 (1973). An advertisement is “[n]otice given in a manner designed to attract public attention.” Black’s Law Dictionary, Sixth Edition, at 54 (1990). To advertise is “[t]o call a matter to the public attention by any means whatsoever.” *Id.* See the definition of “advertisement” or “advertising” in N.D.C.C. §§ 4-09-01(1); 19-02.1-01(1); 43-28-01(1); 47-15.1-01(1); 51-15-01(1); 51-19-02(1); 54-02-01(2).

6. Although Dr. Peterson did not, at least initially, intend to publish an advertisement, strictly speaking, when he learned that the advertisement needed to be published as an advertisement, he allowed it to be published as such, and he paid for it. At that time he intended the advertisement to be an advertisement. Even if he did not intend the advertisement to be an advertisement, he was advertising for the practice of medicine within the meaning of N.D.C.C. § 43-17-31(11).

7. The advertisement was made in an untrue or deceptive manner. Although there was some truth to the advertisement, there was also untruth. Certainly, there was no truth to the statement that the CPC would be providing care to all clients new and old for all the Grand Forks psychiatric providers effected by the flood. There was no truth to the statement that all of the CPC's psychiatric competitors would be out of business for the next four to eight weeks. There are elements of untruth about statements regarding payment for the provision of psychiatric services during the flood. The truth is that Dr. Peterson had no permission to make any statement to other physicians' patients, that the CPC had made no arrangements with other psychiatrists (with the possible exception of Dr. Kerbeshian) to see their patients, and that Dr. Peterson had no permission to make any statement about the other physicians. "Deceit" is defined in N.D.C.C. ch. 9-10 for purposes of obligations imposed by law. Dr. Peterson advertised some facts that were not true when he had no reasonable ground for believing that that they were true. N.D.C.C. § 9-10-02(2). Therefore, the advertising was done in an untrue or deceptive manner.

8. Dr. Peterson's conduct in writing the advertisement and causing it to be disseminated by publication in various newspapers can be considered to be either dishonorable, unethical, or unprofessional conduct. To publish untrue and deceptive statements about the practice of

medicine can be considered dishonorable, unethical, and unprofessional conduct. N.D.C.C. § 43-17-31(6).

9. Defrauding the public seems to require an intent to deceive another person or intent to induce a person to enter into a contract. N.D.C.C. § 9-03-08. The evidence does not show that Dr. Peterson's conduct intended to deceive anyone or induce them to enter into a contract. However, his conduct was likely to deceive or harm the public. As discussed in Conclusions of Law # 7, the advertisement was on its face untrue, in part, and deceptive in part. Therefore, any member of the public reading it would be likely to be deceived by it. "Harm" to the public may be defined as "any loss, disadvantage, or injury," to an individual or to the community or people as a whole, *i.e.* the public, N.D.C.C. § 12.1-01-04(14), or any "physical or mental damage" or "mischief" to the public, Webster's New Collegiate Dictionary at 523 (1973), or "[t]he existence of loss or detriment in fact of any kind to a person resulting from any cause," Black's Law Dictionary, Sixth Edition, at 718 (1990). Even if there was no actual harm to the public, the advertisement was likely to harm the public. There is no requirement in N.D.C.C. § 43-17-31(6) of resulting actual harm. It is obvious that the advertisement was construed by competing psychiatrists as untrue and deceptive, as well as being conduct that was dishonorable, unethical, or unprofessional. In fact, the advertisement caused harm to Dr. Peterson's competing psychiatrists, though not substantial harm. It was likely to cause harm to the psychiatrists and their patients. It was likely to deceive the patients of the competing psychiatrists.

10. There is no requirement, under N.D.C.C. § 43-17-31(6) or (11), in order to show a violation by Dr. Peterson, that any patient of competing psychiatrists, or patients in general, be, in fact, misled or deceived by Dr. Peterson's advertising. The advertisement speaks for itself. The

advertisement is itself a violation of the statutes. The testimony at the hearing and the other evidence (exhibits) offer no reasonable explanation for the wording of the advertisement. Only Dr. Peterson's circumstances and his condition at the time of the flood offer some explanation, but they do not entirely excuse the conduct. Dr. Peterson acknowledges that the stated intent of the advertisement does not match its actual content. This acknowledgment, in itself, is an indication of deceit and untruth. It is an indication that his conduct in writing it was dishonorable, unethical, or unprofessional. In hindsight, Dr. Peterson stated that he would have done it differently. The competing psychiatrists wish that he had not done it at all.

11. In *Gale v. N.D. Board of Podiatric Medicine*, 562 N.W. 2d 878 (N.D. 1997), the North Dakota Supreme Court construed a general false or misleading advertising statute of the Board of Podiatric Medicine. N.D.C.C. ch. 43-05, the chapter regulating podiatrists, defines "[f]alse or misleading . . . advertising" as "advertising that . . . contains a misrepresentation of fact; . . . is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts; . . . contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived . . ." N.D.C.C. § 43-05-01(3). N.D.C.C. § 43-05-16 authorizes the Board of Podiatric Medicine to take disciplinary action against a podiatrist for certain types of conduct, including "[a]dvertising that is false or misleading." N.D.C.C. § 43-05-16(1)(e). Dr. Gale published an advertisement. The supreme court found that a reasoning mind could reasonably find Dr. Gale's advertisement contained representations that in reasonable probability would cause an ordinary, prudent person to misunderstand or be deceived. It upheld the Board of Podiatric Medicine's findings that Dr. Gale used misleading advertisements. 562 N.W.2d at 886. Although the Board of Medical Examiners

does not have a statutory definition of false advertising, it, too, has a general false advertising statute, a prohibition against advertising for the practice of medicine in an untrue or deceptive manner, upon which disciplinary action may be taken. N.D.C.C. § 43-17-31(11). A reasoning mind could reasonably find that Dr. Peterson's advertisement, the advertisement in this matter, contained statements for or about the practice of medicine in North Dakota that are untrue or which could cause an ordinary, prudent person to be deceived by them. In *Gale*, as well as in this matter, the Board is forced to rely on a general advertising prohibition. The only difference between the two matters is that false advertising or misleading advertising is more specifically defined in the Podiatric Board's statute. Under the construction given to the terms above, this is not a serious distinction. The cases are strikingly similar.

RECOMMENDED ORDER

The greater weight of the evidence shows that Dr. Peterson violated the provisions of N.D.C.C. § 43-17-31(6) and (11). The Commission makes a reasonable recommendation which, under the circumstances, with some modification, the ALJ recommends that the Board accept. A suspension of license must be for a period of time. Therefore, the ALJ recommends that Dr. Peterson's license to practice medicine in North Dakota be suspended for a period of one year and that all of the period of suspension be stayed for a period of one year from the date of the Board's final order in this matter, subject to the following conditions:

1. That Dr. Peterson pay all fees and costs associated with these proceedings in a manner as prescribed by the Board. *See* N.D.C.C. § 43-17-31.1
2. That Dr. Peterson take an ethics course approved by the Board to be completed within one year; and

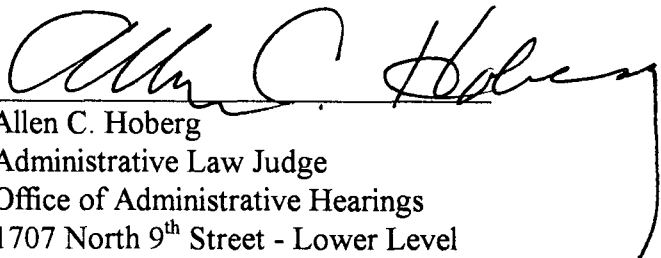
3. That Dr. Peterson be placed on probation during the period of the stay of the suspension (for one year) and have no further violations of N.D.C.C. § 43-17-31, grounds for disciplinary action, during the period of probation.

At the end of the period of the stay of suspension, *i.e.* at the end of one year, if all the conditions of the stay are met, Dr. Peterson's license shall no longer be considered suspended subject to stay conditions, and he shall be considered to have an unencumbered license to practice medicine in North Dakota. If all the conditions of the stay are not met at the end of the period of the stay of suspension, Dr. Peterson's license shall be suspended for a period of one year from the date of the end of the period of the stay of suspension, or from the date of the Board's further order, and Dr. Peterson shall not practice medicine in North Dakota during that time.

Dated at Bismarck, North Dakota, this 21st day of July, 1998.

State of North Dakota
Board of Medical Examiners

By:



Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street - Lower Level
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

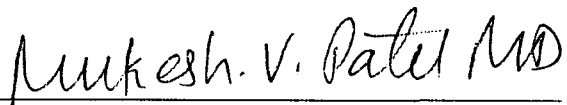
IN THE MATTER OF:)	
)	
Commission on Medical Competency,)	
)	
Complainant,)	
)	
vs.)	ORDER
)	
Thomas M. Peterson, M.D.,)	
)	
Respondent.)	

WHEREAS the North Dakota State Board of Medical Examiners heard arguments in this matter during its regular meeting on Friday, November 13, 1998; and

The respondent, Thomas M. Peterson, M.D., appeared personally and through his attorney Mary Martin. The Commission on Medical Competency was represented by John M. Olson, and the parties were heard.

IT IS HEREBY the Order of the North Dakota State Board of Medical Examiners that a letter of concern be issued to the respondent, Thomas M. Peterson, M.D., and that he be required to pay all costs incurred by the Board of Medical Examiners and the North Dakota Commission on Medical Competency in the investigation and prosecution of this matter.

Dated this 13 day of November, 1998.



MUKESH V. PATEL, M.D.
Chairman

North Dakota State Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

November 13, 1998

Thomas M. Peterson, M.D.
Center for Psychiatric Care
3375 DeMers Ave.
Grand Forks, ND 58201

Re: Letter of Concern:

Dear Dr. Peterson:

The North Dakota State Board of Medical Examiners has found that by advertising in an untrue or deceptive manner, you engaged in unprofessional conduct within the meaning of Section 43-17-31(6), NDCC.

That section provides that:

"Disciplinary action may be imposed against a physician upon any of the following grounds:

6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public."

By committing this violation of the North Dakota Medical Practice Act, you became subject to the disciplinary powers of the Board of Medical Examiners. In accordance with the order of the Board, you are hereby issued this letter of concern pursuant to Section 43-17-30.1(7), NDCC.

You are advised that the Board of Medical Examiners regards your unprofessional conduct as a serious breach of the ethical responsibilities imposed on physicians who practice medicine in North Dakota.

Sincerely,



ROLF P. SLETTEN

Executive Secretary
and Treasurer

RPS/II

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF NORTH DAKOTA

Commission on Medical Competency,)	
)	
Complainant,)	AGREEMENT
)	AND ORDER REGARDING
vs.)	PAYMENT OF COSTS
)	
Thomas M. Peterson, M.D.,)	
)	
Respondent.)	

I.

By its Order dated November 13, 1998, the North Dakota Board of Medical Examiners (hereinafter the Board) required the Respondent to pay all costs incurred by the North Dakota Commission on Medical Competency and by the North Dakota Board of Medical Examiners in the investigation and prosecution of the disciplinary action which was brought against the Respondent pursuant to the Administrative Complaint dated August 21, 1997.

II.

It is hereby agreed by and between the Board and the Respondent that:

- A. The total sum of money due and owing to the Board by the Respondent in this matter is \$13,054.43.
- B. The Respondent shall pay that sum to the Board in installments of \$1000.00 per month. Those payments shall be paid to the Board on or before the 15th day of each month commencing in April 1999, and continuing each month thereafter until the entire sum of \$13,054.43 has been paid to the Board.

BOARD OF MEDICAL EXAMINERS)
)
STATE OF NORTH DAKOTA)
)
)

AFFIDAVIT OF MAILING

Coreen K. Redmann being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of 18, and that on the 16th day of April, 1999, this affiant personally mailed the following:

AGREEMENT AND ORDER REGARDING PAYMENT OF COSTS

DATED 4-12-99

by placing a true copy in a postage paid envelope addressed to the person(s) named below, at the address(s) stated below, and by depositing said envelope with the United States Postal Service at Bismarck, North Dakota to:

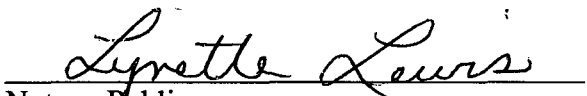
Thomas M. Peterson, M.D.
Center for Psychiatric Care
3375 DeMers Ave.
Grand Forks, ND 58201
(Sent by certified mail)

Mary Martin
Attorney At Law
2411 Francis St.
St. Paul, MN 55075

and that the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.


COREEN K. REDMANN

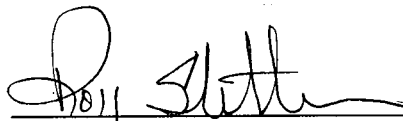
Subscribed and sworn to before me this 16 day of April, 1999.


Notary Public
Burleigh County, North Dakota
My Commission Expires:

LYNETTE LEWIS
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires FEBRUARY 16, 2005

- C. Failure to comply with the terms of this agreement will constitute a violation of Sec. 43-17-31(9), NDCC.

Dated this 24 day of March, 1999.



ROLF P. SLETTEN

Executive Secretary and Treasurer
Board of Medical Examiners

Dated this 7 day of ~~March~~, 1999.

April
(TS)



THOMAS M. PETERSON, M.D.

ORDER

WHEREAS, the terms of this Stipulation have been previously approved by the North Dakota Board of Medical Examiners it is hereby Ordered that the same shall be incorporated herein in its entirety and shall constitute the further Order of this Board.

Dated this 12 day of ~~March~~, 1999.

April



MUKESH V. PATEL, M.D.
Chairman

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF NORTH DAKOTA

Commission on Medical)	
Competency,)	
)	
Complainant,)	
)	ORDER RESTORING
vs.)	UNCONDITIONAL LICENSURE
)	
Thomas M. Peterson, M.D.,)	
)	
Respondent.)	

WHEREAS, the members of the North Dakota State Board of Medical Examiners find that the Respondent, Thomas M. Peterson, M.D., has complied with all the terms and conditions which encumbered License No. 6217 pursuant to the Board's Order of November 13, 1998, and that he has complied with the Board's Agreement and Order Regarding Payment of Costs dated April 12, 1999, it is the Order of the North Dakota State Board of Medical Examiners that License No. 6217 issued to Thomas M. Peterson, M.D., is hereby restored to unconditional status.

Dated this 17 day of November, 2000.

NORTH DAKOTA STATE BOARD
OF MEDICAL EXAMINERS

By: Wallace Radtke, M.D.
WALLACE E. RADTKE, M.D.
Chairman

BOARD OF MEDICAL EXAMINERS)
)
STATE OF NORTH DAKOTA)
)
)

AFFIDAVIT OF MAILING

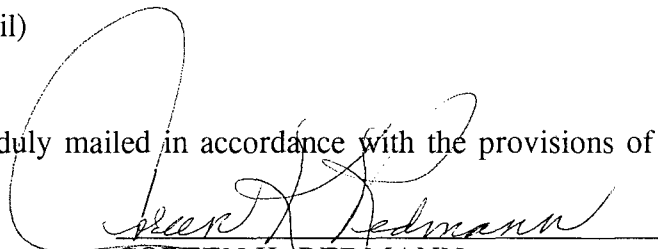
Coreen K. Redmann being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of 18, and that on the 18th day of December, 2000, this affiant personally mailed the following

ORDER RESTORING UNCONDITIONAL LICENSURE dated 11-17-2000

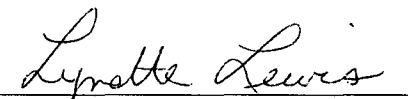
by placing a true copy in a postage paid envelope addressed to the person(s) named below, at the address(s) stated below, and by depositing said envelope with the United States Postal Service at Bismarck, North Dakota to:

Thomas M. Peterson, M.D.
Center for Psychiatric Care
3375 DeMers Ave.
Grand Forks, ND 58201
(sent by certified mail)

and that the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.


COREEN K. REDMANN

Subscribed and sworn to before me this 18th day of December, 2000.



Notary Public
Burleigh County, North Dakota
My Commission Expires:

LYNETTE LEWIS
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires FEBRUARY 16, 2005

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF NORTH DAKOTA

North Dakota State Board of Medical)	
Examiners - Investigative Panel A,)	
)	
Complainant,)	
)	
vs.)	SECOND AMENDED
)	C O M P L A I N T
)	
Thomas M. Peterson, M.D.,)	
)	
Respondent.)	

The Complainant respectfully shows to the Board as follows:

I.

Investigative Panel A of the North Dakota State Board of Medical Examiners ("Board") is authorized pursuant to N.D.C.C. Chapter 43-17.1 to conduct investigations related to the practice of any physician licensed to practice in this state and file a formal complaint against any licensed physician with the State Board of Medical Examiners.

II.

Respondent, Thomas M. Peterson, M.D., is a physician licensed to practice medicine in the State of North Dakota.

III.

Respondent, Thomas M. Peterson, M.D., has engaged in the prescription, administration or distribution of a drug legally classified as a controlled substance or as an addictive or dangerous drug

for other than medically accepted purposes as proscribed by N.D.C.C. 43-17-31 (17), specifically, as follows:

FACTS

1. At all material times herein, Respondent was in the practice of medicine as a board certified psychiatrist at the Center for Psychiatric Care in Grand Forks, North Dakota. He also provided professional medical services at the Richard P. Stadter Psychiatric Center in Grand Forks, North Dakota.
2. **Patient A (DOB: [REDACTED])**: Patient was admitted to the Richard P. Stadter Psychiatric Center under Respondent's care. Patient presented with suicidal threats, physical aggression towards his mom, and trouble sleeping at night. Primary diagnosis was ADHD, and then Bipolar disorder. However, on the medication sheets, diagnosis was listed as Depression NOS. When first admitted Patient was on the anti-depressant Lexapro 10 mg po qam, Adderall XR 15 mg po qam for ADAH, an anti-psychotic medication Seroquel 25 mg po qid prn and Guanfacin 1 mg po qam. During Patient's hospitalization he continued to struggle with aggression and other behavior issues, but at no time was there any documentation of psychotic symptoms, hallucinations, delusions, paranoia, or any other symptoms suggestive of manic spells. At one point during his hospitalization he was on a mood stabilizer Depakote, and two atypical antipsychotics, Risperdal and Zyprexa. At another time he was on Seroquel scheduled and prn, Zyprexa prn and Depakote scheduled. There were notes about Patient complaining of feeling tired and Patient's

11/11/11

mother also expressed concerns to staff after talking to Patient that he sounded medicated, and was groggy while talking to her. On assessment during hospitalization Patient was experiencing extrapyramidal side effects (drooling) from the medication, Risperdal. Respondent reduced Patient's dosage on this medication but continued the dosage of Zyprexa. Patient was discharged with a high dose of Depakote and Risperdal. Patient was also sent home with a prn anti-psychotic medication, Zyprexa 2.5 mg at least once daily but up to 3 times/day in addition to the scheduled atypical antipsychotic, Risperdal. Such an excessive amount of atypical antipsychotic medications are beyond the acceptable standards of prescriptive practice for a child in this age group.

3. **Patient B (DOB: [REDACTED])**: Patient was admitted to the Richard P. Stadter Psychiatric Center under Respondent's care. Patient exhibited agitation, aggression, and behavior issues at home and in the school setting. Primary diagnosis of Patient was Bipolar disorder, mixed, severe, Pervasive developmental disorder, and borderline intellectual functioning. When admitted Patient was on two atypical antipsychotic medications: Seroquel 100mg qid, and Risperdal 0.5mg tid; and two mood stabilizers: Depakote Sprinkles 250mg qid, and Trileptal 300mg bid. Patient's mother called and complained to Respondent about Patient being on too many medications, and on one occasion even requested a transfer to a different facility. Patient was discharged on a high dose of Depakote (250 mg tid and 375 mg qhs, equaling

1,375 mg, higher than commonly used for a 5 year. old) and the atypical antipsychotic medication Geodon 40 mg qid (150 mg total, which is a high dose) and Geodon 40 mg q 1hr prn not to exceed 280 mg/day (a very high dose, prn hourly at discharge). Also at discharge Patient was prescribed another atypical antipsychotic medication, Seroquel 100 mg qid (high dose). Respondent, in effect, sent Patient home with two atypical antipsychotic medications which is injudicious and an excessive use of atypical antipsychotics.

IV.

Based upon the forgoing facts, Respondent has engaged in the prescription, administration or distribution of a drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted purposes.

WHEREFORE, complainant respectfully requests:

That the license of the Respondent, Thomas M. Peterson, authorizing him to practice medicine in the state of North Dakota be revoked or that other appropriate action be taken, pursuant to the provisions of N.D.C.C. Section 43-17-30.1.

Dated at Bismarck, North Dakota, this 25th day of January, 2008.

By: 

JOHN M. OLSON (ID#03053)

SPECIAL ASSISTANT ATTORNEY GENERAL

418 E. Broadway Avenue, Suite 9

Bismarck, ND 58501

Phone: (701)222-3485 - Facsimile: (701) 222-3091

E-mail: olsonpc@midconetwork.com

Attorney for: North Dakota State Board of Medical
Examiners - Investigative Panel A

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF NORTH DAKOTA

North Dakota Board of Medical)
Examiners - Investigative Panel A,)
)
Complainant,)
)
vs.)
)
Thomas M. Peterson, M.D.,)
)
Respondent.)

STIPULATION

WHEREAS, the North Dakota State Board of Medical Examiners issued a Second Amended Complaint seeking to revoke the Respondent's license to practice medicine, or appropriate sanction, in the State of North Dakota pursuant to N.D.C.C. § 43-17-30.1 and N.D.C.C. §43-17-31 (17); and

WHEREAS, the Respondent admits service of the Summons and Second Amended Complaint and agrees that the facts alleged in the Second Amended Complaint of Investigative Panel A dated January 25, 2008, are true and are grounds for disciplinary action by the North Dakota Board of Medical Examiners and that the terms of this Stipulation are appropriate;

THEREFORE, IT IS HEREBY agreed by and between the parties to this action and the North Dakota State Board of Medical Examiners (hereinafter "the Board"):

1. The Respondent hereby waives any procedural irregularity herein and his right to hearing on the Second Amended Complaint now pending in this action.

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ZUGER KIRKIS & SMITH

2. The Board will enter an Order imposing a restriction on Respondent's license to practice medicine in the State of North Dakota that prohibits any prescribing of psychotropic medications to children and adolescents under the age of eighteen (18).
3. Respondent's license shall be placed on probation for a period of three (3) years, commencing from the date of the Board's Order and Respondent shall have no further violations of the North Dakota Medical Practice Act.
4. Respondent shall complete a prescribing course approved by the Board in the area of "Child and Adolescent Psychopharmacology". Respondent is tentatively approved to attend the "Child and Adolescent Psychopharmacology" seminar conducted by the Massachusetts General Hospital, Department of Psychiatry and Accredited by Harvard Medical School Department of Continuing Education scheduled in Boston, Massachusetts, March 14 to 16, 2008. Respondent shall be solely responsible for all costs for such course. After attendance and satisfactory completion of such prescribing course the restriction referenced in No. 2 herein may be removed if Respondent satisfactorily demonstrates to the Board his ability to renew his practice of prescribing medications to adolescents.
5. Any petition made by Respondent for reinstatement of his unrestricted license shall be subject to the sole discretion of the Board, and the Board may review any such petition at a special meeting by teleconference called for such purpose.
6. Respondent shall reimburse the North Dakota Board of Medical Examiners for all reasonable costs expended for the investigation and prosecution of this action. This amount shall be due within sixty (60) days from the date of the Board's Order. The

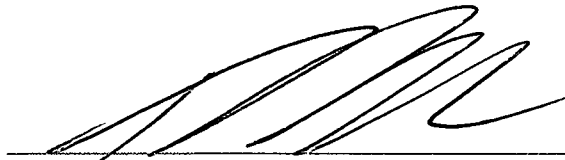
Board shall provide written notice of all amounts due within thirty (30) days from the date of the Board's Order.

7. If Respondent shall fail, neglect, or refuse to fully comply with any of the terms, provisions, or conditions herein, the license of the Respondent to practice medicine in the State of North Dakota shall be revoked in accordance with the law.
8. In the event the Board, 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 Respondent agrees that should the Board reject this Stipulation, and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto.
9. This agreement for the disposition of the above-entitled contested case is a matter of public record and the obligations of the Board with respect thereto shall be governed by the laws of North Dakota and current Board policy.
10. That all parties hereto recognize that Board representatives who have engaged in discussions relative to an agreed disposition of this matter can only make recommendations to the North Dakota State Board of Medical Examiners, which recommendation can in no way be considered as binding upon the full membership of the Board who would ultimately decide the pending contested case, and this agreement is subject to acceptance by the full membership of the Board.
11. That Respondent understands that he has the right and has been afforded the opportunity to have this agreement reviewed by his attorneys, and that in the event

he chooses to execute this document without taking the opportunity to avail himself of this right, such failure shall be deemed to be a waiver of such right.

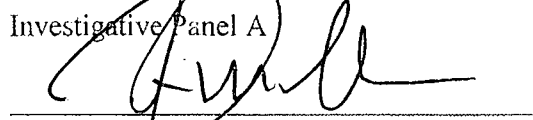
12. Respondent specifically waives any claim that any disclosures made to the full membership of the Board for the purposes of the consideration of this agreement have prejudiced his rights to a fair and impartial hearing in the event this agreement is not accepted by the full Board and if further proceedings ensue.
13. Respondent further agrees that there have been no inducements, threats or promises made in order to obtain his entry into this agreement.
14. That the parties further agree that all statements contained herein are based upon the facts known to the Board on the date of execution of this agreement.

Dated this 19 ^{February} day of ~~January~~, 2008.


Thomas M. Peterson, M.D.

Dated this 26th ^{February} day of ~~January~~, 2008.

NORTH DAKOTA STATE BOARD
OF MEDICAL EXAMINERS
Investigative Panel A


John M. Olson (ID#03053)
Special Assistant Attorney General
418 E. Broadway Avenue Suite 9
Bismarck, ND 58501
Phone: (701) 222-3485
Fax: (701) 222-3091
E-mail: olsonnpc@midconetwork.com

BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF NORTH DAKOTA

North Dakota State Board of Medical
Examiners - Investigative Panel A,

Complainant,

vs.

Thomas M. Peterson, M.D.,

Respondent.


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ORDER

It is the Order of the North Dakota State Board of Medical Examiners that License No. 6217 previously issued to Thomas M. Peterson, M.D., is hereby restricted as specified in the Stipulation dated February 26, 2008, which was adopted by the Board on March 14, 2008, and the same shall be incorporated herein in its entirety and shall constitute the further Order of this Board.

Dated this 14th day of March, 2008.

NORTH DAKOTA STATE BOARD
OF MEDICAL EXAMINERS

By: 
CRAIG J. LAMBRECHT, M.D.
Chairman

BOARD OF MEDICAL EXAMINERS)
)
STATE OF NORTH DAKOTA) AFFIDAVIT OF MAILING
)
)

Marijo DeMott being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of 18, and that on the 18 day of March 2008, this affidavit personally mailed the following:

2nd AMENDED COMPLAINT dated 1-25-08
STIPULATION dated 2-26-08
ORDER dated 3-14-08

by placing a true copy in a postage paid envelope addressed to the person(s) named below, at the address(s) stated below, and by depositing said envelope with the United States Postal Service at Bismarck, North Dakota to:

Thomas M. Peterson, MD
5896 Pinehurst Dr
Grand Forks, ND 58201
(Certified Mail)

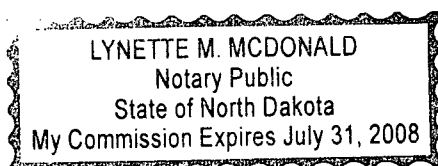
Lance Schreiner, Atty
Zuger Kirmis & Smith
PO Box 1695
Bismarck, ND 58502-1695

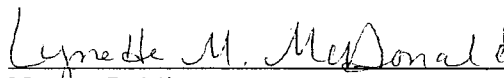
and that the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



MARIJO DEMOTT

Subscribed and sworn to before me this 18th day of March, 2008.





Notary Public
Burleigh County, North Dakota
My Commission Expires: 7-31-08

STATE OF NORTH DAKOTA

Respondent.

ORDER


CRAIG J. LAMBRECHT, M.D.
Chairman

BOARD OF MEDICAL EXAMINERS)
)
STATE OF NORTH DAKOTA) AFFIDAVIT OF MAILING
)
)

Marijo DeMott being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of 18, and that on the 8th day of April 2008, this affidavit personally mailed the following:

ORDER dated 4-2-08

by placing a true copy in a postage paid envelope addressed to the person(s) named below, at the address(s) stated below, and by depositing said envelope with the United States Postal Service at Bismarck, North Dakota to:

Thomas M. Peterson, MD
5896 Pinehurst Dr
Grand Forks, ND 58201

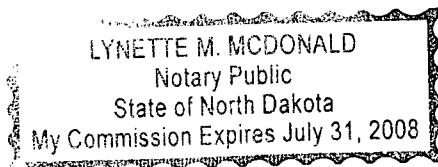
Lance Schreiner, Atty
Zuger Kirmis & Smith
PO Box 1695
Bismarck, ND 58502-1695

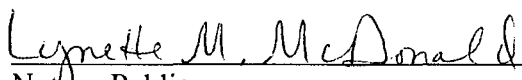
and that the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



MARIJO DEMOTT

Subscribed and sworn to before me this 8th day of April, 2008.





Notary Public
Burleigh County, North Dakota
My Commission Expires: 7-31-08

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF NORTH DAKOTA

North Dakota State Board of Medical
Examiners - Investigative Panel A,

Complainant,

vs.

Thomas M. Peterson, M.D.,

Respondent.

ORDER TERMINATING
PROBATION

WHEREAS, Respondent has petitioned the Board for termination of his probation; and

WHEREAS the members of the North Dakota State Board of Medical Examiners find that the Respondent has satisfactorily demonstrated his ability to appropriately prescribe to children and adolescents, it is the Order of the North Dakota State Board of Medical Examiners that License No. 6217 issued to Thomas M. Peterson, M.D., is no longer on probation and is returned to unconditional status.

Effective this 20th day of November, 2009.

NORTH DAKOTA STATE BOARD
OF MEDICAL EXAMINERS



CORY R. MILLER, M.D.
Chairman

BOARD OF MEDICAL EXAMINERS)
)
STATE OF NORTH DAKOTA) AFFIDAVIT OF MAILING
)
)

Marijo DeMott being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of 18, and that on the 1st day of December, 2009, this affidavit personally mailed the following:

ORDER TERMINATING PROBATION dated 11-20-09

by placing a true copy in a postage paid envelope addressed to the person(s) named below, at the address(s) stated below, and by depositing said envelope with the United States Postal Service at Bismarck, North Dakota to:

Thomas M. Peterson, MD
5896 Pinehurst Dr
Grand Forks, ND 58201

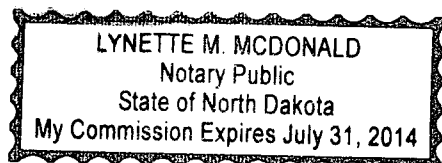
Lance Schreiner, Atty
Zuger Kirmis & Smith
PO Box 1695
Bismarck, ND 58502-1695

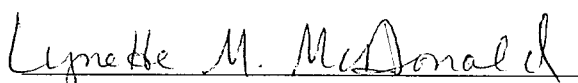
and that the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



MARIJO DEMOTT

Subscribed and sworn to before me this 1st day of December, 2009.





Notary Public
Burleigh County, North Dakota
My Commission Expires: