

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF NORTH DAKOTA

North Dakota State Board of Medical)
 Examiners – Investigative Panel A,)
)
 Complainant,)
)
 vs.)
 David R. Mack, M.D.,)
)
 Respondent.)
)
)

COMPLAINT

COMES NOW, the Complainant, North Dakota State Board of Medical Examiners – Investigative Panel A, and for its Complaint against the Respondent, David R. Mack, alleges and states 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.

David R. Mack, M.D., is a physician licensed to practice medicine in the State of North Dakota.

III.

That N.D. Admin. Code Chapter 50-04-01-01 requires all physicians licensed to practice medicine in the state of North Dakota, subject to exemptions not applicable to Respondent, to

complete no less than sixty (60) hours of board approved continuing medical education (CME) every three (3) years.

IV.

That N.D.C.C. § 47-17-31(1) provides that a physician may be subject to disciplinary action for: “[t]he use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.

V.

That N.D. Admin. Code Chapter 50-04-01-04 provides a “[f]alse statement regarding satisfaction of continuing education requirements on the renewal form or on any documents connected with the practice of medicine may subject the licensee to disciplinary action by the board.”

VI.

That N.D. Admin. Code Chapter 50-04-01(2) allows the Board to randomly audit selected physicians to monitor compliance with the continuing education requirements. Any physician audited must furnish documentation of compliance “including the name of the accredited CME provider, name of the program, hours of continuing medical education completed, dates of attendance, evidence of credit designation (i.e. category I designation, prescribed credit designation, etc.) and verification of attendance.”

VII.

On June 2, 2011, Respondent submitted his license renewal application indicating, “I have fully complied with the CME requirements specified in Chapter 50-04-01 of the North Dakota Administrative Code.”

VIII.

On July 15, 2011 Respondent received a letter from the Board stating he was being randomly audited and requesting he provide the Board with documentation verifying compliance with the CME requirements by August 26, 2011.

IX.

On August 25, 2011, Respondent sent correspondence to the Board requesting an extension of the August 26, 2011 date to provide proof of his CME requirements.

X.

Respondent was granted a two week extension by the Board to provide proof of his CME requirements.

XI.

On August 25-26, 2011, Respondent submitted correspondence and documentation reflecting he had completed 43.25 hours of continuing medical education from June 1, 2008 until June 30, 2011.

XII.

Respondent's assertion that he had "fully complied with the CME requirements specified in Chapter 50-04-01 of the North Dakota Administrative Code" on his renewal application when he had not, constitutes a false statement in connection with licensing requirements in violation of N.D.C.C. § 47-17-31(1) and establishes grounds for discipline.

WHEREFORE, Complainant respectfully requests that Respondent David R. Mack, M.D. be disciplined for his violations of N.D.C.C. § 43-17-31 and seeks an appropriate sanction(s) for those violations as authorized by N.D.C.C. § 43-17-30.1. Complainant also respectfully requests that the Board be awarded its costs in having to bring this action pursuant to

N.D.C.C. § 43-17-31.1.

NOTICE: Respondent must answer this Complaint within twenty one days after service of the complaint or the allegations may be deemed admitted and may result in a default order revoking the subject license. Such answer must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Dated this 20th day of December, 2011.

By Stacy M. Moldenhauer

Stacy M. Moldenhauer

(ID #06293)

Special Assistant Attorney

General

116 North 2nd Street

P.O. Box 460

Bismarck, ND 58502-0460

Phone: (701) 258-0630

Facsimile: (701) 258-6498

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

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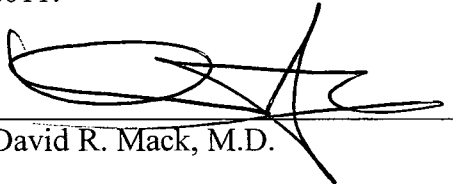
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ADMISSION OF SERVICE

COMES NOW, the undersigned respondent and hereby admits service of the enclosed **SUMMONS** and **COMPLAINT** this 27 day of December, 2011, in the above-entitled matter.

Dated this 27 day of December, 2011.



David R. Mack, M.D.

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STIPULATION

WHEREAS, the North Dakota State Board of Medical Examiners (hereinafter “the Board”) issued a Complaint seeking discipline against the Respondent’s license to practice medicine in the state of North Dakota, pursuant to N.D.C.C. § 43-17-30.1; N.D.C.C. § 43-17-31; and N.D. Admin. Code Chapter 50-04-01; and

WHEREAS, the Respondent admits service of the Summons and Complaint and agrees that the facts alleged in the Complaint of Investigative Panel A dated December 15th, 2011, 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:

1. The Respondent hereby waives any procedural irregularity herein and his right to a hearing on the Complaint now pending in this action;
2. Respondent shall be fined in the sum of \$2,500.00. Respondent shall make payment within thirty (30) days from the execution of the Board’s Order.

3. Respondent shall be required to provide proof of his CME compliance in June 2014, his next reporting period

4. Respondent acknowledges that only CME hours certified during the reporting period will be accepted.

5. Respondent shall complete the remaining 16.75 hours of CME credits that were due on June 30, 2011 within 60 days of the date of this stipulation.

6. Respondent shall be responsible for paying costs incurred by the Board in the investigation and prosecution of this action in an amount not to exceed \$500.00

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. All parties hereto recognize that the 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 recommendations 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. Respondent understands that he has the right and has been afforded the opportunity to have this agreement reviewed by an attorney, 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 consideration of this agreement have prejudiced his right to a fair and impartial hearing in the event that 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. 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.

Date this 12 day of Dec, 2011.



David R. Mack, M.D.

Dated this 3rd day of January, 2012.

By Stacy M. Moldenhauer

Stacy M. Moldenhauer

(ID #06293)

Special Assistant Attorney

General

116 North 2nd Street

P.O. Box 460

Bismarck, ND 58502-0460

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ORDER

On December 20, 2011, North Dakota Board of Medical Examiners Investigative Panel A brought disciplinary action against the Respondent. The Complaint alleges that the Respondent provided a false statement and failed to comply with the laws and regulations governing mandatory continuing medical education (CME).

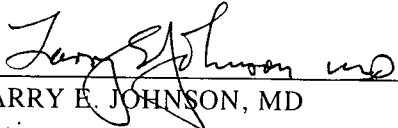
On January 3, 2012, the parties entered into a Stipulation which provided that there was a basis for disciplinary action against the Respondent and set forth the terms of an appropriate Board Order to resolve this action. That Stipulation is incorporated in its entirety and constitutes the further Order of this Board.

Based upon the Stipulation of the parties. IT IS HEREBY ORDERED THAT:

1. The Respondent shall be required to provide proof of his CME compliance in June 2014, his next reporting period. Respondent shall also complete the remaining 16.75 hours of CME credits that were due on June 30, 2011 within 60 days of the stipulation.
2. The Respondent is required to pay a fine in the amount of \$2,500.00 within 30 days of service of this Order.
3. The Respondent is required to pay the costs of the prosecution of this action, not to exceed \$500.00.

This Order is effective March 23, 2012.

NORTH DAKOTA STATE BOARD
OF MEDICAL EXAMINERS


LARRY E. JOHNSON, MD
Chair

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 4th day of April, 2012, this affidavit personally mailed the following:

COMPLAINT dated 12-20-11
STIPULATION dated 01-03-12
ORDER effective 3-23-12

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:

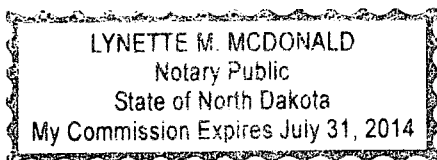
David R. Mack, MD
2305 Turnagain Parkway
Anchorage, AK 99517
(Sent by certified mail)

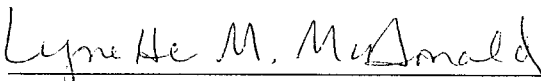
and that the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



MARIJO DEMOTT

Subscribed and sworn to before me this 4th day of April, 2012.





Notary Public
Burleigh County, North Dakota
My Commission Expires: