

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License
to practice Medicine of

JAMES R. MCGUIRE, M.D.

Respondent.

No. 94-02-0074MD

STATEMENT OF CHARGES

The Program Manager of the State of Washington Department of Health upon designation by the disciplining authority states and alleges as follows:

Sections 1: LICENSE STATUS

1.1 At all times materials to this Statement of Charges Respondent has been licensed to practice medicine and perform surgery by the State of Washington.

Section 2: FACTUAL ALLEGATIONS

2.1 On February 10, 1994, the Medical Board for the State of Alaska adopted a Stipulation, Proposed Decision and Order entered signed by Respondent, which suspended Respondent's license to practice medicine in Alaska based on his admission he had a sexual relationship with a patient.

Section 3: ALLEGED VIOLATIONS

3.1 The facts alleged in paragraph 2.1, if proved, constitute a violation of RCW 18.130.180(5) which defines as unprofessional conduct:

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- (5) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation suspension, or restriction.

It is further alleged that the allegations specified and conduct referred to in this Statement of Charges affect the public health, safety and welfare, and the Medical Quality Assurance Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against the accusations of the Statement of Charges. If Respondent fails to defend against these allegations, Respondent shall be subject to such discipline as is appropriate under RCW 18.130.160.

DATED this 24th day of August, 1994.

Washington State
Medical Quality Assurance Commission

By:

Beverly A. Lister for
Kristin Hamilton
Hearings Manager

Pat L. DeMarco
Pat DeMarco WSBA #16897
Assistant Attorney General
Licensing Division
P.O. Box 40110
Olympia, Washington 98504-0110



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: James McGuire
Docket No.: 99-12-A-1056MD
Document: Final Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

Information regarding an individual's health care, including where they received health care services, their medical condition, care provided, etc., pursuant to RCW 42.17.312 (Public Records Disclosure) and RCW 70.02.020 (Medical Records – Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

Adjudicative Clerk Office
P.O. Box 47879
Olympia, WA 98504-7879
Phone: (360) 236-4677
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to Nancy Ellison, Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.



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**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

ORIGINAL

7-10-95

FILED

In the Matter of the License to Practice)
Medicine and Surgery of:)

OPS No. 94-10-19-442 MD
Prog. No. 94-02-0074MD

DEC 20 1999

Adjudicative Clerk
Office

JAMES R. McGUIRE, M.D.,)

Respondent.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

A hearing was held before the Medical Quality Assurance Commission (Commission), formerly the Washington State Medical Disciplinary Board, and Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Commission, on June 2, 1995, at the Tacoma Sheraton Hotel, Tacoma, Washington. Members of the Commission present and considering the matter were: Larry T. Brice, M.D., Panel Chair, James M. Garrison, Jr., M.D.; Jan Polek, Public Member; Dorothy Carlson, M.D.; and Darrell Beers, Public Member. The Washington State Department of Health (Department) was represented by David M. Hankins, Assistant Attorney General. The Respondent, James R. McGuire, M.D., was present and was represented by Rebecca S. Ringer and R. Collin Middleton, Attorneys at Law. The proceedings were recorded by Duane W. Lodell, court reporter.

I. HEARING

1.1 In support of its case in chief, the Department called the following witnesses:

James R. McGuire, M.D., and Ms. KMV.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER - Page 1

7/10/95

REDACTED

1.2 In support of its case in chief, the Respondent called the following witnesses:
Kevin McGovern, Ph.D.; Kathleen D. Rich, Ph.D.; Bruce Gage, M.D.; Janice McCrimmon,
and James R. McGuire.

1.3 The following exhibits were offered by the parties and admitted by the
Presiding Officer:

- A. Exhibit No. 1. State Medical Board, State of Alaska, concerning James R. McGuire, M.D.:
 - a. Stipulation and Proposed Decision and Order (pages 1-10);
 - b. Order (page 11); and
 - c. Accusation (pages 11-16).
- B. Exhibit No. 2. Letters of Support for James McGuire:
 - a. Letter from Leonard Auclair, Ph.D., to Michael Farrell, Staff Attorney, DOH, April 18, 1995 (page 1).
 - b. Letter from Nancy Armstrong, RN III, to Michael Farrell, Staff Attorney, DOH, April 18, 1995 (page 2-3).
 - c. Letter from Jerry Minaker, Associate Superintendent, to Michael Farrell, Staff Attorney, DOH, April 18, 1995 (page 4-5).
 - d. Letter from Ron Jemelka, Ph.D., to Michael Farrell, Staff Attorney, DOH, April 17, 1995 (page 6-7).
 - e. Letter from Barbara Reed-Stamps, CNS, to Michael Farrell, Staff Attorney, DOH, April 11, 1995 (page 8).
 - f. Letter from Patricia Callaghan, R.N., to Michael Farrell, Staff Attorney, DOH, April 10, 1995 (page 9-10).
 - g. Letter from D. C. Assink, MSW ED., to Michael Farrell, Staff Attorney, DOH, April 9, 1995 (page 11).
 - h. Letter from Robert R. Cloke, Health Care Manager, to Michael Farrell, Staff Attorney, DOH, April 7, 1995 (page 12-13).
- C. Exhibit No. 3: Letter to Governor Knowles and the People of Alaska from James R. McGuire, M.D., dated May 6, 1995.

Based on review of the exhibits as admitted, the testimony presented at the hearing, and argument of counsel, the Commission hereby issues the following:

II. FINDINGS OF FACT CONCERNING VIOLATION OF UNIFORM DISCIPLINARY ACT

The factual allegations in the Statement of Charges were not contested by the Respondent. The Commission, therefore makes the following finding:

On February 10, 1994, the Medical Board for the State of Alaska adopted a Stipulation, Proposed Decision and Order entered and signed by Respondent, which suspended Respondent's license to practice medicine in Alaska based on his admission he had a sexual relationship with a patient.

Statement of Charges, No. 94-02-0047MD, Factual Allegations, paragraph 2.1, August 24, 1994. Exhibit No. 1, stipulated to by the parties, also confirms this finding.

III. CONCLUSIONS OF LAW CONCERNING VIOLATION OF UNIFORM DISCIPLINARY ACT

3.1 Pursuant to chapters 18.130 and 18.71 RCW generally, the Commission has jurisdiction over Respondent and over the subject matter herein. The Commission was established to act as a disciplinary body for members of the medical profession licensed to practice medicine and surgery in this state. RCW 18.71.002 and RCW 18.71.003.

3.2 The only alleged violation for unprofessional conduct made in the Statement of Charges was RCW 18.130.180(5):

The following conduct, acts or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

...
(5) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign

jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;...

See. Statement of Charges No. 94-02-0047MD, Alleged Violations, paragraph 3.1, August 24, 1994.

3.3 In this case, the Respondent did not contest the factual allegation made in the Statement of Charges. Further, as evidence by Exhibit No. 1, the Alaska State Medical Board, dated February 10, 1994, adopted a Stipulation, Proposed Decision and Order which suspended the Respondent's license to practice medicine in the state of Alaska. Based upon this evidence, the Commission concludes that the Respondent's actions constitute unprofessional conduct. RCW 18.130.180(5).

IV. FINDINGS OF FACT CONCERNING SANCTIONS

4.1 Ms. KMV testified that in Alaska she was referred to the Respondent in December of 1986 and was treated by the Respondent for about six years. She had a sexual relationship with him for about five and one-half years of the six-year period, during which time she continued her employment as a state trooper. She stated that she did not report the Respondent to authorities because he had helped her in her divorce proceedings and that she trusted him explicitly; he was the only person who understood her and the people inside her. In her testimony, Ms. KMV referred to herself as "we;" she expressed that she has thirty-five alter-personalities inside her. Then, in May 1993, she did report the Respondent to the American Psychiatric Association and to a physician in Oregon. She stated that since then she has made several suicide attempts. She moved to Vashon Island in Washington on October 1,

1993, and is presently not receiving any mental health therapy. She stated that as a result of the harm she received from the Respondent, she will never trust and will never see another physician in her life.

4.2 The Respondent graduated from medical school in 1975 and completed his residency at the University of Washington in 1978. He has been licensed to practice in the state of Washington since 1976. After completing his residency, he started his practice in Alaska and eventually became a medical director at a hospital. He began to see Ms. KMV in December 1986 to cover for a psychiatrist. Ms. KMV was suicidal and initially he saw her daily and thought she was depressed, but then after further observation, he made a diagnosis of multiple personality disorder (MPD).

4.3 The Respondent stated that while practicing in Alaska, he had other patients who had the diagnosis of MPD. He began to research this area and he started to receive referrals of patients with this disorder. The Respondent stated that he became over involved with Ms. KMV and made poor judgments. He had a sexual relationship with Ms. KMV for about five and one-half years. In May 1993, this situation became public and he resigned his position at the hospital.

4.4 The Respondent described his current position at the McNeil Island Corrections Center, Department of Corrections of Washington State (Corrections Center). He treats a specific population of inmates; he treats inmates who are in need of managed psychiatric care, but who are not in need of acute care. He provides

diagnostic evaluations, prescribes medications and steps in during emergent situations. He treats male patients only and provides no psychotherapy. There is a staff of social workers and counselors who provide therapy. He sees that he is helping out an underserved population.

4.5 The Respondent has no private practice.

4.6 The Respondent's license was suspended by the Alaska Medical Board effective February 10, 1994. In April 1995, the Alaska Medical Board changed his status from suspension to probation with conditions. Testimony indicated that the Governor of Alaska intervened and there was a motion for reconsideration of his change in status before the Alaska Medical Board. The press in Alaska covered this matter extensively and after talking to his wife he decided to write a letter to the Governor and People of Alaska, Exhibit No. 3. After his wife reviewed the letter, he sent it to his attorney who then sent it to the newspaper.

he did not attempt to get the letter back from his attorney who apparently had already forwarded it on. The Respondent stated that he

wrote the letter to say he was sorry for his actions and that his actions were wrong. The Respondent also stated that he accepts responsibility for the letter and that he disclosed information that was already known to the public.

4.7 Dr. Kevin B. McGovern obtained his Ph.D. in psychology in 1974 and has been a licensed psychologist in Oregon since 1975. Since 1978, he has been an Associate Clinical Professor of Psychiatry at Oregon Health Science University. He is a Certified Sex Offender Treatment Provider in the state of Washington and is a consultant to the Oregon Board of Medical Examiners. Since the late 1970s, Dr. McGovern has directed a program to treat sex offenders. He has performed over three thousand clinical assessments of individuals accused of aberrant sexual behavior. I

Dr. McGovern reviewed the statements made by the victim, Ms. KMV, before the Alaska State Medical Board. I

over two hundred pages of files and records provided to him, Dr. McGovern concluded that the Respondent is not at risk to the community in his current position at the Corrections Center where he is treating male patients only.

4.8 Dr. McGovern directs a treatment program for impaired professionals including impaired physicians. The treatment program consists primarily of weekly group therapy sessions :

In addition to the group therapy session, Dr. McGovern conducts evaluations which include individual counseling or therapy, psychological testing, polygraph and plethysmograph examinations, review of the patients' history, and a review of information from referring monitoring boards or commissions. Dr. McGovern is very selective in who can participate in his program. One of his primary concerns for the program is community safety; that is, Dr. McGovern stated that he does not want to live with the knowledge that one of his clients has harmed another individual.

Dr. McGovern obtains a release of information from his patients so that he can work closely with a commission or board to insure proper monitoring for public safety. From Dr. McGovern's analysis of his own program data, he stated that the recidivism rate of sexual offenders who have participated in his program is five percent. This data includes a broad sweep of sexual offenders, and for the fifteen to twenty physicians he has treated, there has not been a single relapse for a sexual offense.

4.9 Since the victim in this case exhibited multiple personalities, including those of males and children, questions were raised whether the public can be protected, even though the Respondent would be limited to treating only adult males.

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Dr. McGovern recommended that the Respondent be allowed to treat primarily and exclusively adult male patients.

4.10 Dr. Kathleen Rich has a Ph.D. in psychology and a Masters in Social Work. She is a licensed clinical psychologist and social worker in the State of Oregon.

Participants learn to understand the nature and consequences of their wrongful actions, to take responsibility of their actions, to develop empathy for the victim, to recognize antecedent behaviors, and to develop a plan to address any relapse, should such occur. Participants also learn to develop trust with other group members, to accept their confrontation statements, and to provide appropriate feedback. Dr. Rich makes homework assignments for the participants and conducts individual therapy sessions with a group member when necessary.

Dr. Rich stated that the book reports are part of the ongoing assignments and there are no specific deadlines for completion.

4.11

[illegible]

4.12

[REDACTED]

1.2 Respondent is informed and understands that the Commission has alleged that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4).

1.3 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition, pursuant to RCW 18.130.172(1).

1.4 Respondent agrees to be bound by the terms and conditions of the Stipulation to Informal Disposition.

1.5 This Stipulation to Informal Disposition is of no force and effect and is not binding on the parties unless and until this Stipulation to Informal Disposition is accepted by the Commission.

1.6 Respondent does not admit any of the allegations in the Statement of Allegations and Summary of Evidence or in paragraph 1.1 above. This Stipulation to Informal Disposition shall not be construed as a finding of unprofessional conduct or inability to practice.

1.7 This Stipulation to Informal Disposition is not formal disciplinary action. However, it is subject to the federal reporting requirements pursuant to 45 CFR Part 61.

1.8 This Stipulation to Informal Disposition is releasable to the public upon request pursuant to the Public Records Act, chapter 42.17 RCW. The Statement of Allegations and Summary of Evidence and the Stipulation to Informal Disposition shall remain part of Respondent's file and cannot be expunged.

1.9 Commission agrees to forego further disciplinary proceedings concerning the allegations contained in sections 1.1 and 1.2 above.

1.10 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

1.11 Respondent is advised and understands that a violation of the provisions of section 2 of this Stipulation to Informal Disposition, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

Section 2: INFORMAL DISPOSITION

Pursuant to RCW 18.130.172 (2) and based upon the foregoing stipulation, the parties agree to the following Informal Disposition:

2.1 Respondent shall successfully complete either the PROBE or Vanderbilt medical education course on physician – patient boundary issues and ethics within one year of the effective

support from the professional and administrative staff at McNeil Island, Exhibit 2.

Dr. Gage stated that the Respondent is one of the best institutional psychiatrists he has seen; his psychopharmacology skills are excellent; he provides a very useful function at the Corrections Center and it would be very difficult to replace him. Dr. Gage sends reports concerning the Respondent's work and status to the Alaska Medical Board and would be willing to perform the same function for the Commission.

4.15 Janice McCrimmon has been married to the Respondent for seventeen years. In May of 1993, the Respondent informed her of the sexual relationship he had with Ms. KMV.

They moved to Washington in June 1994. Ms. McCrimmon described her relationship with her husband as better now than before. Concerning the letter to the Governor and the People of Alaska, Exhibit No. 3, Ms. McCrimmon had several friends from Alaska who called her and urged her to respond to all the publicity the case was receiving in Alaska. Ms. McCrimmon discussed with her husband that he write a letter to offer his side of the story and before the letter was sent, she shared it with her friends.

V. CONCLUSIONS OF LAW CONCERNING SANCTIONS

5.1 Upon a finding, after hearing, that a license holder has committed unprofessional conduct, the Commission has the authority to order appropriate sanctions:

"In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority

consider and include in the order requirements designed to rehabilitate the license holder or applicant."

RCW 18.130.160.

5.2 The Department argued in favor of revocation by stressing several points that the Commission evaluated carefully. First, Mr. Hankins argued that the Respondent's license be revoked and stated that the Department does not need to present contrary expert opinion, because the Commission members are the Department's experts. Davidson v. Department of Licensing, 33 Wn.App 783, 657 P.2d 810 (1983). Second, Mr. Hankins pointed out that Dr. McGovern's data concerning the recidivism rate of his patients cannot be applied here, because the Respondent's situation is unique. Mr. Hankins stated that the Respondent is a danger to not just female patients, but to all patients; since the Respondent had abused not only Ms. KMV, but the many persons that were part of her multiple personality.

For example, Mr. Hankins stated that the Respondent is showing little empathy for the victim, Ms. KMV, and he referred to statements made by the Respondent in his letter to the Governor and the People of Alaska, Exhibit No. 3.

Fourth, Mr. Hankins also argued that the public would not be protected if the Respondent were allowed to continue to practice in his current position by pointing out that his supervisor, Dr. Gage, is not continually at the facility.

Mr. Hankins asserted that there are no safeguards established to prevent the Respondent from doing psychotherapy with the inmates or with patients in a private practice setting outside the Corrections Center.

5.3 Finally, Mr. Hankins argued that by betraying his patient's trust, the Respondent has lowered the public perception of all medical professionals. Here, Ms. KMV needed psychiatric help and put her trust in the Respondent. Now, as the Commission members can see, Ms. KMV is still in need of help, but she has stated she will never see a physician again. Mr. Hankins argued that revocation is the appropriate sanction to demonstrate to the public that physicians who break that trust with their patients and cause the harm that has been done to Ms. KMV will not be tolerated.

5.4 The Commission agrees with the Department's position that the Respondent's behavior lowers the public's perception of medical professionals. There is no excuse for the Respondent's actions. Mr. Middleton, Respondent's counsel, acknowledged the tragedy; the victim sought help, but instead she was sexually abused. The Respondent clearly committed unprofessional conduct by violating RCW 18.130.180.

5.5 The Commission's responsibility then, is to address what sanction is appropriate for the Respondent's unprofessional conduct. The Commission must first address its primary responsibility to protect the public. RCW 18.130.160. Considering the appropriate sanction to protect the public, the Commission is obligated to look to facts beyond those that support the conclusion of unprofessional conduct. Therefore,

the Commission must consider the Respondent's current status and activities.

5.6

Dr. McGovern concluded that the Respondent is not at risk to the public to treat male patients.

Although Dr. McGovern's data analysis is limited to patients in his practice, he has had years of experience in the field of treating sex offenders and his conclusions were persuasive. Dr. McGovern was asked to address the concern that the Respondent is a danger to any patient due to the fact that the victim at times exhibited various personalities, including male personalities.

Dr. McGovern indicated that the Respondent does not have a proclivity for such manipulative behavior. On cross-examination, Dr. McGovern affirmed his conclusion that he did not find the Respondent a risk for treating males. Further, Dr. McGovern concluded that the Respondent is not a risk to the public in treating male patients in his current position at the Corrections Center.

5.7

Dr. Rich

concluded with Dr. McGovern's conclusions.

[REDACTED]
[REDACTED]
[REDACTED] the Respondent
apologized to Ms. KMV and to the people of Alaska, [REDACTED]

[REDACTED] Contrary
to the Department's position, the letter does not show the Respondent's failure in
therapy or a complete lack empathy by the Respondent for the victim. [REDACTED]

[REDACTED] There are no time
deadlines for completing his book assignments. [REDACTED]

[REDACTED] The Commission found Dr. Rich
convincing [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5.8 Dr. Bruce Gage, Respondent's supervisor, regularly consults at the
Corrections Center and if any problems occurred with the Respondent, he would surely
be informed by the staff. Further, Dr. Gage meets with the Respondent, reviews his
charts, and interviews some of the Respondent's patients. Dr. Gage currently reports
to the Alaska Medical Board concerning the Respondent and it would be appropriate to
have him report to this Commission as well. Dr. Gage concurred with the opinions in

support of the Respondent from the professional and administrative staff at the Corrections Center, Exhibit No. 2. The Respondent provides a service to the inmates; Dr. Gage testified that the Respondent is excelling in his position and he would be extremely difficult to replace. The Respondent, however, should neither be allowed to provide individual psychotherapy to any male inmates nor to provide psychotherapy to patients in a private practice setting. The Respondent's limited practice of treating only the male inmates at the Corrections Center does contribute to the public welfare and does not present a danger to the public.

5.9 There was no professional opinion to state that there would be a danger to the public were the Respondent to continue in his current position treating only male patients. The Commission, utilizing its own expertise in this matter, concurs with the conclusions of Dr. McGovern and Dr. Rich. To revoke the Respondent's license would be a purely punitive act in light of the testimony and evidence presented at the hearing.

5.10 The Commission's role and responsibility to the public is first and foremost to assure that patients are not placed at risk by the Respondent's practice. Further, the Commission believes that a physician who is making a sincere and committed effort toward rehabilitation by dealing with the personal problems that led to the misconduct, should be allowed that opportunity, provided the public is not placed at risk. In this case, sufficient safeguards can be put in place to protect the public, including reports, careful supervision, and restricted practice setting. In addition, the Respondent recognizes the nature and consequences of his misconduct; he is undergoing continuous rigorous evaluation and

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is willing to comply with restrictions placed upon his practice. The Commission concludes that the Respondent's license should be indefinitely suspended, but that suspension should be stayed upon compliance with conditions.

VI. ORDER

Based upon the pleadings for this case, the exhibits as admitted, the testimony at the hearing, the above Findings of Fact and the Conclusions of Law, the Commission makes the following ORDERS:

6.1 Suspension. The Respondent's authorization to practice as a physician and surgeon is SUSPENDED for an indefinite period, but the suspension is STAYED PROVIDED that the Respondent complies with the following terms and conditions:

A. The Respondent's practice is limited to treatment of adult males at McNeil Island Corrections Center, Department of Corrections, Washington State.

Further, in his position at the Corrections Center, the Respondent can only practice psychopharmacology and diagnostic psychiatry; he may not practice individual or group psychotherapy.

B. The Respondent's activities shall be supervised by Dr. Bruce Gage, M.D., or his successor, who must be approved in advance by the Commission's designee. The Respondent shall provide a copy of this Findings of Fact, Conclusions of Law and Final Order to Dr. Gage. The Respondent shall cause the supervisor to submit quarterly reports to the Commission addressing the Respondent's practice setting, clinical skills, and compliance with the terms of

paragraph 4.1A above. The quarterly reports shall be submitted to the Commission on the first day of the following months: September, December, March, and June.

C.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER - Page 19**

REDACTED

D. The Respondent shall pay an administrative fine to the Commission in the amount of one thousand dollars (\$1,000.00) within one year of the effective date of this Order. The payment shall be sent to the following address:

Medical Quality Assurance Commission
P.O. Box 1099
Olympia, WA 98507-1099

E. The Respondent shall establish a current primary physician and shall obtain from that physician a complete history and physical within three months of the effective date of this Order. The Respondent shall cause his primary physician to send to the Commission a copy of the complete history and physical exam to the Commission. Such copy shall be sent prior to the Respondent's first compliance hearing.

F. Respondent shall refrain from the use of alcohol, and unless prescribed by his treating physician, from the use of any mood-altering drugs.

G. The Respondent shall provide to the Commission a current home and business address and telephone number and shall immediately notify the Commission of any changes in address or telephone number. In the event the Respondent should leave his current position at McNeil Island Corrections Center, he must notify the Commission in writing of the date of termination.

H. The Respondent shall submit quarterly declarations under penalty of perjury, stating whether there has been compliance with all conditions of this

Order. The quarterly declarations shall be submitted to the Commission on the first day of the following months: September, December, March, and June.

I. Any and all costs involved in complying with this Order shall be borne by the Respondent.

J. The Respondent shall obey all federal, state, and local laws and all rules governing the practice of medicine and surgery in Washington State.

6.2 Compliance. The Respondent shall appear before the Commission six months from the effective date of this Order, or as soon thereafter as the Commission's schedule permits, and present proof that he is complying with this Order. He shall continue to make such compliance appearances annually, or as frequently as the Commission otherwise requires, until the period of suspension is terminated by the Commission.

6.3 Modification of Order. (

the Respondent may petition the Commission for modification of this Order no sooner than two years from the effective date of this Order. The Respondent shall appear personally before the Commission, upon notice duly given, at which time evidence in support of, or in opposition to, the petition may be presented for the Commission's consideration. The Commission has sole discretion to grant or deny Respondent's petition and has the authority to impose restrictions and/or conditions on Respondent's license to practice as long as the Commission's jurisdiction over Respondent, pursuant to this Order, continues.

6.4 Violation of Order. If the Respondent violates any provision of this Order, the Commission, after giving the Respondent notice and the opportunity to be heard, may set aside the stay order and impose the suspension, or may impose any sanction as it finds appropriate under RCW 18.130.160, or may take emergency action ordering summary suspension restriction or limitation of the Respondent's practice as authorized by RCW 18.130.050.

6.5 Reporting Requirements. This Order will be subject to the reporting requirement of RCW 18.130.110 including, but not limited to, the National Practitioner Data Bank.

As provided in RCW 34.05.461(3) and .470, either party may file a petition for reconsideration. The petition must be filed with the Medical Quality Assurance Commission, Department of Health, 1300 SE Quince, PO Box 47866, Olympia, Washington, 98504-7866, and a copy sent to the Office of Professional Standards, PO Box 47872, Olympia, Washington, 98504-7872, within ten (10) days of service of this Order. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is deemed to have been denied twenty (20) days after the petition is filed if the Commission has not acted on the petition or served written notice of the date by which action will be taken on the petition.

"Filing" means actual receipt of the document by the Commission.

RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(18).

Proceedings for judicial review may be instituted by filing a petition in the superior court in accord with the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review must be filed within thirty (30) days after service of this Order, as provided in RCW 34.05.542.

DATED THIS 10th DAY OF JULY, 1995.

Medical Quality Assurance Commission

Larry T. Brice, M.D.
LARRY T. BRICE, M.D., Panel Chair



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: James McGuire
Docket No.: 99-12-A-1056MD
Document: Modification Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

Information regarding an individual's health care, including where they received health care services, their medical condition, care provided, etc., pursuant to RCW 42.17.312 (Public Records Disclosure) and RCW 70.02.020 (Medical Records – Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

Adjudicative Clerk Office
P.O. Box 47879
Olympia, WA 98504-7879
Phone: (360) 236-4677
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to Nancy Ellison, Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

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**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice)		
as a Physician and Surgeon of:)		Docket No. 99-12-A-1056MD
)	
JAMES R. McGUIRE, M.D.,)		ORDER ON PETITION
License No. MD00015236,)		FOR MODIFICATION
)	
Respondent.)		
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A modification hearing was held before the Washington State Medical Quality Assurance Commission (the Commission) and Health Law Judge John F. Kuntz, Presiding Officer for the Commission, on January 27, 2000, at the Seattle Airport Hilton, 17620 Pacific Highway South, Seattle, Washington. The Commission members present and considering the matter were: Sunanda Uberoi, M.D.; Dorothy Carlson, M.D.; Robert Newell, M.D.; Juanita Wagner Ph.D., JD, Public Member; David Karges, M.D.; Janice Paxton, PA-C, Panel Chair; Hampton Irwin, M.D.; Mark Vollrath, PA-C; and Marilyn Ward, Public Member. James R. McGuire, M.D. (the Respondent) was present and represented himself. He requested a modification hearing to consider changes to the terms of his Commission Order. The Department of Health (the Department) was present and represented by Michael Farrell, Staff Attorney. George Heye, M.D., Department Medical Consultant, was present during the proceedings. Judie Nicholas, certified court reporter, recorded the proceedings.

Having considered the evidence presented, the files and records in this matter, the testimony of the Respondent, and the arguments of the parties, the Commission now issues the following:

ORDER ON PETITION
FOR MODIFICATION - Page 1 of 9

Docket No. 99-12-A-1056MD

REDACTED

I. PROCEDURAL HISTORY

1.1 After a Statement of Charges was issued on August 24, 1994, the Commission conducted a hearing on June 2, 1995, and issued a Findings of Fact, Conclusions of Law and Final Order (the Final Order) on July 10, 1995. In the Final Order the Commission ordered the Respondent to comply, in pertinent part, with the following terms and conditions:

(a) Issuing an indefinite suspension of the Respondent's license to practice as a physician and surgeon in the state of Washington, to be stayed upon compliance with the terms and conditions set forth in the Order;

(b) Limiting the Respondent's practice to the treatment of adult males at McNeil Island Corrections Center; further limiting his practice to psychopharmacology and diagnostic psychiatry (no individual or group psychotherapy);

(c) Requiring the Respondent's activities to be supervised by Dr. Bruce Gage, M.D. (or a Commission-approved successor), the supervisor to submit quarterly reports to the Commission addressing the Respondent's practice setting, clinical skills, and compliance with the terms of the Final Order;

(d)

(e) Payment of an administrative fine in the amount of \$1,000.00 within one year;

(f) Establishing a primary physician and obtaining a complete history and physical within three months of the effective date of the Final Order;

(g) Refraining from the use of alcohol and, unless prescribed by his treating physician, refraining from the use of mind altering drugs;

(h) Providing the Commission with a current home and business address and notifying the Commission of any changes;

(i) Submitting quarterly declarations under penalty of perjury that he has complied with all terms and conditions of the Final Order;

(j) Appearing before the Commission for annual compliance hearings until otherwise ordered; and

(k) Paying all costs involved in complying with the Final Order.

1.2 On December 16, 1999, the Respondent filed a request, with attachments, for a hearing to consider modifying certain terms and conditions of the Final Order. The Respondent requested the Commission rescind the requirement for a practice supervisor and the prohibition against his use of alcohol.

1.3 On December 20, 1999, the Adjudicative Clerk Office served upon the parties a Notice of Hearing, scheduling a modification/reinstatement hearing before the Commission on January 27, 2000, at the Seattle Airport Hilton.

II. HEARING

2.1 The Respondent testified on his own behalf. The Department did not introduce any witnesses during its presentation.

2.2 The following exhibits were admitted without objection:

Department Exhibit 1: Compliance Requirement Summary, dated December 15, 1999.

Department Exhibit 2: Statement of Charges, dated August 24, 1994.

Department Exhibit 3: Findings of Fact, Conclusions of Law and Final Order, dated July 10, 1995.

Department Exhibit 4: In Compliance Letter from Julian Ansell, M.D., Panel Chair, dated January 25, 1996.

Department Exhibit 5: Order on Compliance, dated March 4, 1997.

- Department Exhibit 6: In Compliance Letter from David Williams, M.D., Panel Chair, dated January 25, 1998.
- Department Exhibit 7: In Compliance Letter from David Williams, M.D., Panel Chair, dated January 21, 1999.
- Department Exhibit 8: Reports from Bruce C. Gage, M.D., dated December 16, 1998, March 5, 1999, June 9, 1999, and September 10, 1999.
- Department Exhibit 9: Reports from Kevin McGovern, Ph.D., dated January 27, 1999, April 16, 1999, June 14, 1999.
- Department Exhibit 10: Respondent's Quarterly Declarations, dated February 19, 1999, August 26, 1999, and December 2, 1999.
- Department Exhibit 11: Letter from Dr. George Heye, Medical Consultant, dated October 26, 1999.
- Department Exhibit 12: Letter from KMV, dated February 12, 1999.
- Department Exhibit 13: Letter from Maryella Jansen, Program Manager, dated February 18, 1999.
- Department Exhibit 14: Notice to Appear and Declaration of Service, dated December 15, 1999.
- Department Exhibit 15: Letter from Respondent, dated December 16, 1999.
- Department Exhibit 16: Notice of Hearing, dated December 20, 1999.

2.3 The Respondent did not present any exhibits, stating he had no exhibits other than those provided by the Department.

III. FINDINGS OF FACT

3.1 The Respondent was licensed to practice as a physician and surgeon in the

state of Washington on July 12, 1976. The Commission indefinitely suspended the Respondent's license to practice pursuant to the Findings of Fact, Conclusions of Law and Final Order issued on July 10, 1995, but stayed the suspension so long as the Respondent complied with the terms and conditions set forth in the Final Order.

3.2 The Respondent stated he is currently employed at McNeil Island Corrections Center as the psychiatrist in charge of a 99-bed mental health facility. His duties include the assessment and psychopharmacology needs of the male residents incarcerated at that facility. The Respondent does not provide therapy, either on an individual or group basis, as specified in the Commission's Final Order.

3.3 The Respondent has been supervised, as required by the terms of the Final Order, by Dr. Bruce Gage. Dr. Gage has provided the Commission with quarterly reports regarding the Respondent's clinic skills and compliance with the terms of the Final Order. Dr. Gage's quarterly reports were the result, in part, of his weekly visits with the Respondent. In his September 1, 1999, report Dr. Gage notified the Department of Health that his regular visits to the McNeil Island facility had ceased due to a change in his contract with the Department of Corrections. As a result, Dr. Gage could no longer submit practice evaluations to the Commission.

3.4 Dr. George Heye, Medical Consultant for the Department of Health, notified the Respondent by letter on October 26, 1999. Dr. Heye stated the Respondent might choose to use his regularly scheduled (January 2000) compliance appearance before the Commission to request a modification of the supervision requirement.

3.5 The Respondent stated there was no supervisory capacity at the McNeil Island facility for fiscal reasons. The Respondent stated he would appreciate continued supervision but the facility no longer had money to continue that level of supervision. The Respondent stated he was currently unaware of any practitioner who could provide the same services that Dr. Gage has provided over the term of the Final Order. The Respondent stated to the Commission members that he felt competent to practice without supervision at this time.

3.6 The Respondent stated he currently sees Dr. Gage on a regular basis, during an informal breakfast group he attends weekly.

3.7 The Respondent stated he does not, and never did have an alcohol problem. A concern was raised at the time the Commission issued the Final Order (see paragraph 4.7).

During his cross-examination of the Respondent, the Department's Staff Attorney established the Department did not uncover any evidence of the Respondent having an alcohol problem at the time the Statement of Charges was issued in this case.

3.8 The Department informed the Commission the Respondent has been in compliance with the terms of the 1995 Final Order,

REDACTED

The Department's position is supported by the record and exhibits presented to the Commission.

IV. CONCLUSIONS OF LAW

4.1 The Commission has jurisdiction over the Respondent and the subject matter herein. Chapter 18.71 RCW.

4.2 Chapter 18.130 RCW governs the discipline of licensed physicians and surgeons. Chapter 18.71 RCW and RCW 18.130.040. The Commission may fashion appropriate remedies in disciplining the Respondent. RCW 18.130.160. In determining what action is appropriate the Commission must first consider the protection and compensation of the public. RCW 18.130.160.

4.3 In paragraph 6.3 of the Findings of Fact, Conclusions of Law and Final Order of July 1995 the Commission provided that the Respondent could petition for modification of the Final Order under certain specified conditions. The Commission retained the sole discretion to grant or deny the Respondent's modification petition. In the present case the Commission finds the Respondent has established sufficient evidence to support a modification of that 1995 Final Order. The terms of that modification are set forth below.

V. ORDER

Based on the above Findings of Fact and Conclusions of Law, the Commission hereby ORDERS that the Respondent's authorization to practice as a physician and surgeon remains SUSPENDED for an indefinite period, but the suspension is STAYED

PROVIDED that the Respondent complies with the terms and conditions of the July 10, 1995, Order except as follows:

5.1 The Respondent's activities are no longer required to be supervised by Dr. Bruce Gage, or any successor, as set forth in paragraph 6.1B of the Commission's Final Order of July 10, 1995;

5.2 The Respondent is no longer required to refrain from the use of alcohol, as set forth in paragraph 6.1F of the Commission's Final Order of July 10, 1995. The Respondent shall continue to refrain from the use of any mind-altering drugs unless prescribed by his treating physician.

5.3 All other terms and conditions of the Commission's Final Order of July 10, 1995, shall remain in full force and effect.

As provided in RCW 34.05.461(3), RCW 34.05.470 and WAC 246-11-580, either party may file a petition for reconsideration. The petition must be filed with the Adjudicative Clerk Office, 1107 Eastside Street, PO Box 47879, Olympia, Washington 98504-7879, and a copy sent to the Medical Quality Assurance Commission, Department of Health, 1300 SE Quince Street, PO Box 47866, Olympia, Washington 98504-7866, within ten (10) days of service of this Modification Order. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is deemed to have been denied twenty (20) days after the petition is filed if the Commission has not acted on the petition or served written notice of the date by which action will be taken on the petition.

"Filing" means actual receipt of the document by the Adjudicative Clerk Office.

RCW 34.05.010(6). This Modification Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

Proceedings for judicial review may be instituted by filing a petition in the superior court in accordance with the procedures specified in chapter 34.05 RCW, Part V., Judicial Review and Enforcement. The petition for judicial review must be filed within thirty (30) days after service of this Modification Order, as provided in RCW 34.05.542.

DATED THIS 23 DAY OF MARCH, 2000.

Medical Quality Assurance Commission


JANICE PAXTON, PA-C
Panel Chair

FOR INTERNAL USE ONLY: (Internal tracking numbers) OPS No 94-10-19-442MD Program No. 94-02-0074MD

ORDER ON PETITION
FOR MODIFICATION - Page 9 of 9

Docket No. 99-12-A-1058MD

REDACTED



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: JAMES R. MCGUIRE
Docket No.: 99-12-A-1056MD
Document: ORDER ON REQUEST FOR TERMINATION OF COMMISSION
ORDER

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice)
as a Physician and Surgeon of:)

JAMES R. MCGUIRE, M.D.,)
License No. MD00015236,)

Respondent.)

Docket No. 99-12-A-1056MD

ORDER ON REQUEST FOR
TERMINATION OF COMMISSION
ORDER

APPEARANCES:

Respondent, James R. McGuire, M.D., pro se

Department of Health Medical Program, by
Michael Farrell, Staff Attorney

COMMISSION PANEL: Frederick H. Dore, Jr., M.D., Panel Chair
Kenneth Cogen, M.D.
William Gotthold, M.D.
Ellen Harder, PA-C
Susan Harvey, M.D.
Frank Hensley (Public Member)
Clifford Herman, M.D.
Judith Page (Public Member)
Linda Ruiz (Public Member)
Rogelio Ruvalcaba, M.D.

PRESIDING OFFICER: Michael T. Concannon, Health Law Judge

The Medical Quality Assurance Commission (the Commission) convened a hearing on April 13, 2007, in Renton, Washington. The Reviewing Commission Member, Samuel Selinger, M.D., was not present and did not participate in the decision. The license of James R. McGuire, M.D., previously subject to a stayed

ORDER ON REQUEST FOR
TERMINATION OF COMMISSION
ORDER

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Docket No. 99-12-A-1056MD

4/30/07

suspension with probation and disciplinary restrictions, CONTINUES to be subject to the probationary conditions of his stayed suspension.

I. SUMMARY OF THE PROCEEDING

At the hearing, the Department questioned Respondent, and he testified on his own behalf. The record submitted for consideration by the Commission consists of the disciplinary packet provided to the Commission members in advance of the hearing (Exhibit A, 129 pages); an evaluation by Kevin McGovern, Ph.D., a clinical psychologist, of Respondent, dated August 3, 1993 (Exhibit B); and a one-page annual evaluation of Respondent by his employer, McNeil Island Corrections Center (Exhibit C).

Based on the evidence presented, the Commission issues the following:

II. FINDINGS OF FACT

1.1 Respondent is a psychiatrist duly licensed as a physician and surgeon in the state of Washington.

1.2 A Statement of Charges was issued against Respondent on August 24, 1994, alleging, among other items, Respondent's medical license in Alaska had been suspended by the Medical Board for the state of Alaska, based on his admission that he had a sexual relationship with a patient. After a hearing on the Statement of Charges in June 1995, the Commission issued a Findings of Fact, Conclusions of Law and Final Order, dated July 10, 1995 (the Prior Order). As the fact of the Alaska suspension had been established, Respondent had violated RCW 18.130.180(5).

1.3 In addressing sanctions in the Prior Order, the Commission noted the five-year sexual relationship Respondent had with a patient in his Alaska practice, a

woman with multiple-personality disorder. As set forth in detail in the Prior Order, the Commission concluded Respondent was not at risk to the community as a treater of *male patients only* in a correctional facility. The Prior Order imposed an indefinite suspension on Respondent's license to practice medicine in Washington, such suspension to be stayed providing Respondent complied with many continuing requirements and probationary conditions. Among the probationary restrictions are the following: 1) a limitation on Respondent's practice to the treatment of adult males at McNeil Island Corrections Center (MICC); 2) supervision of his practice by another physician at McNeil Island with quarterly reports from the supervisor; 3) a continuing therapy regimen involving, principally, Dr. Kevin McGovern, who is a licensed psychologist and Certified Sex Offender Treatment Provider in the state of Washington; 4) a prohibition on the use of alcohol or mind-altering drugs; and 5) payment of a \$1,000 fine. Since 1995, Respondent has appeared before the Commission at least annually for compliance presentations, sometimes in conjunction with Respondent's request to modify the disciplinary restrictions of the Prior Order.

1.4 Over the years, Respondent has continued his work at MICC. In an Order on Petition for Modification, dated March 23, 2000 (Exhibit A, pgs. 34-40), the Commission concluded Respondent's practice at MICC would no longer require supervision and reports from his supervisor. Respondent also was no longer required to refrain from the use of alcohol, as there was no evidence of alcohol abuse. The Commission also recently released Respondent from any continuing mandatory therapy with Dr. McGovern (Exhibit A, p. 60). Respondent's professional relationship with

Dr. McGovern, which dates to 1993, continues on a voluntary basis. Dr. McGovern has supported Respondent, as far back as 2001 (Exhibit A, p. 98), in Respondent's belief that he can be released from the discipline of the Prior Order. In addition, as recently as January 11, 2007, Dr. McGovern opined to the Commission that Respondent had "met his therapeutic goals and no longer needs my therapeutic assistance" (Exhibit A, p. 116).

1.5 On February 26, 2007, Respondent requested a termination of the disciplinary conditions of the Prior Order (the Termination Request, Exhibit A, p. 126). The Prior Order imposed an "indefinite suspension." It permits modifications at any time after two years of discipline. It has no specific, or additional, conditions for a complete termination and release from the imposed discipline. When there has been serious sexual misconduct or boundary violations involving sexual contact with patients by a physician (as was the case with Respondent), the Commission finds a comprehensive psychological evaluation by a specialist who deals with sex offenders or boundary violators is necessary before possible approval by the Commission of a return to an unrestricted practice. That detailed evaluation by a specialist is distinct from the continuing, ongoing therapy provided by a qualified practitioner such as Dr. McGovern.

1.6 Although Dr. McGovern has given Respondent a clean bill of health after 13 years of therapy, the Department recommends the comprehensive psychological evaluation as previously described. The Commission agrees. The Commission also finds that such an evaluation should occur at Commission expense (not Respondent's), as it was not a requirement contemplated specifically by the Prior Order.

III. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over Respondent and over the subject matter herein. As provided by RCW 18.71.019, the Uniform Disciplinary Act (UDA) (Chapter 18.130 RCW) governs the discipline of physician licensees by the Commission.

2.2 RCW 18.130.160 permits the Commission to fashion appropriate remedies in disciplining Respondent including, without limitation, imposing restrictions or limitations on Respondent's practice. The Prior Order provided for restrictions and/or limitations on Respondent's practice, and the Commission must consider what is necessary to protect the public in imposing (or continuing) sanctions.
RCW 18.130.160.

2.3 Based on the Findings of Fact, the Commission concludes that an order should be entered denying the Termination Request.

IV. ORDER

Based on the foregoing Summary of the Proceeding, Findings of Fact, and Conclusions of Law, the Commission makes the following order:

3.1 The Termination Request of Respondent, James R. McGuire, M.D., is DENIED.

3.2 Before any petition by Respondent for a termination of the Prior Order and therefore an unrestricted license for the practice of medicine, Respondent must first undergo a comprehensive psychological evaluation by one of the following three psychologists (as chosen by Respondent and *at the expense of the Commission*):

ORDER ON REQUEST FOR
TERMINATION OF COMMISSION
ORDER

a) Irwin Dreiblatt, Ph.D., Seattle, Washington; b) Leslie Rawlings, Ph.D., Seattle, Washington; or c) J. Robert Wheeler, Ph.D., Lynwood, Washington (as chosen, the Evaluator).

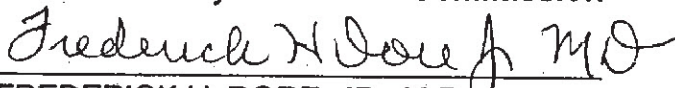
3.3 Once selected and an initial visit is scheduled by Respondent with the Evaluator, Respondent shall notify the Medical Consultant of the Commission, Dr. George Heye, of the date scheduled for the initial consultation. Dr. Heye shall provide the Evaluator a copy of this order, Exhibits A-C from this proceeding, and any other written materials in the Department's possession that Dr. Heye finds will assist the Evaluator. Respondent will sign any necessary waivers of confidentiality with the Evaluator to enable the Commission representatives (including Dr. Heye) to communicate with the Evaluator on Respondent's case. All reports prepared by the Evaluator shall be given directly to the Commission.

3.4 Respondent must successfully complete any treatment recommended by the Evaluator, and the Evaluator must make a recommendation to the Commission as to the need for any continuing practice restrictions.

3.5 The desirability and timing of such an evaluation, and therefore any future request to terminate the Prior Order's discipline, is within the control of Respondent. He continues under the indefinite suspension and probationary restrictions of the Prior Order.

Dated this 30th day of April, 2007.

Medical Quality Assurance Commission



FREDERICK H. DORE, JR., M.D.,
Panel Chair

ORDER ON REQUEST FOR
TERMINATION OF COMMISSION
ORDER

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

The Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Medical Quality Assurance Commission
P.O. Box 47866
Olympia, WA 98504-7866

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

This order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

ORDER ON REQUEST FOR
TERMINATION OF COMMISSION
ORDER



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: James R. McGuire, M.D.
Master Case No.: M1995-58923
Docket No.: 99-12-A-1056MD
Document: Reinstatement

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice)
as a Physician and Surgeon of:)

JAMES R. MCGUIRE, M.D.,)
License No. MD00015236,)

Respondent.)

Docket No. 99-12-A-1056MD
Master Case No. M1995-58923

**ORDER GRANTING REQUEST
FOR TERMINATION OF
AGREED ORDER**

APPEARANCES:

Respondent, James R. McGuire, M.D., by
Floyd, Pflueger & Ringer, P.S., per
Rebecca S. Ringer, Attorney at Law

Department of Health Medical Program (Department), by
Michael Farrell, Staff Attorney

COMMISSION PANEL: Frederick H. Dore Jr., M.D., Panel Chair
William Gotthold, M.D.
Ellen Harder, PA-C
Frank Hensley, Public Member
Judith Page, J.D., Public Member
Linda A. Ruiz, Public Member
Anjan K. Sen, M.D.

PRESIDING OFFICER: Arthur E. DeBusschere, Health Law Judge

The Medical Quality Assurance Commission (Commission) convened a
modification/reinstatement hearing on July 11, 2008, in Vancouver, Washington. The
Respondent's Petition for Release is GRANTED.

**ORDER GRANTING REQUEST
FOR TERMINATION OF
AGREED ORDER**

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Docket No. 99-12-A-1056MD
Master Case No. M1995-58923

SUMMARY OF THE PROCEEDING

On February 21, 2008, the Respondent submitted a letter requesting that the Commission release him from the order titled "Findings of Fact, Conclusions of Law and Final Order," dated July 10, 1995 (the 1995 Final Order). The Adjudicative Service Unit initially scheduled a Modification/Reinstatement Hearing for April 11, 2008, but the Presiding Officer continued it to July 11, 2008.

At the hearing, the Department presented the testimony of Patient K.K. In support of his case, the Respondent testified on his own behalf. The following Department exhibit was admitted:

D-1: Disciplinary Packet, pp. 1-172.

The following Respondent exhibit was admitted:

R-1: Letter from Leslie Rawlings, Ph.D., dated June 27, 2008, and Letter from Kevin B. McGovern, Ph.D., dated July 8, 2008.

Based on the evidence presented, the Commission issues the following:

I. FINDINGS OF FACT

1.1 The Respondent is a psychiatrist duly licensed as a physician and surgeon in the state of Washington.

1.2 On August 24, 1994, the Commission issued a Statement of Charges against the Respondent, alleging, among other items, that the Medical Board for the State of Alaska suspended the Respondent's medical license. The Statement of Charges noted that the Respondent's license was suspended in Alaska, because the Respondent admitted that he had a sexual relationship with Patient K.K., a woman with

ORDER GRANTING REQUEST
FOR TERMINATION OF
AGREED ORDER

Page 2 of 8.

Docket No. 99-12-A-1056MD
Master Case No. M1995-58923

a multiple-personality disorder. After a hearing on the Statement of Charges, the Commission found that the Respondent violated RCW 18.130.180(5) and issued the 1995 Final Order.

1.3 In the 1995 Final Order, the Commission indefinitely suspended the Respondent's license. The Commission, however, stayed the suspension, if the Respondent complied with a number of probationary conditions. The Commission ordered, along with other conditions, the following probationary conditions: (1) a limitation on the Respondent's practice, limiting him to the treatment of adult males at McNeil Island Corrections Center (McNeil); (2) supervision of his practice by another physician at McNeil with quarterly reports from the supervisor; (3) a continuing therapy regimen involving, principally, Dr. Kevin McGovern, who is a licensed psychologist and Certified Sex Offender Treatment Provider in the state of Washington; (4) a prohibition on the use of alcohol or mind-altering drugs; and (5) payment of a \$1,000 fine.

1.4 Since the 1995 Final Order, the Respondent has appeared before the Commission at least annually for compliance presentations, sometimes in conjunction with the Respondent's request to modify the disciplinary restrictions of the 1995 Final Order. The Commission has regularly found the Respondent to be in compliance.

1.5 Over the years, the Respondent has continued his work at McNeil. In an Order on Petition for Modification, dated March 23, 2000, the Commission concluded the Respondent's practice at McNeil would no longer require supervision and reports from his supervisor. The Respondent also was no longer required to refrain from the

use of alcohol, as there was no evidence of alcohol abuse. The Commission also released the Respondent from any continuing mandatory therapy with Dr. McGovern.

1.6 Although the Commission released the Respondent from mandatory therapy, the Respondent's professional relationship with Dr. McGovern, which dates back to 1994, continues on a voluntary basis. In 2001, Dr. McGovern supported the Respondent's request to be released from the 1995 Final Order. In addition, on January 11, 2007, Dr. McGovern stated in a letter to the Commission that the Respondent had "met his therapeutic goals and no longer needs my therapeutic assistance." The Respondent has had 13 years of therapy.

1.7 Pursuant to a request made by the Respondent prior to the present request for termination of the 1995 Final Order, the Commission convened a hearing on April 13, 2007. The Commission found that when there has been serious sexual misconduct or boundary violations involving sexual contact with a patient by a physician, the Commission should require that the Respondent participate in a final comprehensive psychological evaluation by a specialist who deals with sex offenders or boundary violators. This would be necessary before the Commission could approve a return to an unrestricted practice, even though Dr. McGovern had given the Respondent a clean bill of health after 13 years of therapy. In the Order on Request for Termination of Commission Order dated April 30, 2007, the Commission ordered the Respondent to undergo a comprehensive psychological evaluation by an evaluator approved by the Commission and to complete any recommended treatment.

1.8 The Respondent participated in the ordered comprehensive psychological evaluation. On December 17, 2007, Dr. Leslie Rawlings, Ph. D., submitted a detailed 14-page mental examination to the Commission. Dr. Rawlings noted that the Respondent acknowledged the harm he caused to Patient K.K.¹ Dr. Rawlings opined that the Respondent did not suffer from a mental condition that makes him unable to practice psychiatry with a reasonable degree of skill and safety. He also opined that the Respondent did not need additional treatment.

1.9 In a supplemental letter dated June 27, 2008, Dr. Rawlings noted that the Respondent would most likely finish his career as a psychiatrist at the McNeil Correctional facility, because of his financial stake in receiving state retirement benefits. Nevertheless, Dr. Rawlings again opined that the Respondent does not exhibit any risk factors for further sexual misconduct if he were released from the restrictions ordered by the Commission.

1.10 Dr. Kevin B. McGovern submitted a letter dated July 8, 2008, to the Commission on the Respondent's behalf. Dr. McGovern has provided individual therapy, 129 sessions, with the Respondent since August 8, 1994. Dr. McGovern stated that the Respondent has complied with restrictions imposed by the Commission, makes excellent judgments at work, and has received positive evaluations. Dr. McGovern opined that the Respondent's probability of recidivism remains extremely

¹ At the hearing on July 11, 2008, the Respondent expressed his remorse for harming Patient K.K.

low, close to zero. The Commission finds Dr. Rawlings' and Dr. McGovern's reports to be persuasive.

II. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over the Respondent and over the subject matter herein. Chapter 18.130 RCW.

2.2 RCW 18.130.160 permits the Commission to fashion appropriate remedies in disciplining the Respondent, including imposing restrictions or limitations on the Respondent's practice. The 1995 Final Order provided for restrictions and/or limitations on the Respondent's practice, and the Commission must consider what is necessary to protect the public in imposing (or continuing) sanctions.

RCW 18.130.160.

2.3 Based on Findings of Fact 1.1 through 1.10, the Commission concludes the Respondent has fully complied with the terms and conditions of the 1995 Final Order. Over the past 13 years, the Respondent has complied with the conditions ordered in the 1995 Final Order, including the successful completion of his therapy and supervision of his practice. Dr. McGovern, the Respondent's therapist for over 13 years, opined that the Respondent can practice with a reasonable degree of skill and safety. Dr. Rawlings, a clinical psychologist who performed an independent comprehensive evaluation, recently confirmed Dr. McGovern's opinion. The Commission has taken all measures to ensure that the public is protected. Thus, the Commission should grant the Respondent's Petition for Release.

III. ORDER

Based on the foregoing Summary of the Proceeding, Findings of Fact, and Conclusions of Law, the Commission ORDERS that the Respondent's Petition for Release is GRANTED; accordingly, the 1995 Final Order is hereby TERMINATED, and the Respondent's license to practice as a physician and surgeon in the state of Washington is fully reinstated without conditions or restrictions.

Dated this 11 day of August, 2008.

Frederick H. Dore Jr MD
FREDERICK H. DORE, JR, M.D.
Panel Chair

FOR INTERNAL USE ONLY: (Internal tracking numbers)
Program No. 94-02-0074

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable Interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a petition for reconsideration. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

ORDER GRANTING REQUEST
FOR TERMINATION OF
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Docket No. 99-12-A-1056MD
Master Case No. M1995-58923

Medical Quality Assurance Commission
P.O. Box 47866
Olympia, WA 98504-7866

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Medical Quality Assurance Commission does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at <http://www.doh.wa.gov/hearings>.