

STATE OF NORTH DAKOTA

Respondent.

COMPLAINT

I.

II.

III.

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Section 43-17-31(17); and/or the lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients, as proscribed by N.D.C.C. Section 43-17-31(26), specifically, as follows:

FACTS

1. Respondent has seen Patient A since July, 2009. Respondent has seen Patient B for approximately a year.
2. On or about February 10, 2010, Respondent was informed that Patient A had altered and attempted to fill a prescription for Vicodin.
3. On or about February 11, 2010, Respondent prescribed Patient A ninety (90) tablets of Hydrocodone.
4. On or about February 16, 2010, during an investigative interview, Respondent indicated that he was unable to provide information regarding the amount of Hydrocodone he had prescribed Patient A since December 2009. Respondent was then informed that a report from the Prescription Drug Monitoring Program indicated that Patient A had obtained approximately five hundred (500) tablets of Hydrocodone from Dr. Briggs during the previous month. Respondent was unable to provide information regarding the amount of Hydrocodone he prescribed Patient A during December 2009, January 2010 and February 2010.
5. A partial report from the Prescription Drug Monitoring Program indicated that between January 4, 2010, and February 4, 2010, Patient B had obtained four hundred and fifty (450) Hydrocodone and Oxycodone from various pharmacies

which had listed the Respondent as the prescriber. Respondent indicated that the last time he had seen Patient B was on December 22, 2009.

6. On or about February 16, 2010, after being shown a prescription for Patient B for sixty (60) Hydrocodone with three (3) refills, Respondent indicated that he was unable to remember if he had written it to provide for three (3) additional refills and he had no means or documentation by which to verify the prescription.
7. Respondent indicated his lack of documentation and photocopies was the result of his patients catching him in places where he was unable to make copies.
8. On or around February 17, 2010, in an investigative interview, Patient A and Patient B indicated that they were always able to obtain prescriptions for controlled substances from the Respondent, many times without an appointment.

WHEREFORE, Complainant respectfully requests that:

The license of the Respondent, Brian E. Briggs, M.D., 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. §43-17-30.1; N.D. §43-17-31 (17); and §43-17-31 (26).

Dated at Bismarck, North Dakota, this 15 day of April, 2010.

By: 

JOHN M. OLSON (ID#03053)

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Examiners - Investigative Panel A

STATE OF NORTH DAKOTA

BOARD OF MEDICAL EXAMINERS

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OAH File No. 20110161

On April 15, 2010, a Complaint was filed with the North Dakota State Board of Medical Examiners (“Board”) by its Investigative Panel A, through counsel, the Complainant, requesting revocation of, or other administrative action against, the license to practice medicine in the state of North Dakota of Brian E. Briggs, M.D. ("Briggs"), the Respondent. The Complaint cites as grounds for administrative action N.D.C.C. §§ 43-17-30.1 and 43-17-31, alleging violations by Briggs of N.D.C.C. § 43-17-31(17) and (26).

On April 15, 2011, 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 to the Board in regard to the Complaint. On April 19, 2011, ALJ Allen C. Hoberg was designated to preside.

A Prehearing Conference was held on May 6, 2011, attended by the ALJ, counsel for Investigative Panel A, Special Assistant Attorney General John M. Olson, and counsel for Briggs, attorney Michael Ward of Minot.

On May 17, 2011, the ALJ issued a Notice of Hearing. The hearing was held as scheduled on August 18, 2011, in the Office of Administrative Hearings, Bismarck, North Dakota. Investigative Panel A was represented by Mr. Olson. Briggs was present at the hearing. Briggs was represented at the hearing by Mr. Ward. Investigative Panel A called four witnesses, Duane Houdek, the Board's executive secretary, Briggs, Patient A, and an expert witness, Dr. Steven C. Stripe. Investigative Panel A offered 10 exhibits each of which was admitted, exhibits 1,2, and 7 over objection. Besides testifying in Investigative Panel A's case in chief, Briggs testified in his own behalf but called no other witnesses. He offered five exhibits, each of which was admitted.¹ See attached exhibit list.

Counsel for the parties filed post hearing briefs. Investigative Panel A filed the "Brief of Panel A" on September 1, 2011. Briggs filed his "Brief to Panel A" on September 22, 2011. Investigative Panel A filed the "Reply Brief of Panel A" on October 3, 2011. Briggs filed a "Reply to Reply Brief" on October 11, 2011. However, Briggs' last brief was not considered by the ALJ. At the hearing the ALJ specifically stated the briefing schedule and further stated that Panel A, the Complainant, would file a reply brief; he did not authorize the filing of another brief by Briggs.² Thus, the hearing record closed with the filing of the last brief, on October 3, 2011.

Based on the evidence presented at the hearing and the three briefs of counsel for the parties, the administrative law judge makes the following recommended findings of fact and conclusions of law.

¹ Exhibits 11 through 17 were marked but only 11, 12, 14, 16, and 17 were offered and admitted.

² Briggs' last brief is included in the record, however.

FINDINGS OF FACT

1. Briggs is currently a physician licensed to practice medicine in the State of North Dakota. He has been a licensed physician in North Dakota since 1955, practicing in Minot since 1960, and in a solo, general practice since 1963.

2. The Complaint in this matter involves allegations arising out of Briggs' practice and his care and treatment in his practice of two patients, identified in the Complaint and for purposes of this decision as Patients A and B. Patient B is the mother of Patient A.

3. From the evidence at the hearing it appears that Patients A and B, at least at the time they were receiving care and treatment from Briggs, were heavy users and abusers of controlled substances. Exhibit 5 contains a list in a report from the Prescription Drug Monitoring Program ("PDMP") showing the controlled substances dispensed for Patients A and B during the time period 2008-2010, together with the prescribing physicians, including Briggs. Numerous controlled substances are listed for both Patients A and B, including Hydrocodone, Oxycodone, and Diazepam.

4. The timelines for the drugs prescribed by Briggs to Patients A and B correspond to his treatment records, Patient A - July 31, 2009, through February 15, 2010, and Patient B - July 23, 2009, through February 15, 2010. *See* exhibits 2 and 8; compare to exhibit 5. Patient A learned about Briggs from her mother who first visited Briggs as a patient. Patient A testified at the hearing. Patient B did not testify at the hearing.

5. Briggs agreed in his hearing testimony that he never made a determination that Patient A had been pregnant during a majority of the time that she was being treated by him. Briggs admitted on cross examination that this was a mistake, and that this fact should have been known by him, especially in the light of the fact that he was prescribing controlled substances for

her over the course of her pregnancy (July - December 2009). The record is clear that at the outset of her treatment with Briggs, Patient A was several months pregnant. Yet, no examination or determination in regard to pregnancy was ever made by Briggs, even upon other examination close to the time she delivered her baby. Patient A testified that she feared Briggs discovering her pregnancy, at least with his stethoscope, but he did not, and she was able to obtain more controlled substances from Briggs.

6. Investigative Panel A's expert, Dr. Stripe, testified that the drugs prescribed to Patient A are "Class C" drugs and should only be prescribed to pregnant women if the benefit outweighs the risk. However, Briggs never made an evaluation and assessment of the risk for Patient A in this regard. He did no pelvic exam, urinalysis, or any other test for Patient A to help him make a determination that Patient A was pregnant. The evidence is clear, and Briggs essentially agreed, that he failed in making the proper assessment of Patient A for prescribing controlled substances to her.

7. In the case of Patient B, as early as July 23, 2009, Briggs noted in her patient records "drug dependency," yet he continued to prescribe controlled substances for her throughout his treatment of her into February 2010. Exhibit 8. This reference in his medical records to Patient B being drug dependent never appeared again in his records nor was there any attempt by Briggs to resolve this addiction warning sign.

8. During the course of his care and treatment of Patients A and B, Briggs had prescribed over twice as much Oxycodone and Hydrocodone as Dr. Stripe stated would be acceptable for Patients A and B (120 per month). Briggs agreed in his testimony that any amounts prescribed for Patients A and B over 120 pills per month would be excessive. *See*

exhibit 5. Exhibits 2 and 8 contain the entire documentation Briggs recorded for his treatment of Patients A and B for the more than six months he cared for and treated them.

9. Briggs has for a number of years practiced medicine in his home in Minot with the assistance of his wife. Although he also practices using traditional medical therapies, the primary focus of his practice is treating his patients with alternative remedies, therapies, and manipulations. However, Patients A and B complained to Briggs primarily about pain and Briggs responded in the care and treatment of Patients A and B with more traditional care, with prescriptions for controlled substances.

10. Briggs testified that he ended this practice of prescribing controlled substances for Patients A and B when he was alerted to the possibility of a forged prescription presented to a pharmacy by Patient A.

11. There is a factual dispute between Briggs, who stated at the hearing that he did not believe that he could have prescribed the amounts of controlled substances to Patient A as indicated in the PDMP report, and Patient A, who testified that she easily obtained all prescriptions indicated from Briggs and did not forge any prescriptions. The facts appear to be in favor of Patient A's testimony and against Briggs' testimony. Briggs' position in this regard does not appear to be sustained by the facts and, furthermore, is not believable. *See* exhibit 5. Patient A appeared to be credible at the hearing. Since being in the care of Briggs, Patient A has been in a drug rehabilitation treatment program for her drug addiction and now appears to be sober.

12. Briggs asserted at the hearing that prescriptions he did not record were forgeries perpetrated by Patients A and B. However, he admitted at the hearing that he issued prescription refills which he did not record. The PDMP indicates that many of the prescriptions dispensed to

Patients A and B were, in fact, refills. *See* exhibit 5. Minot police conducted an investigation of the alleged forgeries by Patients A and B, and brought no charges against either Patient A or B. The evidence does not support Briggs' forgeries theory.

Briggs' theory of this matter, as stated in his closing brief, appears to be that his prescription pad or pads was stolen from his office and prescription signatures by him forged by either Patient A or B, or both, so that many of the prescriptions written and obtained by Patients A and B were fraudulently obtained. His theory is primarily based on speculation. There was no evidence that any prescription pads were stolen and no evidence that any prescriptions were forged, only Briggs' speculation that this must have occurred. It is not believable considering all of the evidence.

13. Briggs admitted to prescribing a controlled substance to Patient A even after learning about a problem with a prescription at the pharmacy.

14. The amount of controlled substances that it appears from the evidence that Briggs prescribed for Patients A and B is alarming. Briggs testified at one point in the hearing that it would harm Patient A if she had to go "cold turkey," but Dr. Stripe testified that under the circumstances no such physical harm would occur to Patient A.

15. Never did Briggs reference a referral to an addiction counselor, a drug rehabilitation program, or a pain specialist for either Patient A or Patient B. Thus, it must be assumed that he did not do so, though from the evidence it would have been advisable.

16. Dr. Stripe also testified concerning Briggs' medical records, describing them as inadequate, particularly in the case of Patient A where no determination had been made about her pregnancy, no tests were given, no questions were asked, and clear observations were missed. The medical records kept by Briggs for Patients A and B, exhibits 2 and 8, speak for themselves.

They do not support the numerous pain medications he prescribed. There are scant references to "pain" as justifying the large amount of controlled substances given. The subjective assertions of pain communicated by these two patients, the histories and physicals referenced in the medical records, and the diagnoses reached by Briggs do not support a sufficient basis for the drug therapies he gave to Patients A and B. Briggs even admitted at the hearing that he failed to document two prescriptions that were later pointed out by his daughter as having been prescribed. Additionally, it was not clear from the medical records, nor even from Briggs' own testimony at the hearing, whether prescription refills for Patients A and B were intended or given; however, many of the controlled substances referenced in the PDMP report were dispensed as refills. Furthermore, the medical records are replete with documentation of what was only communicated by the patient, mostly a reiteration of what patients told him, with no or little objective or medical confirmation. Any physician, including Briggs, who subsequently treated Patients A and B based on Briggs documentation in their medical records, would appear to be at great risk of providing inappropriate, and potentially harmful, treatment. Finally, it appears to be virtually impossible to follow the progression of treatment provided by Briggs to Patients A and B. In many instances, he failed to accurately record his prior treatment of these two patients.

CONCLUSIONS OF LAW

1. Briggs is currently a physician licensed to practice medicine in the State of North Dakota. As such he is subject to the regulatory provisions of N.D.C.C. chapter 43-17 and 43-17.1.

2 The evidence shows, by the greater weight of the evidence, that Briggs engaged in the prescription of controlled substances for both Patient A and Patient B for other than medically accepted therapeutic purposes, in violation of N.D.C.C. § 43-17-31 (17).

3. The evidence shows, by the greater weight of the evidence, that the medical records for Briggs' care and treatment of Patients A and B show a lack of appropriate documentation for their diagnosis, testing, and treatment, in violation of N.D.C.C. § 43-17-31(26).

4. N.D.C.C. § 43-17-30.1 authorizes the Board to impose various administrative action against Briggs, including suspension or revocation of Briggs' license to practice medicine in the State of North Dakota for any of the grounds for disciplinary action listed in N.D.C.C. § 43-17-31. The evidence in this matter shows violations of two sections of N.D.C.C. § 43-17-31, subsections 17 and 26. Thus, the Board is authorized to take administrative action against Briggs' license under N.D.C.C. § 43-17-30.1.

5. N.D.C.C. § 43-17-31.1 authorizes the Board when disciplinary action is imposed against a physician, to direct the physician to pay the reasonable and actual costs, including reasonably attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of the matter.

RECOMMENDED ORDER

The greater weight of the evidence shows that Briggs violated the provisions of N.D.C.C. § 43-17-31 (17) and (26) in his care and treatment of Patients A and B. It appears that Counsel for Investigative Panel A in his briefs recommends revocation of Briggs' license to practice medicine in North Dakota not only because of the seriousness of the violations proven at the hearing but also because of his age and the apparent lack of "focus and detailed attention required to treat patients in the traditional manner." Brief of Panel A, at 6. Counsel also notes that Briggs has enjoyed a long career and is, apparently, still popular with at least some of his patients, several of whom attended the hearing. Counsel also notes that it is "unrealistic to consider further education or other rehabilitative measures as a realistic alternative" for Briggs. *Id.* at 7. The ALJ agrees with counsel for Investigative Panel A, in part, certainly regarding the seriousness of the violations and the lack of focus and attention, and regarding the unrealistic alternatives of further education or other rehabilitative measures. However, in light of Briggs' long career as a physician in North Dakota, apparently without any other violations of the laws regarding physicians and surgeons in North Dakota (at least no other violations are in evidence), the ALJ recommends that Briggs' license to practice medicine in North Dakota be suspended for a period of years, the number of years of the suspension to be imposed by the Board and invoked upon the issuance of the Board's final order in this matter.

Counsel for Investigative Panel A makes a recommendation regarding Briggs paying for the costs of prosecution of this matter under N.D.C.C. § 43-17-31.1 in his final reply brief. Thus, the ALJ makes that recommendation, too, that the Board direct Briggs to pay the reasonable and

actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of this matter.

Dated at Bismarck, North Dakota, this 12th day of October, 2011.

State of North Dakota
Board of Medical Examiners

By: 

Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

EXHIBIT LIST

Matter	Brian E. Briggs, M.D. Complaint						
Hearing	August 16, 2011 ME – Medical Examiners BB = Brian E. Briggs, M.D.						
No.	Description	Mkd	Idd	Ofd	W/D	Adm	Note
1	BOMEX License Status Report dated 8/16/2011	X		ME		X	
2	Medical Records of [REDACTED]	X		ME		X	10 pages Objection
3	Briggs letter to [REDACTED] dated 2/6/2010	X		ME		X	
4	Briggs letter to [REDACTED] dated 3/2/2010	X		ME		X	
5	Prescription Drug Monitoring Program Report	X		ME		X	7 pages
6	Curriculum Vitae of Stephen C. Stripe MD, FAAFP.	X		ME		X	5 pages
7	Report of Stephen C. Stripe, M.D.	X		ME		X	2 pages Objection
8	Medical Records of [REDACTED]	X		ME		X	5 pages
9	Medical Record of [REDACTED] from 12/2009 – 8/2011	X		ME		X	
10	Prescription Drug Monitoring Program Report	X		ME		X	10 pages
11	Monthly Statement/Billing Sheet for [REDACTED]	X		BB		X	
12	Monthly Statement/Billing Sheet for [REDACTED]	X		BB		X	

14	Photocopy of Prescription for [REDACTED] dated 2/2/2010	X		BB		X	
16	Photocopy of Prescription for [REDACTED] dated 1/14/2010	X		BB		X	
17	Photocopy of Prescription for [REDACTED] dated 2/8/2010	X		BB		X	

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:

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

Complainant,

vs.

Brian E. Briggs, M.D.

Respondent.

**CERTIFICATE
OF SERVICE**

OAH File No. 20110161

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The undersigned certifies that the original of the **RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**, and the proposed final **ORDER**, were mailed, regular mail, on the 12 day of October 2011, to:

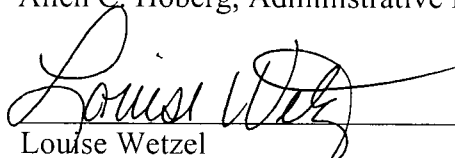
Duane Houdek
Executive Secretary
Board of Medical Examiners
418 East Broadway Avenue – Suite 12
Bismarck, ND 58501

and that true and correct copies of the above documents were mailed, regular mail, on the 12 day of October 2011, to:

Michael Ward
Eaton, Van De Streek & Ward
201 South Main – Suite 200
Minot, ND 58701

John M. Olson
Special Assistant Attorney General
John M. Olson, PC
418 East Broadway Avenue – Suite 9
Bismarck, ND 58501

OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge


Louise Wetzel

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:

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

Complainant,

vs.

Brian E. Briggs, M.D.

Respondent.

ORDER

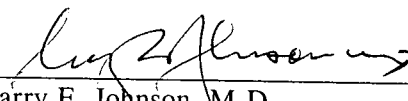
OAH File No. 20110161

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The evidence of record has been considered and appraised. IT IS ORDERED that the recommended findings of fact and conclusions of law of the administrative law judge are adopted as the Board's findings of fact and conclusions of law in this matter; IT IS FURTHER ORDERED that the recommended order of the administrative law judge is adopted, with modifications, as the Board's final order in this matter. The license to practice medicine in the State of North Dakota issued to Brian E. Briggs, M.D., is suspended immediately pending completion of a comprehensive evaluation of his medical skills and knowledge, to be performed at Dr. Briggs' expense at the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado. The Board will issue any additional order, as may be appropriate, after review of the CPEP evaluation. IT IS FURTHER ORDERED, that Brian E. Briggs, M.D. pay to the Board the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of this matter. The Board shall state the amount of such costs, as well as the manner and method of payment of such costs, in a separate letter which shall be incorporated as part of this order and served upon Dr. Briggs.

Effective this 18th day of November, 2011.

NORTH DAKOTA STATE BOARD
OF MEDICAL EXAMINERS



Larry E. Johnson, M.D.
Chairman