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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ERIC A. DOVER, MD,

Plaintiff,

v.

KATHLEEN HALEY, JD, et al.,

Defendants.

Case No. 3:13-cv-01360-BR

**DECLARATION OF MARC ABRAMS IN  
SUPPORT OF MOTION TO DISMISS OR  
FOR SUMMARY JUDGMENT**

I, Marc Abrams, declare:

1. I am a Senior Assistant Attorney General in the Trial Division of the State of Oregon Department of Justice, and am counsel of record for the defendants in this matter.
2. Attached to this declaration as **Exhibit A** is a true and correct copy of the Final Order in *In matter of Eric Alan Dover, M.D., License No. MD16996* and pertaining to plaintiff dated January 14, 2011.

**I declare under penalty of perjury that the foregoing is true and correct.**

EXECUTED on August 26, 2013.

\_\_\_\_\_  
s/ Marc Abrams  
MARC ABRAMS  
Senior Assistant Attorney General



1 3. Whether Licensee violated a Board order by refusing to be evaluated at the Center  
2 for Personalized Education for Physicians (CPEP), thereby violating ORS 677.190(17).  
3

4 4. If Licensee is found to have violated any or all of the above, whether license  
5 revocation, payment of a \$10,000 civil penalty, and payment of costs are the appropriate  
6 sanctions.  
7

#### 8 EVIDENTIARY RULINGS 9

10 Exhibits A1 through A20, offered by the Board, were admitted into evidence. Exhibits  
11 A19 and A20 were admitted over Licensee's objection. Exhibits L1 through L23, L26, L27 and  
12 L29 were admitted into evidence.<sup>3</sup>  
13

14 Licensee also objected to Pleading Documents P10 through P17, documents concerning  
15 the protective order. Those documents are not evidence and are included only to show the  
16 procedural history of the case. Because the protective order is part of the procedural history of  
17 the case, the objection was overruled.  
18

#### 19 FINDINGS OF FACT 20

21 1. Licensee is a practicing family physician, formerly Board certified. He has a  
22 clinic in Portland, called "Portland Health Care." He has an undergraduate degree in biomedical  
23 sciences from UC-Riverside, and a medical degree from UCLA. He did a residency at Harbor-  
24 UCLA Hospital in Los Angeles and practiced family medicine in San Luis Obispo, California  
25 and Salem, Oregon, before opening his practice in Portland. At the time the complaint was filed  
26 against him, Licensee spent 80 percent of his time in his practice in Portland, and 20 percent as  
27 an independent contractor for Voter Power clinics, certifying clients for the Oregon Medical  
28 Marijuana Program (OMMP). (Ex. A4 at 1-2; test. of Licensee).  
29

30 2. Voter Power had a clinic in Medford that Licensee worked at between January  
31 2004 and June 2008. (Test. of Licensee). Patients paid a fee to Voter Power, filled out forms to  
32 demonstrate that they had one or more of the qualifying conditions for the OMMP, and provided  
33 their medical records. Voter Power prepared a packet for each patient that would be taken in to  
34 Licensee. Licensee met with the patient and determined whether the patient could be certified  
35 for the OMMP. (Test. of Licensee, Patient A, Wall).  
36

37 3. Patient A is a male, born in 1950. He visited the Voter Power clinic on January 4,  
38 2008 to obtain certification for medical marijuana. He was told about the benefits of marijuana  
39 by a retired physician friend. (Test. of Patient A). Patient A has gout, which was diagnosed in  
40 2001, and he has had intermittent problems with the condition ever since. His physician  
41 prescribed allopurinol, a gout medication, but Patient A had a reaction to the medicine and quit  
42 taking it after only two pills. Patient A has never had knee surgery. (Test. of Patient A; Ex.  
43 A18).  
44

45  
46 <sup>3</sup> The numeric gaps in the "L" documents were due to the party's numbering system; there are no  
47 excluded L documents.

1 4. Patient B is a male, born in 1959. He has had surgery on both knees to repair the  
2 ACL joints, and has orthopedic screws in each of his knees to help maintain the surgical result.  
3 He was seen at Voter Power on January 4, 2008, seeking OMMP certification for chronic pain.  
4 (Ex. A11). Licensee recorded Patient B's medical history and findings on documents with  
5 Patient A's contact information, and again on documents with Patient B's contact information.  
6 (Ex. A10 at 6; Ex. A11 at 15).  
7

8 5. Patient C is a male, born in 1955. On May 10, 2006, he returned to the Voter  
9 Power clinic to recertify for the OMMP. Patient C has had AIDS for 17 years, and has Hepatitis  
10 C and hypertension as well. Patient C also has psychological diagnoses, including PTSD,  
11 depression and a history of polysubstance abuse. He was seeking OMMP recertification for  
12 severe nausea and loss of appetite. Licensee's physical examination of Patient C, noted on a  
13 preprinted form, consists of 22 circled plus signs and an indication that the lungs and chest are  
14 "clear," the abdominal/gastrointestinal areas is "benign," neurological was "intact," and skeletal  
15 was "WNL." On the form, Licensee also listed the medications and a list of diagnoses reported  
16 by Patient C. (Ex. A15 at 72).  
17

18 6. Patient D is a female, born in 1959. She came to the Voter Power clinic on May  
19 6, 2008, seeking OMMP certification for chronic pain and muscle spasms due to multiple  
20 sclerosis (MS) and fibromyalgia. Licensee's physical examination records, on the preprinted  
21 form, eleven circled plus signs, an indication of neurological "weakness," and a list of  
22 medications and diagnoses. (Ex. A16 at 210).  
23

24 7. Patient E is a female born in 1955, who suffers from MS. She was seeking  
25 recertification for OMMP due to chronic pain. Licensee's physical examination records, on the  
26 preprinted form, eleven circled plus signs, and a list of medications and diagnoses. (Ex. A16 at  
27 513).  
28

29 8. Patient A and Patient B visited the Voter Power clinic on January 4, 2008, but did  
30 not know each other at that time. Both filled out the OMMP paperwork to seek authorization for  
31 medical marijuana, and handed the paperwork to Voter Power staff. Either the staff or Licensee  
32 switched the files, sending Patient A's file (with his name and contact information at the top) in  
33 to Licensee with Patient B. Licensee wrote Patient B's physical findings and information (48  
34 years of age, bilateral knee condition with hardware surgically implanted) on Patient A's forms.  
35 (Test. of Patient A; Ex. A1 at 7-9).  
36

37 9. When Patient A was seen by Licensee, Licensee spent eight minutes with him and  
38 did not do a physical examination. Patient A had removed his left shoe and sock because he  
39 wanted Licensee to look at his left foot, where his gout symptoms were bothering him the most.  
40 Licensee reviewed his records but did not look at the left foot. He told Patient A he did not have  
41 enough information to justify OMMP certification, and sent the patient to a nearby clinic for x-  
42 rays. (Test. of Patient A). When he wrote the x-ray order, Licensee requested a right foot x-ray,  
43 not a left foot x-ray. (Ex. A1 at 6). Patient A had been treated since 2001 for gout, and provided  
44 the records to Licensee for his review. (Test. of Patient A, Ex. A18).  
45  
46  
47

1           10. On the form entitled "Documentation of Review of Medical Records, Patient  
2 History, Treatment Plan" Licensee indicated he reviewed Patient A's records (by writing "yes"),  
3 and placed a check mark next to "Discussed risks/benefits of medical marijuana with patient".  
4 Licensee partially circled "6-12 months" to answer the question of "Next doctor visit" and signed  
5 the form. (*Id.* at 7). With Patient A and the other patients, Licensee did not think there were any  
6 risks to the patient because of the benefits of using medical marijuana. (Test. of Licensee).  
7

8           11. On the SOAP<sup>4</sup> page, Licensee wrote the physical findings for Patient B on Patient  
9 A's forms. (*Id.* at 8). On the "Physical Examination" page, Licensee circled several "plus"  
10 marks on the page; indicated his lungs and chest were "clear;" indicated his abdominal exam was  
11 "benign;" his neurological exam was "intact;" and Licensee recorded that Patient A had bilateral  
12 knee scars with bad to severe crepitus and a past medical history of knee surgeries and  
13 "extensive OA" (osteoarthritis). (*Id.* at 9). Those findings were for Patient B and did not match  
14 Patient A's medical history. (Test. of Patient A).  
15

16           12. In October 2008, Licensee recalled some of the information he reviewed in  
17 Patient A's file:  
18

19           He had 2 or 3 documented cases of acute gouty attacks that he went to Urgent  
20 Cares for treatment from what I recall (from the records he brought in[.]  
21

22 (Ex. A4 at 1). Patient A provided approximately 24 pages of documents to Licensee, including  
23 the application forms. (Test. of Patient A; Ex. A18).  
24

25           13. After obtaining the x-rays from the clinic, Patient A returned to Voter Power and  
26 saw Licensee for an additional five minutes. Licensee refused to certify Patient A for the  
27 OMMP at that time, and asked Voter Power to refund his money. (Test. of Patient A, Licensee).  
28

29           14. After returning home that evening, Patient A's wife answered a phone call from  
30 Patient B, who informed her that his medical records from Voter Power had Patient A's name  
31 and contact information at the top, explaining how he knew to call Patient A's home. Patient A  
32 talked to Patient B, verified the story, and decided to go back down to Voter Power the next  
33 morning to find out how the records had been mixed up. When Patient A went back to Voter  
34 Power the next day, he wanted to talk to Licensee, but Licensee refused to talk to him. Voter  
35 Power staff sent Patient A home without answering his questions. (Test. of Patient A).  
36

37           15. After Patient A returned home, he received another call from Voter Power and  
38 was told that he was being certified for the OMMP, and to come back to the clinic. When  
39 Patient A returned to the clinic, he was given further paperwork to fill out. At that point, the  
40 director of Voter Power realized that Patient A's documents contained Patient B's medical  
41 information. She grabbed the paperwork out of Patient A's hands and shredded it. Patient A  
42 again asked if he could speak with Licensee, but was refused. (Test. of Patient A).  
43

44           16. On January 27, 2008, Patient A sought treatment from Darryl George, DO, to be  
45 evaluated for certification for the OMMP card. Dr. George examined Patient A, certified him for  
46

47 <sup>4</sup> SOAP is an acronym for "Symptoms (or Subjective), Objective, Assessment, and Plan.

1 the OMMP, and then wrote a letter to the Board to report Patient A's experiences with Licensee  
2 and the Voter Power clinic. (Ex. A16). The letter was written approximately one week after  
3 Patient A filed his complaint with the Board. (Ex. A1).  
4

5 17. After the Board received the complaint from Patient A and the letter from Dr.  
6 George, it opened an investigation of Licensee. The initial letters to Licensee were mistakenly  
7 sent to him at the Voter Power address rather than at his Portland office address. (Test. of  
8 Drum). Licensee responded:  
9

10 My name is Dr. Eric Dover. I am a Family Physician. 80% of my work is  
11 obligated to a clinical practice where I see patients at a reduced rate who are  
12 either uninsured or have high deductibles associated with their insurance policies.  
13 The other 20% of my work time is spent helping an organization called Voter  
14 Power where I work as an independent contractor. Here I evaluate patients  
15 regarding their qualifications for a Medical Marijuana Card. I take this situation  
16 very seriously. I would not be involved with this if I did not feel it was beneficial  
17 to patients. The readily available medical literature substantiates marijuana's  
18 benefits.  
19

20 [Patient A] was seen by myself at Voter Power. [He] came there seeking a  
21 medical marijuana card for gout. I don't know if he indicated that in his letter to  
22 the Board? [He] supposedly stated that I gave him back the wrong records. This  
23 would be impossible.  
24

25 (Ex. A2).  
26

27 18. Based upon Patient A's complaint, which included the mixed up documents  
28 between Patients A and B, the Board's investigator determined that Licensee was incorrect about  
29 the possibility of a records mix-up and that the matter should be forwarded to the Medical  
30 Director to see if further action was needed. (Ex. A3). The Medical Director asked the  
31 investigator to request more files from Licensee, and Licensee responded to that request on  
32 October 1, 2008. After reluctantly agreeing to provide additional files, Licensee stated:  
33

34 After reviewing the Investigating Committee's backgrounds, I don't feel  
35 comfortable with their knowledge regarding the treatment of gout. Nor do I feel  
36 comfortable with their knowledge of medical marijuana and the treatment of  
37 chronic pain or other medical problems. I do know that none of these members  
38 treat chronic pain and that two of them are involved in specialties that leave  
39 legions of chronic pain sufferers in their wake.  
40

41 (Ex. A4 at 2).  
42

43 19. At the Board's request, Family Practice physician James Calvert MD reviewed  
44 Licensee's charts from his Portland office and from Voter Power. Included among the files were  
45 the records of Patients A, B, C, D and E, all from Voter Power clinics. In all five cases, Dr.  
46 Calvert concluded that the physical examinations and histories were superficial, and the medical  
47

1 decision-making did not meet the standard of care. (Ex. A5). Dr. Calvert has worked as an  
2 independent contractor in clinics before, and certifies some of his patients to receive medical  
3 marijuana under the OMMP. He has a special relationship with HIV patients, and has certified  
4 several of them to receive medical marijuana under the OMMP. (Test. of Calvert).  
5

6 20. Dr. Calvert reviewed Patient A's records and concluded that the x-rays requested  
7 by Licensee showed lucencies consistent with gout. He noted that Patient A's records were  
8 confused with Patient B's records ("an unfortunate but an understandable error"), and was  
9 critical of the assessment done by Licensee in the cases.<sup>5</sup> Dr. Calvert wrote:  
10

11 The physical exams contain no detail and the medical histories are overly brief.  
12 There is no evidence in either case of medical decision making regarding the risks  
13 and benefits of use of marijuana or any rationale as to why the certification might  
14 make sense in their cases. \* \* \* It seems to me that when Dr. Dover indicates that  
15 he had no evidence [that Patient A] had gout when he did in fact have that  
16 evidence, and that he did a physical examination on a patient when according to  
17 the patient he did not, and then when he made an error in his record keeping he  
18 denied doing so rather than trying to figure out what went wrong, his care is  
19 characterized by gross negligence.  
20

21 (Ex. A5 at 3).  
22

23 21. Dr. Calvert reviewed Licensee's records concerning Patient C and ultimately  
24 agreed with Licensee's recertification decision. However, he noted that Patient C's records also  
25 contained evidence of "significant psychiatric disease," including PTSD, depression, suicidal  
26 ideations and gestures, and a history of polysubstance abuse. Concluding that Patient C's case  
27 was "extremely complicated, with numerous co-morbidities," Dr. Calvert noted that:  
28

29 The medical decision-making is substantially below the standard of care for any  
30 physician seeing such a complicated patient.  
31

32 (*Id.*).  
33

34 22. Dr. Calvert reviewed Licensee's records concerning Patient D. He concluded that  
35 Licensee's analysis was superficial, with medical decision-making not well documented. He did  
36 not consider the records to be up to a professional standard. (*Id.* at 4).  
37

38 23. Dr. Calvert reviewed Licensee's records concerning Patient E. He agreed with  
39 Licensee's diagnosis of MS, but concluded:  
40

41 The evaluation performed by Dr. Dover is superficial, mostly using preprinted  
42 forms that simply require a + mark or a circle to document the physical. His  
43 diagnosis of MS is confirmed[.]  
44  
45

46 <sup>5</sup> The confusion in the records leads to documents with Patient A's personal information and Patient B's  
47 medical information, so both patients are involved.

1 Dr. Calvert's written comments summarized the problems he found in all five cases. (*Id.*)  
2

3 24. On June 4, 2009, Licensee was interviewed by the Board's Investigative  
4 Committee. Included on the committee was Gary LeClair, MD. (Ex. A6 at 2). Licensee  
5 insisted, at hearing, that the doctor's name was "St. Clair." (Test. of Licensee).  
6

7 25. As part of the initial notice in the case, the Board required Licensee to attend an  
8 evaluation with CPEP within 90 days. On December 3, 2009, Licensee sent a letter refusing to  
9 attend:  
10

11 I will not be attending the CPEP evaluation. This is not because I feel I have any  
12 deficits as a physician, in fact it is quite the contrary. I personally feel I'm  
13 probably one of the best doctors you actually have in this state. No, the reason I  
14 won't attend is because I feel that it is money down the toilet. Why would I spend  
15 \$10,000 plus for this program and \$30,000 to \$50,000 plus for a lawyer for your  
16 "hearing" when I have a strong feeling your minds are already made up in my  
17 situation. If I thought I had a snowballs chance in hell that all the money I would  
18 spend would make a difference then I would go for it, but from the Medical  
19 Boards actions and statements it's obvious it won't.  
20

21 Why do I feel this way? First, you have broken my confidentiality on three  
22 separate occasions, but this doesn't seem to matter. If I broke a patient's  
23 confidentiality once, let alone three times, you all would have me on the ropes,  
24 but for you it doesn't seem to matter whose confidentiality is broken nor how.  
25 We'll eventually find out if it does or doesn't matter.  
26

27 Second, my lawyer \* \* \* has made three separate requests for medical  
28 records related to your allegations of me regarding my encounter with  
29 [Patient A], yet nothing has been sent nor have you even acknowledged these  
30 requests with a letter. Dr. St. Claire tried to cancel the Investigative Committees  
31 questioning of me some 5 months ago because I had not received the records.  
32 The committee decided to continue. They then read from a computer screen a  
33 statement supposedly from another physician's note stated that [Patient A] stated  
34 that I had counseled him on a concealed weapons permit at our encounter. This is  
35 ludicrous. I have never seen a copy of that supposed physicians chart note. They  
36 asked numerous questions about my encounter with [Patient A]. I had not seen  
37 his records for 1 1/2 years and still haven't. When I last saw them was the day  
38 he took off with his, another individual's and the non profit's records. Yet, I'm  
39 supposed to answer questions about a situation that has a tremendous effect upon  
40 my and thousands of others lives. Why should I continue with this absurd  
41 process when I can't get records regarding it? That is why I will not  
42 continue your process until all information you have is divulged to me. Is  
43 this the way democracy works in Oregon?  
44

45 This only touches the surface of why I mistrust your governmental body. This is  
46 why I will not throw away financial resources that are extremely important to my  
47



1 family and me at this juncture. Now my families near term financial situation will  
2 be dependent upon decisions made by a prejudiced and misinformed group of  
3 individuals. You don't think I know this is political? I am in trouble with the  
4 Medical Board because I was willing to sign a statement for individuals that  
5 stated that medical marijuana may be beneficial for their medical condition. My  
6 signature means nothing more or less. I was willing to do this for patients  
7 because they have the State Right to obtain this important medication and their  
8 doctors are either prejudiced against it, ignorant of it, are afraid to sign to  
9 statement or are not allowed by the institutions they work for to sign it. It used to  
10 be the physicians could say that they were afraid of the Feds if they signed the  
11 Physician's Statement. Bush did nothing to any physician in any state who signed  
12 it and Obama has stated that the Feds will state hands off. So now the only  
13 governmental agency to fear is you - the Oregon Medical Board.  
14

15 \* \* \* \* \*

16  
17 At this point, the best light I see the Medical Board in is that you are incompetent.  
18 At worst I see you as corrupt, running this government body with your own  
19 political agenda. What I have seen so far is a "witch hunt." What I expect in the  
20 future is a kangaroo court followed by a lynch mob if I continued down the road  
21 you have set in place for me. Why waste my time, energy and money on that  
22 losing hand? Now, I am no longer playing defense. I am now on offense.  
23 Nobody is going to get away with smearing my name in the community and  
24 undermining my family's economic future when I have done nothing wrong. In  
25 fact I have done everything right. Get ready for this to go very public because  
26 you actually work for the public. They need to find out how you are undermining  
27 their rights in this State.  
28

29 \* \* \* \* \*

30  
31 (Ex. A8; emphasis in original). The Board sent documents to Licensee during the 90 day period  
32 in which he could have complied with the request for an evaluation at CPEP, but Licensee did  
33 not comply with the order after receiving the documents. (Test. of Licensee).  
34

35 26. Alisa Wall was an employee of Voter Power at the time when Patient A and B  
36 were there in January 2008. Wall testified that she saw Patient A write his name on the form  
37 after he had seen Licensee. Wall then testified she did not see Patient A write his name on the  
38 form after he had seen Licensee. (Test. of Wall).  
39

40 27. In preparation for the hearing, Licensee sent written requests on his medical office  
41 letterhead to several pharmacies in Southern Oregon, asking for a list of medications that Patient  
42 A purchased. (Ex. L1-L22). Licensee did not ask for permission from Patient A before seeking  
43 those records. (Test. of Licensee).  
44

45 28. Patient A received prescriptions for allopurinol and colchicine from Walgreens  
46 Pharmacy in Medford on December 12, 2007. (Ex. A19). He took two allopurinol tablets but  
47

1 had a reaction to the medication and stopped taking it. (Test. of Patient A). In the bottle of  
2 allopurinol brought by Patient A to the hearing, there were 28 of 30 tablets remaining. (Count by  
3 Attorney Loney).  
4

### 5 CONCLUSIONS OF LAW

6  
7 1. Licensee engaged in one or more acts of unprofessional or dishonorable conduct,  
8 thereby violating ORS 677.190(1)(a);  
9

10 2. Licensee engaged in gross or repeated negligence in the practice of medicine,  
11 thereby violating ORS 677.190(13);<sup>6</sup>  
12

13 3. Licensee violated a Board order by refusing to be evaluated at The Center for  
14 Personalized Education for Physicians (CPEP), thereby violating ORS 677.190(17).  
15

16 4. The appropriate sanctions in this case are set forth below.  
17

### 18 OPINION

19  
20 The Board alleged several acts of unprofessional conduct and gross negligence in  
21 Licensee's treatment of five patients at the Voter Power clinic. In addition, the Board contended  
22 through counsel at the hearing that Licensee violated a Board order by refusing to be evaluated at  
23 CPEP. All of the charges against Licensee arise from ORS 677.190, which states in part:  
24

25 **Grounds for suspending, revoking or refusing to grant license, registration or**  
26 **certification; alternative medicine not unprofessional conduct.** The Oregon  
27 Medical Board may refuse to grant, or may suspend or revoke a license to practice  
28 for any of the following reasons:  
29

30 (1)(a) Unprofessional or dishonorable conduct.  
31

32 \* \* \* \* \*

33  
34 (13) Gross negligence or repeated negligence in the practice of medicine or  
35 podiatry.  
36

37 \* \* \* \* \*

38  
39 (17) Willfully violating any provision of this chapter or any rule adopted by the  
40 board, board order, or failing to comply with a board request pursuant to ORS  
41 677.320.  
42

43 A different statute contains the definition of unprofessional or dishonorable conduct:  
44  
45  
46

47 <sup>6</sup> The oral amendments involved the statutes in Issues 2 and 3.

1 (4) "Unprofessional or dishonorable conduct" means *conduct unbecoming a*  
2 *person licensed to practice medicine* or podiatry, or detrimental to the best  
3 interests of the public, and includes:  
4

5 (a) Any conduct or practice contrary to recognized standards of ethics of the  
6 medical or podiatric profession or any conduct or practice which does or might  
7 constitute a danger to the health or safety of a patient or the public or *any conduct,*  
8 *practice or condition which does or might adversely affect a physician's or*  
9 *podiatric physician and surgeon's ability safely and skillfully to practice medicine*  
10 *or podiatry[.]*  
11

12 ORS 677.188 (emphasis added).  
13

14 As the proponent of the position that Licensee has violated the rules noticed above, the  
15 Board has the burden of presenting evidence in support of its position. ORS 183.450(2). The  
16 Board must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130  
17 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative  
18 Procedures Act is preponderance of evidence absent legislation adopting a different standard).  
19 Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts  
20 asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390  
21 (1987). In this case, the ALJ found that the Board carried its burden.  
22

### 23 Procedural Matters 24

25 Before addressing the merits of the case, several procedural matters that were raised  
26 during and before the hearing must be addressed. Those matters include: 1) allegations of bias or  
27 prejudice; 2) the motion for a protective order; 3) a motion to strike/dismiss a portion of the case;  
28 and 4) how much weight to give hearsay evidence. In addition, the ALJ addressed Licensee's  
29 argument that Dr. Calvert was not an appropriate peer reviewer in the case, as well as the  
30 credibility of witnesses.  
31

32 **Allegations of Bias or Prejudice.**<sup>7</sup> It is important at the outset to identify, as the Board  
33 through counsel did in closing argument, what this case is *not* about. Licensee worked as an  
34 independent contractor for Voter Power, and certified patients for the OMMP. He argued in his  
35 testimony and in his correspondence that the Board's real reason for attempting to discipline him  
36 stemmed from his belief that medical marijuana was a legal and underutilized medication.  
37

38 Under Licensee's theory, he is "one of the best doctors you actually have in this state,"  
39 and a "compassionate, well informed physician," but the Board is a "lynch mob" who is out to  
40 "hang" him because of his involvement with certifying patients for the OMMP. (Ex. A8).  
41 However, leaving aside Licensee's considerations of his own prowess, the record does not  
42 support that the Board is prejudiced against doctors involved in certifying patients for the  
43 OMMP.  
44

45  
46 <sup>7</sup> Although not stated in so many words, the ALJ interpreted Licensee's belief that the Board is pursuing  
47 this case because of his involvement with the OMMP as an allegation of prejudice or bias.

1 Every one of the experts involved in the case was familiar with, and actually certified  
2 patients for, the OMMP. Licensee did so through the Voter Power clinic and, presumably, in his  
3 private practice in Portland. Dr. George, the physician who later treated Patient A, and may have  
4 encouraged Patient A to file the complaint with the Board, certified Patient A for OMMP. Dr.  
5 Calvert, the family practitioner who reviewed Licensee's records and testified as an expert for  
6 the Board, also certifies patients for OMMP, including several certifications among HIV  
7 patients.  
8

9 Even the five cases relied upon in the Board's allegations against Licensee show that  
10 certification for OMMP is not the issue. In four cases, Licensee certified the patient for OMMP  
11 and in one case he refused to certify the patient.  
12

13 In short, this case is not about whether physicians should certify patients for medical  
14 marijuana, nor is it a vendetta against Licensee for his involvement with the program. Licensee  
15 has failed to show any bias or prejudice on the Board's part.  
16

17 **Motion for Protective Order.** As noted above, the Board sought a Protective Order in  
18 the case and Licensee objected to its issuance, claiming there was no authority for such an order.  
19 A prehearing conference was held on August 30, 2010, to address the arguments. Before the  
20 conference, the Board filed a reply to Licensee's argument, including copies of a Craigslist  
21 "blog" discussing the Board's complaint against Licensee and releasing information about the  
22 patients whose records are part of the Board's allegations against Licensee.  
23

24 Based upon ORS 676.175(4), concluding that Licensee (or his designee) was in violation  
25 of the statute,<sup>8</sup> ALJ Barber signed the Protective Order on August 30, 2010. (Doc. P17).<sup>9</sup>  
26

27 **Motion to Strike 3.1.b of the complaint.** During the hearing, Licensee moved to  
28 dismiss or strike a section of the complaint concerning the physical examination and chart notes  
29 of Patient A.<sup>3</sup> Licensee contended that there is no actual documentation of Patient A's visit to  
30 Voter Power, because the findings on his forms are actually the physical findings of Patient B.  
31 Consequently, he argues, Dr. Calvert never evaluated the Voter Power chart for Patient A,  
32 making his opinion (that Licensee violated the standard of care in A's case) without foundation.  
33

34 The Board countered by listing several pieces of evidence that show what occurred when  
35 Licensee met with Patient A, and contended there is no basis to strike the complaint when there  
36 is evidence on both sides. The ALJ took Licensee's motion under advisement.  
37

38 The lack of actual documentation of what Licensee wrote on Patient A's forms (other  
39 than the ones incorrectly containing Patient B's information) presents a problem of evidence that  
40

41  
42 <sup>8</sup> Although Licensee argued that there was no proof he was the source of the Craigslist blog, the content  
43 and the occasional use of the personal pronoun "I" convinced the ALJ that he was the source. Licensee's  
44 comment in Exhibit A8 that the case was about to go "very public" strengthens the ALJ's belief.

45 <sup>9</sup> Licensee argued at hearing that the order of pleading documents makes it appear that the ALJ had his  
46 objections to the Protective Order (dated August 30) at the time he signed the Protective Order. Licensee  
47 correctly notes that his objections to the form of the order were received after ALJ Barber had signed the  
order.

1 will be addressed in greater detail below. According to the ALJ, it is not a basis for a procedural  
2 dismissal of the charge. The evidence, or lack of evidence, will be weighed accordingly, but the  
3 motion is denied.  
4

5 **Hearsay Evidence.** Licensee objected to evidence presented by Investigator Jay Drum,  
6 concerning his phone conversation with Patient B, and objected to Patient A's testimony about  
7 his wife's telephone conversation with Patient B. The Board responded that hearsay is  
8 admissible in administrative hearings. ALJ Barber allowed the testimony into the record with  
9 the understanding that he would apply the court's standards for evaluating that evidence under  
10 *Reguero v. Teacher Standards and Practices*, 312 Or 402, 417-21 (1991). In *Reguero*, the court  
11 looked at several factors when evaluating what weight to give to hearsay evidence:  
12

13 "[T]he alternative to relying on hearsay evidence; the importance of the facts  
14 sought to be proved by the hearsay statements to the outcome of the proceeding  
15 and considerations of economy; the state of the supporting or opposing evidence,  
16 if any; the degree of lack of efficacy of cross-examination with respect to the  
17 particular hearsay statements; and the consequences of the decision either way."  
18

19 312 Or at 418. The ALJ applied those standards to the hearsay objections made by  
20 Licensee.  
21

22 **Patient A's wife.** Patient A testified that his wife received a phone call from Patient B,  
23 who was calling because Patient A's personal information was on Patient B's medical  
24 documents. Patient A's wife did not testify but was present and willing to testify, if necessary.  
25 Licensee decided not to cross-examine her. The ALJ gave full weight to Patient A's testimony  
26 about his wife's phone conversation, which is elsewhere established in the record.  
27

28 The other declarant, Patient B, was not present but his reported comment (A's name and  
29 number were on B's medical records) is equally supported by the presence of those documents in  
30 the record. There is no reason to disregard the testimony of Patient A (about the conversation  
31 between his wife and Patient B), or to give it lesser weight.  
32

33 **Investigator Drum's conversation with Patient B.** Investigator Drum testified about his  
34 phone conversation with Patient B, when Patient B explained the mix-up in the records. Again,  
35 there is other evidence showing Patient A's name and Patient B's physical findings on the same  
36 document. The testimony is corroborated in the record and is not so important that Licensee's  
37 rights are at risk by its introduction into evidence. The hearsay objections were overruled, and  
38 full weight will be given to the evidence.  
39

40 **Peer Review Qualifications.** Licensee contends that Dr. Calvert, the expert retained by  
41 the Board, was not an appropriate peer reviewer to offer an opinion on the standard of care.  
42 Licensee offered arguments in support of this contention, but no evidence.  
43

44 Licensee contended that there are many doctors who perform independent contractor  
45 duties in medical marijuana clinics in Oregon and in other states. He contends, relying on *Spray*  
46  
47

1 v. *Board of Medical Examiners*. 50 Or App 311 (1981), that only a physician with the exact same  
2 experience as Licensee would be qualified to testify on the standard of care.  
3

4 The ALJ disagreed. Under Licensee's analysis, only a physician working as an  
5 independent contractor in a medical marijuana clinic would have the proper experience to  
6 comment on Licensee's practices. The court in *Spray*, the case upon which Licensee relies,  
7 presents the reasons why Licensee's argument must fail in this case.  
8

9 Although the Petitioner in *Spray* used what the court called a "machine gun attack" on  
10 the Board in that case, raising many issues, the court's conclusion on two of the issues guide the  
11 Board's and the ALJ's analysis in this case:  
12

13 *We begin our analysis with a self-evident proposition: What is inappropriate or*  
14 *unnecessary medical treatment will vary from case to case. \* \* \** Only expert  
15 testimony elicited on a case by case basis can determine whether the treatment in  
16 a particular case was inappropriate and/or unnecessary. *We think it follows that*  
17 *the use of expert testimony to determine the standards of treatment that would be*  
18 *adhered to by the members of the medical community in any given case is implicit*  
19 *in the statutory standard before us.*  
20

21 50 Or App at 318 (emphasis added). The first point is clear: whether a physician violates the  
22 standard of care is going to be decided on a case-by-case basis.  
23

24 The quotation also alludes to the second point of guidance from *Spray*—that evidence of  
25 the standard of care in the medical community is established through the use of expert testimony.  
26

27 Citing *Spray*, Licensee wants to narrowly construe what "medical community" means, to  
28 include only those physicians who work as independent contractors in medical marijuana clinics.  
29 However, the *Spray* court stated:  
30

31 It is to be determined through the testimony of qualified physicians as to just what  
32 is the norm of treatment in the medical community in the particular case and  
33 whether the course of treatment actually followed deviates from the norm to the  
34 extent that the physician involved may be said to have used "inappropriate or  
35 unnecessary treatment."  
36

37 *Id.*, at 319. It stands to reason, therefore, that nature of the medical community is also an issue to  
38 be established by expert testimony.  
39

40 Therefore, if Licensee contends that there is a special "community" of independent  
41 contractor physicians who work in medical marijuana clinics certifying patients for OMMP (or  
42 similar programs in other states), he was required to bring one or more of those experts to the  
43 hearing to explain what the standard of care should be. However, Licensee brought no expert  
44 witnesses to the hearing.  
45  
46  
47

1 Whether the Board's expert is a "qualified physician" is a question of fact to be  
2 determined from the evidence of the case. Here, where Dr. Calvert has the same specialty as  
3 Licensee (family practice), practices in a Southern Oregon community similar to where Licensee  
4 did his Voter Power examinations (Klamath Falls to Medford), and has experience as an  
5 independent contractor and at certifying patients for the OMMP, the ALJ concluded that he is  
6 sufficiently within the "medical community" and is able to comment as an expert on Licensee's  
7 practices.  
8

9 In fact, because the issues in the case actually concern the completeness of Licensee's  
10 physical examinations and chart notes, this case could probably have been reviewed by  
11 physicians of many specialties and sub-specialties.  
12

13 **Credibility.** A witness testifying under oath or affirmation is presumed to be truthful  
14 unless it can be demonstrated otherwise. ORS 44.370 provides, in relevant part:  
15

16 A witness is presumed to speak the truth. This presumption, however, may be  
17 overcome by the manner in which the witness testified, by the character of the  
18 testimony of the witness, or by evidence affecting the character or motives of the  
19 witness, or by contradictory evidence.  
20

21 The determination of a witness' credibility can be based on a number of factors other than the  
22 manner of testifying, including the inherent probability of the evidence, internal inconsistencies,  
23 whether or not the evidence is corroborated, and whether human experience demonstrates that  
24 the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).  
25

26 **Alisa Wall.** Licensee presented Ms. Wall's testimony in what was clearly an effort to  
27 discredit Patient A's testimony. Wall, formerly a Voter Power employee, testified that Patient A  
28 was causing a scene at the Voter Power clinic; that he grabbed documents that were not his; and  
29 that he then (after the examination was completed) wrote his name on the documents.  
30

31 Ms. Wall's testimony was internally inconsistent. At one point, to emphasize how sure  
32 she was that Patient A had caused the scene, she testified that she watched him sign and fill out  
33 the documents after the examination. Later, however, she admitted that she had *not* seen him  
34 write on the documents at any time.  
35

36 This testimony, and the fact that it was offered by Licensee, is troubling. Assuming for  
37 the moment that Wall was correct—that Patient A caused a scene, grabbed someone else's  
38 documents and wrote his name on them—the act would make no sense. In addition, questions  
39 for Licensee and the clinic would only increase. If Patient A was able to write his name and  
40 address on Patient B's documents at that late date, it would mean that Licensee was performing  
41 his medical examination of the patients without even their names in the file.  
42

43 While it is unclear whether Ms. Wall was fabricating her testimony to support Licensee  
44 or to try to protect the Voter Power clinic, the ALJ concluded that her testimony is unreliable and  
45 gave it no weight.  
46  
47

1           *Licensee.* Another dispute in the evidence arises when comparing Licensee's testimony  
2 with Patient A's testimony. Licensee testified that he would spend approximately 30 minutes  
3 with each OMMP certification patient at Voter Power. Patient A testified that he spent eight  
4 minutes with Licensee on the first visit, then five minutes more once he returned from the x-ray  
5 clinic. Licensee testified that he performed a physical examination; Patient A testified Licensee  
6 did not perform a physical examination. Licensee testified that Patient A only had a couple of  
7 documents, none showing gout. Patient A testified that he had several pages of documents that  
8 he gave to Licensee.  
9

10           Interestingly, Licensee commented on the documents he received from Patient A in a  
11 letter written in 2008. He stated:

12  
13           He had 2 or 3 documented cases of acute gouty attacks that he went to Urgent  
14           Care for treatment from what I recall from the records he brought in[.]  
15

16 (Ex. A4 at 1). This letter impeaches his later testimony that there was insufficient evidence of  
17 gout, and at the very least calls his memory into question.  
18

19           The evidence establishes that Licensee talked with Patient A about his gout condition, as  
20 shown by A's visit to the x-ray clinic. However, there is nothing in the record to show that an  
21 actual physical examination took place. The only records with Patient A's name on them contain  
22 the physical history of Patient B, and the references on the physical examination page are, as Dr.  
23 Calvert said, cryptic and superficial.  
24

25           In this case, the ALJ accepted Patient A's testimony over Licensee's, primarily because  
26 Patient A only had one meeting with the doctor but Licensee had multiple meetings with other  
27 patients at the clinic. Simply put, given Licensee's written comments in 2008 and the non-  
28 existence of any contemporaneous chart notes with any detail, the ALJ did not trust Licensee's  
29 memory.  
30

31           Licensee and Ms. Alisa Wall went to great lengths to impeach Patient A. However,  
32 Patient A testified directly and consistently. For instance, he testified he had taken two  
33 allopurinol pills and then stopped taking them. Licensee did not believe Patient A, and went so  
34 far as to violate Patient A's privacy rights by sending requests for Patient A's personal pharmacy  
35 records. At hearing, Patient A presented his bottle of allopurinol—with two pills missing.  
36 Patient A was credible. Licensee's testimony, on the other hand, was not.  
37

### 38           **On the Merits** 39

40           As noted, the Board's allegations focus on alleged violations of the standard of care—as  
41 both unprofessional conduct and repeated negligence—and Licensee's refusal to comply with the  
42 Board's order concerning the CPEP evaluation. The Board relies upon Dr. Calvert's review and  
43 analysis in support of the standard of care issues.  
44

45           It was clear from the testimony that Licensee and the Board have differing views of what  
46 the relationship is when Licensee would see a patient at the Voter Power clinic. The Board and  
47



1 Dr. Calvert see a doctor-patient relationship. Licensee claims he is not the patient's physician,  
2 and that he is just an independent contractor certifying that the person coming into the clinic has  
3 one of the qualifying conditions for the OMMMP. The ALJ agreed with the Board.  
4

5 Licensee acknowledged that he was chosen for the clinic contract because he is a  
6 physician. A medical doctor or an osteopathic physician can certify the persons coming in to the  
7 clinic. A lawyer or a nurse or an architect cannot. Licensee is able to do the certification process  
8 precisely because he is a medical doctor and when he is certifying patients for medical  
9 marijuana, he is a medical doctor and the person he is seeing is his patient. Licensee owed the  
10 same standard of care to that patient that he did to the one coming into his clinic in Portland.  
11

12 *Violations of the Standard of Care.* The Board alleges that Licensee's records for the  
13 patients seen at the Voter Power clinic do not meet the standard of care expected of a physician,  
14 relying primarily upon the report and testimony of Dr. Calvert. Dr. Calvert testified that the  
15 "plus minus" system used on the forms at Voter Power was insufficient to explain to any reader  
16 what exactly Licensee found in his examination of the patient. Dr. Calvert referred to Licensee's  
17 notes as "superficial," "cursory," and "cryptic" in places.<sup>10</sup> He testified that the standard of care  
18 was the same for an independent contractor physician as it would be for any other physician.  
19

20 Dr. Calvert places little emphasis upon the clearest example of a mistake—the fact that  
21 Patient A's personal information and Patient B's medical information ended up on the same  
22 documents. However, that episode (and the conflict in testimony between Patient A and  
23 Licensee about it) actually illustrates why record-keeping is important, and why a physician must  
24 be thorough in describing the actions being taken. In essence, there is nothing in the documents  
25 to show that Licensee actually saw Patient A, much less examined him.  
26

27 Although the records of five different patients were reviewed by the Board as the basis  
28 for this action, the allegations are very similar in all five cases. In all five, Licensee used  
29 preprinted physical examination forms, SOAP forms, and "Documentation of Review" forms.  
30 On all of those documents, says Dr. Calvert, Licensee's reported information failed to meet the  
31 standard of care.  
32

33 On the physical exam form, Licensee's comments consisted of circles around plus signs  
34 and cryptic and unexplained comments. For instance, he wrote "weakness" in the neurological  
35 section of Patient D's form, but did not explain the nature or the extent of the weakness. With  
36 terms such as "benign" and "NA," Dr. Calvert was unable to tell what actual findings Licensee  
37 had made. Two of the patients' forms had eleven circles; one had 22 circles around plus signs.  
38

39 On one SOAP form, Licensee examined Patient B but used the paperwork signed by  
40 Patient A. The record indicates that Licensee performed a physical examination on Patient B  
41 without verifying that the information at the top of the page (Patient A's information) was  
42 accurate. The ALJ accepted Patient A's testimony that he had filled the paperwork out before  
43

44 <sup>10</sup> Licensee demanded that Dr. Calvert define his terms superficial, cursory and cryptic, arguing that those  
45 words did not appear in any rule or statute. However, Dr. Calvert's analysis is not a legal analysis but  
46 one of the standard of care. Dr. Calvert's definitions of the terms were roughly the same as a dictionary  
47 would provide, and were entirely proper to use in his description of the patient notes.

1 the examination, but even if the ALJ did not accept that testimony it would mean that Licensee  
2 performed a physical examination without *any* identifying information at the top of the page.  
3

4 Licensee argues that Dr. Calvert's conclusion of unprofessional conduct in Patient A's  
5 case is incorrect because the record does not contain his actual forms. Although Licensee's  
6 argument is buttressed only by the apparent destruction of Patient A's application and documents  
7 by Voter Power, the ALJ concluded it would not be appropriate to find unprofessional conduct  
8 for the same documents for Patients A and B. Therefore, the ALJ found that the Board has  
9 established four (rather than five) counts of unprofessional conduct arising from the way  
10 Licensee recorded his findings of the patients. The Board will not disturb this finding and  
11 therefore, concludes that Licensee engaged in unprofessional and dishonorable conduct as to  
12 Patients A, C, D, and E, but not Patient B.  
13

14 However, as to repeated negligence the ALJ found that the Board has established all five  
15 counts. In addition to the record-keeping inadequacies, which were both unprofessional and  
16 negligent for Patients A-E, it is very appropriate to find two counts of negligence in the mistakes  
17 made with the files of Patient A and B. Patient B's forms have Patient A's personal data on the  
18 top, and Patient A's forms have Patient B's medical data on the bottom.  
19

20 *Willful violation of a Board order.* Licensee was ordered to attend an evaluation at  
21 CPEP, and he was given a period of time within which to set the appointment and be evaluated.  
22 On December 9, 2009, Licensee wrote to the Board and refused to attend the evaluation. In the  
23 letter, he claimed to be one of the best doctors in the State of Oregon and accused the Board of  
24 being out to "lynch" him. Licensee threatened the Board, and expressed his anger at the Board's  
25 failure to provide records that he was seeking. (Ex. A8).  
26

27 Leaving aside the content of the letter for a moment, the ALJ found that the Board proved  
28 that Licensee violated its order by refusing to attend the CPEP evaluation. Licensee violated  
29 ORS 677.190(17). The ALJ then raised a question as to whether any of Licensee's purported  
30 reasons for not attending would excuse his actions.  
31

32 Licensee's primary argument at hearing for not attending the CPEP evaluation was that  
33 the Board had failed to provide medical documents to Licensee or his attorney. Licensee argued  
34 that he did not have to obey the Board's order if the Board had not provided the documents.  
35 However, the record fails to show how that delay would excuse Licensee from following the  
36 Board's order in this case.<sup>11</sup> Licensee cites no rule, statute, or case law in support of his decision  
37 to defy the Board.  
38

39 More importantly, the content of the refusal letter shows that there were other reasons for  
40 his refusal:  
41  
42  
43  
44

45 <sup>11</sup> The Board correctly points out, and Licensee admits, that he received the documents within the 90 days  
46 he had to schedule the CPEP evaluation. He could have changed his mind after receiving the documents,  
47 but did not.

- 1           • Licensee believed that the money spent to be evaluated and attend CPEP would  
2 be "money down the toilet" because the Board already had its mind made up  
3 about his professional fate;  
4           • Licensee believed his confidentiality had been violated by the Board because the  
5 Board erroneously sent letters to him, "personal and confidential," at the Voter  
6 Power address rather than at his clinic;  
7           • Licensee believed the order was "political." "You don't think I know this is  
8 political? I am in trouble with the Medical Board because I was willing to sign a  
9 statement for individuals that stated that medical marijuana may be beneficial for  
10 their medical condition."  
11           • Licensee considered the Board to be "incompetent" at best, and "corrupt" at  
12 worst, engaging in a "witch hunt" followed by a "kangaroo court" followed by a  
13 "lynch mob."  
14

15 (Ex. A8).

16  
17           None of Licensee's reasons, even if true, justify his refusal to attend the evaluation that  
18 the Board requested. The ALJ found that the Board established that Licensee violated ORS  
19 677.190(17).  
20

#### 21 **The Sanctions**

22  
23           As previously noted, at the hearing the Board sought to revoke Licensee's medical  
24 license, to impose a \$10,000 civil penalty, and to require him to pay the costs of the litigation.  
25 The Board's authority to impose sanctions is found in ORS 677.205, which states in part:  
26

27           **Grounds for discipline; action by board; penalties.** (1) The Oregon Medical  
28 Board may discipline as provided in this section any person licensed, registered or  
29 certified under this chapter who has:  
30

31           (a) Admitted the facts of a complaint filed in accordance with ORS 677.200 (1)  
32 alleging facts which establish that such person is in violation of one or more of  
33 the grounds for suspension or revocation of a license as set forth in ORS 677.190;  
34

35           (b) *Been found to be in violation of one or more of the grounds for disciplinary*  
36 *action of a licensee as set forth in this chapter;*  
37

38 \* \* \* \* \*

39  
40           (2) In disciplining a licensee as authorized by subsection (1) of this section, *the*  
41 *board may use any or all of the following methods:*  
42

43           (a) Suspend judgment.  
44

45           (b) Place the licensee on probation.  
46  
47

1 (c) Suspend the license.

2  
3 (d) Revoke the license.

4  
5 (e) Place limitations on the license.

6  
7 (f) Take such other disciplinary action as the board in its discretion finds proper,  
8 including assessment of the costs of the disciplinary proceedings as a civil penalty  
9 or assessment of a civil penalty not to exceed \$10,000, or both.

10  
11 \* \* \* \* \*

12  
13 (4) If the board places any licensee on probation as set forth in subsection (2)(b)  
14 of this section, the board may determine, and may at any time modify, the  
15 conditions of the probation and may include among them any reasonable  
16 condition for the purpose of protection of the public or for the purpose of the  
17 rehabilitation of the probationer, or both. Upon expiration of the term of  
18 probation, further proceedings shall be abated if the licensee has complied with  
19 the terms of the probation.

20  
21 (5) If a license issued under this chapter is suspended, the holder of the license  
22 may not practice during the term of suspension. Upon the expiration of the term  
23 of suspension, the license shall be reinstated by the board if the conditions for  
24 which the license was suspended no longer exist.

25  
26 (Emphasis added). Every one of the sanctions the Board seeks to impose is within its authority  
27 under this statute.

28  
29 **Proposed Sanctions.** The ALJ found that the Board's assessment of a civil penalty and  
30 the requirement to pay costs of the hearing and investigation are reasonable and appropriate, and  
31 are accepted without further comment. The ALJ did, however, comment on the Board's desire to  
32 revoke Licensee's license.

33  
34 The ALJ found that the Board has the authority to revoke his license based upon the  
35 violations it has proved in this case. However, the ALJ proposed a different set of sanctions that  
36 contain the possibility of restoring Licensee to the practice of medicine but allow the Board to  
37 revoke his license if he fails to make appropriate changes.

38  
39 The record shows that Licensee failed to meet the standard of care in the way he  
40 performed and charted the examinations at the Voter Power clinic. The ALJ noted that no  
41 evidence was presented to show whether any problems arose from his practice in Portland. The  
42 Board will draw no inference from that observation because that issue was not identified in the  
43 Board's Notice nor addressed at the hearing. The ALJ found that the Board should discipline  
44 Licensee for his violations, but should consider a plan to allow him to keep his license.

1 The ALJ did find that there were certain factors that might lead the Board to reject his  
2 proposal (discussed in detail below), which were evident throughout the record of this case. The  
3 ALJ found that Licensee is arrogant, he is angry at the Board, and he tends to see conspiracies  
4 where none have been shown to exist. Licensee can see no wrong in himself, and cannot admit  
5 he is wrong. (The ALJ noted that Licensee's testimony insisting that Dr. LeClair's name was  
6 really St. Claire, despite evidence to the contrary, is a minor example of this trait. Another is his  
7 belief that a record mix-up at the clinic would be "impossible."). Thus, the question exists  
8 whether Licensee would be willing to abide by the proposal even if the Board agreed.  
9 Nevertheless, the ALJ proposed the following:

- 10
- 11 • That Licensee's license be revoked, but that revocation be held in abeyance;
- 12 • That Licensee be suspended from the practice of medicine for two years, to begin from
- 13 the date of a Final Order in this case;
- 14 • That Licensee be required to undergo an evaluation at CPEP and to follow all
- 15 requirements set by that program, at his own cost, and that the two year suspension be
- 16 extended, if necessary, until he has so complied;
- 17 • That Licensee agree to any further educational or practice-oriented training that the Board
- 18 requires;
- 19 • That Licensee pay a civil penalty of \$10,000; and
- 20 • That Licensee pay the costs of the investigation and hearing, in an amount to be
- 21 determined in the Final Order of this proceeding;
- 22 • That the revocation be imposed without further need for hearing if Licensee fails to
- 23 follow through on any part of this discipline, and that it be withdrawn following
- 24 successful completion of the discipline.
- 25

26 The ALJ stated that his proposal was intended to give Licensee the opportunity to rebuild his  
27 relationship with the Board and to gain and apply the skills necessary to meet the standard of  
28 care. It would place the onus of his professional future on him. If he refuses to follow through,  
29 the revocation could be re-imposed. If he is successful, his patients and his family would benefit  
30 from his success.

### 31

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### FINAL ORDER

The Board issues the following order:

The Board adopts the ALJ's findings of fact and conclusions of law, finding that Licensee engaged in unprofessional conduct and repeated negligence, and that he violated a Board order by refusing the CPEP evaluation. The Board has considered the ALJ's proposed sanctions, but concludes that Licensee's refusal to accept responsibility for his conduct, his refusal to comply with a Board order, and his continued defiant attitude make him a poor candidate for rehabilitation. Licensee should be disciplined in the manner set forth above.

1. The license of Dr. Dover to practice medicine in Oregon is revoked.
2. Dr. Dover must pay a civil penalty of \$10,000 due within 60 days from the date this Order is signed by the Board Chair.

- 1  
2 3. Dr. Dover is assessed the full costs of this disciplinary action. Costs shall be due  
3 within 90 days from the date the Board issues its Bill of Costs.  
4  
5 4. Licensee must notify all patients seen within the previous two years of the change in  
6 his license status and how patients may access or obtain their medical records.  
7 Notifications must be in writing and sent by regular mail to each patient's last known  
8 address within 45 days of the change in licensee's status.  
9

10  
11  
12 DATED this 14<sup>th</sup> day of January, 2011.

13  
14  
15 OREGON MEDICAL BOARD  
16 State of Oregon

17  
18 Signature Redacted

19  
20 LISA A. CORNELIUS, DPM  
21 Board Chair  
22

23  
24  
25  
26 **APPEAL**  
27

28 If you wish to appeal the final order, you must file a petition for review with the Oregon  
29 Court of Appeals within 60 days after the final order is served upon you. See ORS 183.480 et  
30 seq.  
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**CERTIFICATE OF SERVICE**

I certify that on August 26, 2013, I served the foregoing DECLARATION OF MARC ABRAMS IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT upon the parties hereto by the method indicated below, and addressed to the following:

Eric A. Dover, MD  
1615 Cloverleaf Rd.  
Lake Oswego OR 97034

HAND DELIVERY  
 MAIL DELIVERY  
 OVERNIGHT MAIL  
 TELECOPY (FAX)  
 E-MAIL  
 E-FILE

s/ Marc Abrams  
MARC ABRAMS #890149  
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Trial Attorney  
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