

**BEFORE THE
WYOMING BOARD OF MEDICINE**

FILED

DONALD TARDIF, PA-C, and)
ANNE MACGUIRE, M.D.,)
)
Petitioners,)
)
vs.)
)
THOMAS M. HORIAGON, M.D.,)
)
Respondent.)

APR 10 2015
Wyoming Board
of Medicine

Docket No. 15-04
(Complaint No. 688)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER APPROVING CONSENT DECREE**

THIS MATTER having come before a hearing panel of the Wyoming Board of Medicine (Board) consisting of Ms. Val Burgess; Michael Jording, M.D.; Ms. Jody McGill; David M. Skolnick, D.O.; Kristina Stefka, M.D.; and Jeffrey Storey, M.D.; during its quarterly Board meeting on April 9, 2015, upon the presentment of a STIPULATED MOTION FOR ACCEPTANCE OF CONSENT DECREE in the above-captioned matter; the duly assigned interviewers, Donald Tardif, PA-C, and Anne MacGuire, M.D. (Petitioners), appeared by and through counsel, Bill Hibbler, Esq., Board Prosecutor, and Thomas M. Horiagon, M.D. (Respondent), appeared in person¹; the Board having considered the CONSENT DECREE and being otherwise advised in the premises finds, concludes, and orders as follows:

¹ Respondent has been represented by Andrew Sears, Esq.; however, Respondent's counsel did not appear at the hearing.

I. JURISDICTION

The Board is the sole, exclusive, and duly-authorized licensing, regulatory, and administrative agency in the State of Wyoming regarding the practice of medicine as authorized by the Medical Practice Act, WYO. STAT. ANN. §§ 33-26-101 to -601. Wyoming Statute § 33-26-401(e) provides that the Board retains jurisdiction over “those licensees to whom temporary or full licenses were granted and who are subject to ongoing investigation by the board, regardless of whether the license expired, lapsed or was relinquished during or after the alleged occurrence of conduct proscribed by W.S. 33-26-402 by the licensee.” Respondent is the holder of Wyoming Physician License No. 6354A issued by the Board. Therefore, the Respondent is subject to the Board’s jurisdiction.

II. STATEMENT OF THE CASE

On January 28, 2014, the Colorado Medical Board issued a final order disciplining Respondent. Afterward, the Board initiated a complaint against Respondent. The Petitioners met informally with Respondent and his legal counsel. Subsequently, the parties executed a CONSENT DECREE which mirrored the terms of the Colorado order.

III. ISSUES AND CONTENTIONS

The major issue in this case is whether the CONSENT DECREE is an appropriate resolution of this matter as presented by the parties.

IV. FINDINGS OF FACT

1. On February 7, 2000, the Board issued Respondent Wyoming Physician’s License No. 6354A.

2. On January 28, 2014, the Colorado Medical Board ordered disciplinary action against Respondent's Colorado medical license, No. DR-39465, pursuant to a Stipulation and Final Agency Order (Colorado Order), Case No. 2012-001513-B.

3. The Colorado Order asserted Respondent's medical treatment of three (3) separate patients fell below the acceptable standard of care. Additionally, that Respondent's temper and demeanor exhibited toward staff while practicing at a Grand Junction, Colorado, hospital created a negative work environment.

4. Later, the Board received notice of the Colorado Order. As a result, the Board initiated a complaint (Complaint #688), and assigned it to Petitioners for review and investigation.

5. Based upon the discipline ordered pursuant to the Colorado Order, Petitioners believed that the public health, safety and welfare, required that a formal Petition be filed and action be taken against Respondent's Wyoming Physician License. However, Petitioners believed it is appropriate to resolve this matter pursuant a consent decree that mirrored the terms of the Colorado Order.

6. As such, the parties determined that it is appropriate to resolve this matter by CONSENT DECREE under the terms and conditions set forth therein.

7. On February 25, 2015, Respondent executed a CONSENT DECREE, attached hereto and fully incorporated herein.

8. On March 24, 2015, the parties filed a STIPULATED MOTION FOR ACCEPTANCE OF CONSENT DECREE.

9. On April 9, 2015, the Board held a hearing regarding consideration of the CONSENT DECREE.

10. The Board finds the specific terms and conditions outlined in the CONSENT DECREE at paragraph 3(a) through (j) appropriate resolution of this matter.

11. The Board finds that the CONSENT DECREE should be APPROVED.

CONCLUSIONS OF LAW

1. The Findings of Fact, paragraphs 1 – 11, are fully incorporated herein.

Applicable Principles and Rules of Law

2. Statutory enactments, such as the Wyoming Medical Practice Act, are presumed to be constitutional. *Hoem v. State*, 756 P.2d 780, 782 (Wyo. 1988).

3. “Licensure acts such as the [Medical Practice Act] are passed for the express purpose of affording the public protection[.]” *Allhusen v. State by and through Wyo. Mental Health Professions Licensing Bd.*, 898 P.2d 878, 885 (Wyo. 1995) (citing *Mapes v. Foster*, 266 P. 109, 116 (Wyo. 1928)).

4. The Wyoming Medical Practice Act provides:

The board shall investigate, upon a written and signed complaint or by its own motion, any information that if proven would fall within the jurisdiction of the board and would constitute a violation of this act.

WYO. STAT. ANN. § 33-26-401(a).

5. The Wyoming Administrative Procedure Act provides:

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

WYO. STAT. ANN. § 16-3-107(n).

6. The Board’s RULES AND REGULATIONS provide:

The interviewers, board prosecutor, licensee and/or licensee’s counsel may discuss stipulation, dismissal, the consent decrees, restrictions or any other pertinent

procedural or substantive information.

BD. OF MED. RULES AND REGULATIONS, Chapter 7, § 5(f) (Jun. 2014)

7. The Wyoming Medical Practice Act provides:

Final findings of fact, conclusions of law, orders of the board entered and any consent decree, stipulation or agreement to which the board is a party in any disciplinary docket of the board are public documents.

WYO. STAT. ANN. § 33-26-408(c).

8. The Wyoming Medical Practice Act provides:

The board shall promptly report and provide all final orders entered by it to the chief of the medical staff and hospital administrator of each hospital in which the licensee has medical staff privileges and to all appropriate agencies including the federation of state medical boards, the national practitioner data bank and other state medical boards.

WYO. STAT. ANN. § 33-26-408(d). See also BD. OF MED. RULES AND REGULATIONS, Chapter 7 § 17 (Jun. 2014).

9. The Wyoming Administrative Procedures Act provides:

[A]ny person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction resides or has its principal place of business.

WYO. STAT. ANN. § 33-26-408(d); *See also* WYO. R. APP. P. 12.01.

10. Wyoming Rules of Appellate Procedure provides:

In a contested case, or in an uncontested case, even where a statute allows a different time limit on appeal, the petition for

review shall be filed within 30 days after service upon all parties of the final decision of the agency or denial of the petition for a rehearing, or, if a rehearing is held, within 30 days after service upon all parties of the decision.

WYO. R. APP. P. 12.04(a).

Applicable of Rules of Law to Facts

11. The Board may resolve a disciplinary matter by consent decree.
12. The Board finds that terms of the CONSENT DECREE to be an appropriate resolution of this matter.
13. The Board finds and concludes that the CONSENT DECREE should be APPROVED.
14. This ORDER is a final, public order of the Board.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, the CONSENT DECREE is **APPROVED**.

IT IS FURTHER ORDERED that Respondent's Wyoming Physician License 6354A shall be placed on a probationary period commencing on the effective date of the CONSENT DECREE and ending on February 21, 2019.

IT IS FURTHER ORDERED that Respondent shall timely, strictly, fully, completely and successfully comply with and abide by all provisions, conditions and restrictions set forth, established and ordered by and within the Colorado Order.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days of the effective date of the CONSENT DECREE, execute, sign and provide all proper and necessary releases and authorizations to the Board allowing it to communicate with all entities mentioned in the Colorado Order, including but not limited to, the Colorado

Physician Health Program (CPHP), all other entities reporting to CPHP regarding Respondent; the Center for Personalized Education for Physicians (CPEP), the CPEP “quality reviewer,” and the Colorado Medical Board.

IT IS FURTHER ORDERED that Respondent shall simultaneously provide and/or cause to be provided, written copies to the Board of all reports, evaluations, correspondence and/or documents required to be submitted and when submitted to the Panel pursuant to the Colorado Order.

IT IS FURTHER ORDERED that Respondent shall notify the Board in writing prior to beginning the practice of medicine in Wyoming. Respondent shall provide a copy of the CONSENT DECREE to all proposed health care facilities and other sites, where he may practice medicine, before beginning the practice.

IT IS FURTHER ORDERED that Respondent shall pay partial costs incurred by the Board in this matter, in the amount of five hundred dollars (\$500.00), within thirty (30) days from the effective date of the CONSENT DECREE.

IT IS FURTHER ORDERED that Respondent shall personally meet with Petitioners and/or the Board, when and where requested, during the term of this CONSENT DECREE or this ORDER.

IT IS FURTHER ORDERED that Respondent shall obey all federal, state and local laws and all administrative rules governing physicians’ practice of medicine in Wyoming.

IT IS FURTHER ORDERED that Respondent shall be responsible for all costs of complying with the CONSENT DECREE and this ORDER.

IT IS FURTHER ORDERED that if Respondent violates any provision, term or

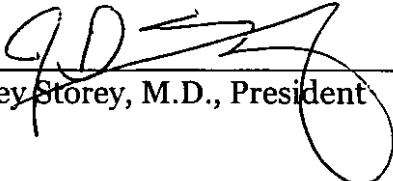
condition of the CONSENT DECREE or the Colorado Order, the Board may take any further action against Respondent's physician license deemed appropriate and allowed hereunder or by law.

IT IS FURTHER ORDERED that the CONSENT DECREE, pursuant to paragraph 11 therein, is made effective as of April 10, 2015, the date on which the Board enters its order.

IT IS FURTHER ORDERED that these FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER APPROVING CONSENT DECREE shall constitute a final order of the Board. Additionally, these FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER APPROVING CONSENT DECREE are a public document.

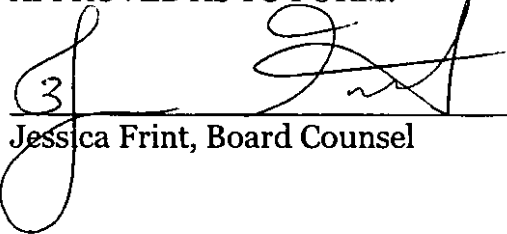
DATED this 10th day of April, 2015.

FOR THE BOARD:



Jeffrey Storey, M.D., President

APPROVED AS TO FORM:



Jessica Frint, Board Counsel

**BEFORE THE
WYOMING BOARD OF MEDICINE**

FILED

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Wyoming Board
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DONALD TARDIF, PA-C, and)
ANNE MACGUIRE, M.D.)
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Petitioners,)
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v.)
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THOMAS M. HORIAGON, M.D.,)
)
Respondent.)

DOCKET NO. 15-04
(Previously Complaint #688)

CONSENT DECREE

COME NOW, Petitioners, Donald Tardif, PA-C and Anne MacGuire, M.D., as members of the Wyoming Board of Medicine (“Board”), and Respondent, Thomas M. Horiagon, M.D., to stipulate and agree as follows:

WHEREAS, the Board is the sole and exclusive regulatory and licensing agency in the State of Wyoming regarding the practice of medicine and surgery, as provided in the Wyoming Medical Practice Act, WYO. STAT. ANN. §§ 33-26-101, *et seq.*, (“Act”); and

WHEREAS, Respondent holds Wyoming Physician License number 6354A, as initially issued by the Board on February 7, 2000, subjecting him to the jurisdiction of the Board; and

WHEREAS, Petitioners are members of the Board, which is authorized by WYO. STAT. ANN. §§ 33-26-202(b) and 33-26-401(a), to investigate upon a written and signed

complaint or on its own motion any information, that if proven, would fall within the jurisdiction of the Board and would constitute a violation of the Act; and

WHEREAS, the Board received notice that the Colorado Medical Board ordered disciplinary action against Respondent's Colorado medical license, No. DR-39465, pursuant to a Stipulation and Final Agency Order ("Colorado Order"), Case No. 2012-001513-B, executed January 28, 2014; and

WHEREAS, that Colorado Order is attached hereto and made a part hereof as if fully set forth herein, as EXHIBIT 1; and

WHEREAS, that Colorado Order asserted Respondent's medical treatment of three (3) separate patients fell below the acceptable standard of care. Additionally, that Respondent's temper and demeanor exhibited toward staff while practicing at a Grand Junction, Colorado, hospital created a negative work environment; and

WHEREAS, the Board opened Complaint #688 against Respondent to investigate the Colorado Order and the circumstances that led to it; and

WHEREAS, based upon the discipline ordered pursuant to the Colorado Order, Petitioners believe that the public health, safety and welfare, require that a formal Petition be filed and action be taken against Respondent's Wyoming Physician License. However, Petitioners believe it is appropriate to resolve this matter pursuant to this Consent Decree, recommending approval by the Board, to informally resolve Docket No. 15-04 (previously Complaint #688), now pending.

NOW THEREFORE, in lieu of further investigation being conducted and action being pursued against Respondent's Wyoming Physician License, including proceeding to a contested case hearing in this disciplinary case at which the Petitioners would seek

disciplinary action against Respondent's Wyoming Physician License, Respondent hereby voluntarily and willingly agrees and consents as follows:

1. Respondent admits that the Board of Medicine is a duly-authorized administrative agency of the State of Wyoming with the appropriate statutory authority to regulate the practice of medicine and surgery in the State of Wyoming; that this Consent Decree and the filing of such documents are in accordance with the requirements of law; that the Board of Medicine is lawfully constituted to consider this matter; that the Respondent does not challenge the constitutionality of the Wyoming Medical Practice Act, WYO. STAT. ANN. §§ 33-26-101, *et seq.*; that the Board of Medicine's actions in this matter is not beyond the jurisdiction conferred upon it by any provision of law.

2. Respondent agrees that his conduct, if proven, and related disciplinary action at issue in the Colorado Order, constitutes bases for disciplinary action pursuant to WYO. STAT. ANN. § 33-26-402(a):

. . .

(xxv) Suspension, probation, imposition of conditions or restrictions, relinquishment, surrender or revocation of a license to practice medicine in another jurisdiction.

3. Respondent in signing this Consent Decree agrees to abide by the following terms and conditions:

a. Respondent's Wyoming Physician License is subject to and placed on a probationary period commencing on the effective date of this Consent Decree and ending on February 21, 2019;

b. Respondent agrees to timely, strictly, fully, completely and successfully comply with and abide by all provisions, conditions and restrictions set forth, established and ordered by and within the Colorado Order, attached hereto, incorporated herein and made a part hereof;

c. Within thirty (30) days of the effective date of this Consent Decree, Respondent shall execute, sign and provide all proper and necessary releases and authorizations to the Board allowing it to communicate with all entities mentioned in the Colorado Order, including but not limited to, the Colorado Physician Health Program (hereinafter "CPHP"); all other entities reporting to CPHP regarding Respondent; the Center for Personalized Education for Physicians (hereinafter "CPEP"); the CPEP "quality reviewer"; and the Colorado Medical Board;

d. Respondent shall simultaneously provide and/or cause to be provided, written copies to the Board of all reports, evaluations, correspondence and/or documents required to be submitted and when submitted to the Panel pursuant to the Colorado Order;

e. Respondent shall notify the Board in writing prior to beginning the practice of medicine in Wyoming. Respondent shall provide a copy of this Consent Decree to all proposed health care facilities and other sites, where he may practice medicine, before beginning the practice;

f. Respondent shall pay partial costs incurred by the Board in this matter, in the amount of Five Hundred Dollars (\$500.00), within thirty (30) days from the effective date of this Consent Decree;

g. Respondent shall meet with Petitioners and/or the Board, when and where requested, during the term of this Consent Decree or Board Order approving it;

h. Respondent shall obey all federal, state and local laws and all administrative rules governing physicians' practice of medicine in Wyoming;

i. Respondent shall be responsible for all costs and expenses of compliance with this Consent Decree and Board order approving it;

j. If Respondent violates any provision, term, condition or restriction of this Consent Decree or the Colorado Order, the Board may take any further action against Respondent's Wyoming Physician License deemed appropriate and allowed hereunder or by law.

4. Respondent agrees to comply with all provisions, terms and conditions set forth in Paragraph 3 of this Consent Decree at all times.

5. Respondent agrees that the Board, in acting in this matter, is not acting beyond the jurisdiction conferred upon it by any provision of law and by its duly adopted RULES AND REGULATIONS.

6. By entering into this Consent Decree, Respondent knowingly and voluntarily waives the right to a contested case hearing in this matter and to the following rights related to that hearing: to present witnesses and testimony in defense or in mitigation of any disciplinary action or sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence offered against him; to present legal arguments by means of a brief; and to petition for judicial review of any final Board order.

7. This Consent Decree, once approved by the Board, is a final order pursuant to WYO. STAT. ANN. § 33-26-408(c) and, as such, shall be reported to the Federation of State Medical Boards and to the National Practitioner Data Bank pursuant to the Health Care Quality Improvement Act of 1986, Title IV of Public Law 99-660, as amended, and Federal Regulations at 45 CFR Part 60 and other entities as required by law. The Consent Decree shall also be reportable as provided in WYO. STAT. ANN. § 33-26-408(d) and Board RULES AND REGULATIONS Chapter 7, Section 17.

8. Respondent acknowledges that he has had the opportunity to confer with legal counsel regarding this Consent Decree. He understands each of the terms and provisions herein. He is entering into this Consent Decree freely and voluntarily.

9. This Consent Decree constitutes the entire agreement between the Petitioners and the Respondent; there are no other agreements or understandings between them which are not set forth herein; and this Consent Decree may not be modified or amended, except in writing executed by all parties hereto.

10. Respondent acknowledges that this Consent Decree will have no legal effect unless and until the Board approves its contents and entry as an Order. If the Board does not approve this Consent Decree, and the matter proceeds to a contested case hearing, Respondent agrees he will not assert Board consideration of the Consent Decree as grounds to assert bias, prejudice, prejudgment and/or similar defenses.


11. If the terms and conditions of this Consent Decree are approved by the Board, the effective date of this Consent Decree shall be the date on which the Board enters its order accepting and approving it.

12. Pursuant to WYO. STAT. ANN. § 33-26-406(a), Respondent may petition the Board beginning six (6) months after the effective date of this Consent Decree, that is the date of the Board order approving it, for removal of any restrictions and/or conditions placed upon his Wyoming Physician License hereby, if any. Removal of any restrictions and/or conditions placed upon his Wyoming Physician License hereby, requested via petition, shall be within the Board's sole discretion. Respondent shall be responsible for payment of all Board fees and costs expended related to any petition filed by Respondent seeking removal of any restrictions and/or conditions placed upon his Wyoming Physician License hereby.

IN WITNESS HEREOF, the following have executed this Consent Decree on the date shown.

Thomas M. Horiagon, M.D.
Respondent

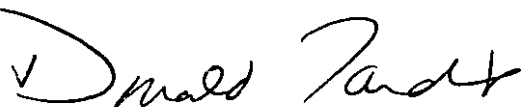
Date



3/19/2015

Andrew F. Sears, No. 7-4557
MURANE & BOSTWICK, LLC

Date



4/8/15

Donald Tardiff, PA-C
Petitioner


Date



Anne MacGuire, M.D.
Petitioner

Date

4/9/15



Bill G. Hibbler, No. 5-2178
Special Assistant Attorney General
Board Prosecutor

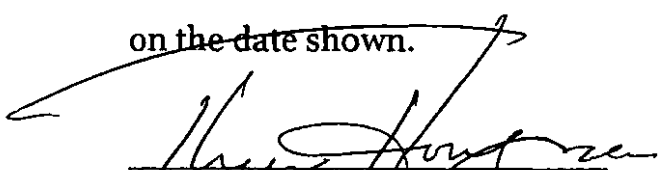
Date

3/24/2015

12. Pursuant to WYO. STAT. ANN. § 33-26-406(a), Respondent may petition the Board beginning six (6) months after the effective date of this Consent Decree for removal of any restrictions and/or conditions placed upon his Wyoming Physician License hereby, if any. Removal of any restrictions and/or conditions placed upon his Wyoming Physician License hereby, requested via petition, shall be within the Board's sole discretion. Respondent shall be responsible for payment of all Board fees and costs expended related to any petition filed by Respondent seeking removal of any restrictions and/or conditions placed upon his Wyoming Physician License hereby.

IN WITNESS HEREOF, the following have executed this Consent Decree

on the date shown.


Thomas M. Horiagon, M.D.
Respondent


02/25/2015
Date


Donald Tardif, PA-C
Petitioner

4/8/15
Date


Anne MacGuire, M.D.
Petitioner

4/9/15
Date


Bill G. Hibbler, No. 5-2178
Special Assistant Attorney General
Board Prosecutor

3/9/2015
Date