publicly and limiting his license to exclude the practice of emergency room medicine.

Findings of Fact

A. Dr. Merrick's Background

1. Respondent graduated from medical school in 1972. He subsequently entered into a rotating internship, and thereafter practiced general surgery for four years. He is Board certified in surgery. He was employed as an emergency room physician at the Central Peninsula General Hospital in Soldotna for approximately one year, including the dates relevant to this proceeding. He is currently self-employed at the Wildwood Clinic, practicing general medicine.

2. Dr. Merrick testified that his last training and practice in reading electrocardiograms took place in the early '70's during his internship.

B. The Events of April 21 and 22, 1983

1. At or about six o'clock on April 21, 1983, Patrick Daniels left the dinner table and went into the bedroom. His wife followed him there and found him lying on the bed, holding his chest and saying that it hurt "really bad." He asked his wife to take him to the Central Peninsula General Hospital in Soldotna. On route, he kept telling her to hurry, he was going to pass out from the pain. Affidavit of Theresa Daniels at 1.

2. Mrs. Daniels stopped at the Nikiski Fire Station. Her husband told her there that his arms were feeling "funny." Id. Paramedics Ty S. Miller and James E. Hoyt were present at the station when the Daniels arrived. Upon questioning by Miller, Daniels indicated that he had been having little chest pains for approximately one week, that he had a history of bronchitis, and that he was not on any medication. Affidavit of Ty S. Miller at 2.

3. The paramedics transported Daniels to the hospital by ambulance. On route, Daniels reported increasing pain. The

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paramedics obtained authorization from a Dr. Kane, who was substituting for their regular medical director, to administer morphine, first five milligrams, then six additional milligrams. Id.

4. Upon their arrival at the hospital, Mr. Daniels was transferred to an emergency room bed. Miller states that the paramedics spoke at least with a male nurse, Keith, and possibly the RN in charge also, filling them in on the chief complaint of the patient. Paramedic Hoyt states that both he and Miller gave their reports to the nurse on duty, Jan, and to Keith. Affidavit of James E. Hoyt at 2.

5. Respondent was the only doctor on duty at the emergency room. He spoke initially with Mrs. Daniels. She told him about the pain and the fact that her husband had spit up blood earlier in the day. Merrick testimony and Affidavit of Theresa Daniels at 2.

6. While waiting for Dr. Merrick to finish talking to Mrs. Daniels, Miller completed what he refers to as his "report[,]" presumably the Pre-Hospital Care Report, Exh. 5. Affidavit of Miller at 2. (Although signed by paramedic Hoyt, Hoyt also testified that Miller did the paperwork. Affidavit of Hoyt at 2.) The report stated that Daniels' chest pain was rated at "8 out of 10," that he had experienced nausea and vomiting, and that the paramedics had administered a total of 11 milligrams of morphine to him. Exh. 5 at 1.

7. Miller further indicates that when Dr. Merrick went in to see Mr. Daniels, Miller followed him and stood with him by the patient and "filled him in roughly again as to what we had done and how the patient, when we initially got him, was in a great deal of pain but that the morphine had taken some of the edge off and he was doing better." Affidavit of Miller at 3. Jim Hoyt testified that he also went into Daniels' room and he found Miller with the report in his hand talking to Dr. Merrick.

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Hoyt indicated that "Merrick was taking our history at the edge of the bed where Pat was." Affidavit of Hoyt at 2.

8. Respondent asked Mr. Daniels if he smoked and learned that he was a heavy smoker. Respondent also inquired whether Daniels was on any medication, to which Daniels replied in the negative. Dr. Merrick concluded from the lack of medication that Daniels did not suffer from hypertension. Merrick did not inquire into Daniels' family history relating to heart disease, nor did he seek to ascertain whether additional cardiac risk factors were present. Respondent testified that he does not find such inquiry appropriate in a crisis, emergency room situation. He did not remember whether he asked Daniels if he had pain in his arm or arms, or had experienced any nausea and vomiting. Dr. Merrick did not review the paramedics' report.

9. Dr. Merrick's initial suspicion, based in large part on the patient's age, was that Pat Daniels had suffered a pneumothorax, or collapsed lung. Respondent ordered a chest X-ray, blood count, and electrocardiogram. Merrick testimony.

10. While the paramedics were still present, a burn victim was brought into the emergency room. Affidavit of Miller at 3. Merrick testified that this patient was hollering and required attention. Merrick also testified that during this same general period of time, patients with a fracture and bleeding from the gums, respectively, were also seeking emergency room care. Many family members were present. In respondent's words, the situation was "chaotic."

11. Mr. Daniels relayed to his wife that the pain was still there; he asked her to do something for him. She talked to Dr. Merrick who assured her that the problem was not with Mr. Daniels' heart. Affidavit of Theresa Daniels at 2.

12. Mr. Daniels was taken for X-rays by radiology technician Susan J. Johnson. Daniels told her he was having chest pains. Johnson said, as a technologist for 20 years, "you

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get kind of a suspicion about patients and how they feel. . . ." Affidavit of Johnson at 5-6. She double-checked the order to have the patient sit up; Dr. Merrick approved of the procedure. Mr. Daniels told her he was having an extreme amount of pain, to the extent that Johnson felt she had to take him back to the emergency room, even though one of the views was "on the light side" and another picture might have been warranted under other circumstances. Id. at 6.

13. The burn patient was air-evacced out. Dr. Merrick reviewed Mr. Daniels' X-rays and ruled out the possibility of pneumothorax. The blood count was high. Dr. Merrick examined the 12 lead EKG strip and evaluated the results as being normal. Respondent diagnosed the patient as having pleurisy and bronchitis. He related in his report that Daniels was "in no acute distress." Exh. 8 at 5.

14. Respondent advised the patient to discontinue cigarettes, drink lots of fluids, and take aspirin or tylenol for the pain. Merrick prescribed Erythromycin for the "infection." Exh. 8 at 5. When respondent informed Mrs. Merrick of his diagnois and treatment plan, she "couldn't believe it." She tried to explain to Dr. Merrick that her husband was not the kind of man to ride in an ambulance, that his arms felt funny. When respondent told her that if the pain got excruciating they could come back, she told him that they lived 30 miles from the hospital. Dr. Merrick discharged Mr. Daniels. Affidavit of Theresa Daniels at 3-4.

15. The Daniels talked about chartering a plane to go to Anchorage, but Mr. Daniels felt he could not take the flight. On the way home he said "I'm just not going to make it." At home, he went to bed. He slept fitfully, then awakened at 2:00 or 2:15 a.m, gasping for breath, seizing and moaning. He collasped on the bed. Mrs. Daniels summoned the paramedics and administered mouth to mouth ressusitation. Affidavit of Theresa

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Daniels at 4-5. The paramedics arrived and started CPR, defibrilated Daniels, inserted an EGTA tube, and started I.V.s. They transported him to the hospital, arriving there at about 3:40 a.m. Affidavits of Hoyt and Miller and Exh. 12 at 1. Dr. Merrick then worked with the paramedics in efforts to revive Mr. Daniels. Merrick pronounced the patient dead at 4:08 a.m. Exh. 13 at 3.

16. The EKG that had been read by Dr. Merrick earlier in the evening was sent to Anchorage. It was reviewed by Dr. George Rhyneer who interpreted it as demonstrating abnormalities and acute inferior wall myocardial infarction. Exh. 11 at 3. That interpretation was telephoned back to Central Peninsula Hospital the same morning that Patrick Daniels died. Merrick testimony.

C. Respondent's Assessment of his Professional Conduct

1. When Mr. Daniels was brought to the emergency room for the second time, respondent acknowledged that he had made a bad diagnosis earlier in the evening and should not have sent the patient home. Affidavits of Miller at 6 and Hoyt at 4.

2. Respondent acknowledged at hearing that as early as the morning of Mr. Daniels' death, upon review of Dr. Rhyneer's report and re-examination of the EKG, now mounted according to the 12 different leads, he recognized that he had mis-interpreted the cardiogram. His initial reading of the EKG, he further testified, was the principal factor in his elimination of myocardial infarction from the potential diagnoses he had under consideration.

3. Dr. Merrick testified that since this incident, he has attended a weekend cardiology course for non-cardiologists at Providence Hospital and spent four days in July of this year on the cardiology service at the University of Oregon; all his cardiograms have been reviewed. He feels that he is now competent to read electrocardiograms.

4. Apart from his erroneous evaluation of the EKG, Dr.

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Merrick did not acknowledge other mishandling of the Daniels' case. Respondent testified that Pat Daniels presented a difficult case, because his age did not suggest that he was a likely heart attack victim, and because, additionally, there were the "red herrings" of the elevated white count, a sign of infection rather than myocardial infarction, and the report of spitting up blood, another symptom not associated with heart attack.

5. Most critically, Dr. Merrick testified that neither Ty Miller nor anyone else had advised him that Pat Daniels had received morphine in the ambulance on his initial trip to the emergency room. Merrick insisted that Miller (and presumably Hoyt) were mistaken in their testimony to the contrary. Respondent recognized that it was the morphine's masking effect which led him to perceive that his patient was not in extreme pain. Dr. Merrick acknowledged that had he been aware of the severity of Daniels' distress, he might have found such complaint more consistent with a diagnosis of heart attack than one of bronchitis and pleurisy.

6. Respondent emphasized the "chaos" in the emergency room occasioned by two major cases being brought in at the same time.

D. The Assessment of Dr. Merrick's Professional Conduct by Expert Witness Frank Hollingshead

1. Dr. Frank Hollingshead graduated from the University of Mississippi medical school. He served a surgical internship and came to Alaska as a general medical officer for the Public Health Service, remaining in that position for two years. He was employed thereafter by Humana Hospital as an emergency room physician and has worked in this capacity for seven years. Dr. Hollingshead is eligible to take the newly created Emergency Room Boards and intends to do so. He encounters patients complaining of chest pain two to ten times per day and admits patients to the hospital to rule in or out the

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possibility of myocardial infarction one or two times each week. He was qualified as an expert witness in emergency room diagnosis of chest pain.

2. Dr. Hollingshead testified that he examined all the records on the Daniels' case available to the Board. Dr. Hollingshead found respondent's initial suspicion that Patrick Daniels had experienced a pneumothorax logical under the circumstances. He also affirmed the appropriateness of the three tests ordered by Dr. Merrick: the EKG, the blood test, and the chest X-ray. And he recognized that the case was made difficult by the "red herring" factors of the patient's age, the spitting of blood, and the elevated white count. But in spite of these points of agreement, Dr. Hollingshead concluded that Dr. Merrick did not perform an adequate evaluation of Patrick Daniels' complaint.

3. First, Dr. Hollingshead thought that someone in the emergency room had to have been informed that Daniels had received morphine in the ambulance, and that Dr. Merrick had to have known of this fact. On the other hand, if in fact Dr. Merrick was not so informed, Dr. Hollingshead attributed to him the responsibility for obtaining information, in oral and/or written form, regarding all treatment received by the patient while being transported by the paramedics. It seemed evident from the testimony of both Dr. Hollingshead and respondent himself, that had respondent been aware of the morphine, he would have assessed the degree of pain experienced by Mr. Daniels in a far more serious light.

4. Second, Dr. Hollingshead ascribed to the physician the responsibility for reducing the chaos which can obtain when more than one patient requires immediate attention and friends and relatives are present in the emergency room.

5. Third, Dr. Hollingshead placed the responsibility for eliciting information regarding the patient's history and

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symptoms on the physician in charge, rather than the patient and/or family members. Taking issue with Dr. Merrick's view that cardiac risk factors need not be investigated in a crisis situation, Hollingshead testified that he always runs through several questions designed to produce information about the presence of such factors and the condition of the patient. He indicated that adult males may be particularly reluctant to volunteer information about their symptoms, and that it is up to the doctor to ferret out such data.

6. Even without an EKG, Dr. Hollingshead testified that had he obtained the relevant information, respondent should at least have suspected heart attack in light of Mr. Daniels' extreme and constant pain, the "funny" feeling in his arms, and the nausea and vomiting that Daniels had experienced. The diagnosis of pleurisy could have been eliminated, had Dr. Merrick ascertained that Daniels' pain was constant, rather than present only upon breathing.

7. Like Dr. Rhyneer and respondent himself, Dr. Hollingshead also faulted Dr. Merrick for an incorrect reading of the EKG. Dr. Hollingshead stressed that this was not a subtle EKG, difficult of interpretation, but, rather, a classical representation of a myocardial infarction. The fact that several of the "leads" appeared normal did not dissuade Dr. Hollingshead from his belief that those leads that demonstrated abnormalities were sufficiently clear that any student completing medical school should have been able to reach the correct diagnosis.

Conclusions of Law

A. Applicable Statutory and Regulatory Standards

AS 08.64.326, effective July 9, 1983, authorizes the Medical Board to impose disciplinary sanctions, if the Board finds after hearing that a licensee has "(8) . . . demonstrated (A) professional incompetence, gross negligence or repeated negligent conduct[.]" AS 08.64.331 provides that such sanctions

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may include, inter alia, suspension, revocation, and/or limitation of a license, as well as censure of a licensee.

At the time of the events in question here, AS 08.64.330 was in effect. That statute authorized the same sanctions upon a finding of professional incompetence, but did not include negligence as a grounds for instituting disciplinary action. Because a ruling on the negligence issue is not necessary to a resolution of this matter, and because the question of retroactive application of AS 08.64.326 has not been addressed by the parties, the hearing officer will measure the evidence presented at hearing against the "professional incompetence" standard alone.

"Professional incompetence" is defined in 12 AAC 40.970 as meaning

> lacking sufficient knowledge, skills, or professional judgment in that field of practice in which the physician or physician assistant engages, to a degree likely to endanger the health of his or her patients.

The Alaska Supreme Court has upheld this standard against allegations of violations of due process. Storrs v. State Medical Board, 664 P.2d 547 (Alaska 1983).

B. Burden of Proof

The State argues that it must carry its burden of proof by a standard of preponderance of the evidence, not clear and convincing evidence. Again, this issue need not be decided at this time, in light of the fact that the outcome of the decision is not affected by a change in the burden of proof.

C. Respondent's Professional Incompetence

The evidence established that Dr. Merrick demonstrated professional incompetence in several respects. By his own admission, he was insufficiently knowledgeable and skilled to be interpreting electrocardiograms. His judgment, according to the testimony of Dr. Hollingshead, was not equal to that of a graduating medical student. Yet as respondent acknowledged, it

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was his reading of Pat Daniels' EKG which occasioned the elimination of heart attack as a possible diagnosis of Daniels' condition.

Additionally, his failure to elicit and/or heed information from the patient and the paramedics regarding history, cardiac risk factors, symptoms, and treatment received on route to the hospital demonstrated a further deficiency in knowledge, skills and professional judgment pertaining to emergency room diagnostic procedures. While the hearing officer believes it is more likely than not that Ty Miller did tell respondent when Daniels was first brought to the hospital that morphine had been administered, resolution of this factual question is not necessary to a determination of professional incompetence. For if the paramedics or nursing staff did not convey this information to Dr. Merrick, he must be held accountable for poor skills and judgment in failing to inquire into the treatment received by Daniels while in transit to the hospital.

The hearing officer acknowledges the presence of "red herrings" which complicated this case. The evidence is clear, nonetheless, that the combination of intense and constant chest pain, "funny" feeling in the arms, and nausea and vomiting would have signalled at least the strong likelihood that a heart attack had occurred or was occurring to a physician acting competently. Proper reading of the EKG would have confirmed this potential diagnosis. The degree of incompetence exhibited by respondent proved fatal to the patient.

D. Appropriate Sanctions

The most difficult portion of this analysis does not lie in the finding of incompetence respecting the handling of this case, but in determining the appropriate sanctions to be imposed therefor. The State's first recommendation, a limitation against practicing emergency room medicine, appears sound. Dr.

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Merrick rightly protests that the same incident could conceivably have occurred in his office or elsewhere. But the very essence of emergency room medicine is crisis operations. Respondent relied on the frenetic atmosphere of the emergency room to justify his failure to obtain the necessary information and make the correct diagnosis. He expressed a belief that certain procedures need not be followed in the emergency situation. Dr. Hollingshead, on the other hand, indicated that the business of an emergency room physician is to respond to more than one major trauma at once, and to elicit the vital information in each instance.

The hearing officer is persuaded that the health of Dr. Merrick's patients could be endangered by allowing him to practice in the emergency room where he might again be constrained to handle more than one crisis simultaneously and might once more fail to obtain the requisite information in an atmosphere of tension and confusion. A condition precluding emergency room practice should be placed on his license. Should Dr. Merrick be able to persuade the Board at some later date that he has received sufficient education and training in emergency medicine, and that he now subscribes to accepted diagnostic practices in the emergency room and has improved his judgment in the process of responding to crises, the Board may then consider lifting this limitation.

The second proposed sanction, suspension of Dr. Merrick's license for six months, is more problematical. Counsel for the State requested this sanction partly on the grounds that respondent had not accepted responsibility for his errors, except in the case of the EKG interpretation. Counsel determined that revocation was inappropriate on the basis of one incident, but contended that a severe sanction was still required to induce respondent to re-evaluate his handling of the Daniels' case.

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The suspension cases researched by the hearing officer are essentially devoid of philosophical explanations for the discipline imposed. Alaska's licensing statutes, however, do not appear to be punitive in orientation, but, rather, directed towards the objective of protecting the public. See, e.g., AS 08.64.331(d) and AS 08.64.336. It is difficult to see how a suspension from practice would achieve this end.

Presumably, Dr. Merrick's current patients would suffer some inconvenience should he be obliged to close his clinic for six months. Additionally, and most critically, the hearing officer cannot perceive that respondent's skills and judgment would be enhanced by half a year's enforced vacation from the practice of medicine. To the contrary, it is possible that some loss of facility could result therefrom. Finally, while it is possible that imposition of a suspension would result in further reflection and improved judgment on Dr. Merrick's part, it is highly speculative that such consequence would flow from the suspension rather than the considerable difficulties this case has already caused respondent. Certainly, Dr. Merrick is now on notice that a second serious incident of incompetence would raise the spectre of revocation, not just suspension. The requested suspension could result in greater harm than benefit to the public; it is, therefore, not recommended.

It is agreed that some sanction beyond the limitation prohibiting emergency room practice is appropriate in this case. To insure that both respondent and the public are made aware of the Board's strong disapproval of the professional incompetence demonstrated by Dr. Merrick, public censure is required. Such action should serve to advise the public that the Board does respond to complaints registered by patients or others on their behalf. It may also alert Dr. Merrick's patients, or prospective patients, of the findings in this case, enabling them to make their own decisions about using his services. As a result of

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such action, moreover, the Board will place Dr. Merrick on notice respecting the seriousness with which it regards this incident of professional incompetence.

Conclusion

The death of a 26 year old man due to the incompetent exercise of skill and judgment by a physician seems to cry out for the imposition of major sanctions by the licensing agency. Because the license to practice medicine is a valuable right, however, and because it cannot be concluded from one incident that respondent is, as a general proposition, a danger to the health of his patients, revocation is not warranted. Suspension bears no rational relationship to the public interest. It is, therefore, the recommendation of the hearing officer that respondent be censured by the Board and that his license be limited by prohibiting him from practicing emergency room medicine.

DATED this 22nd day of August, 1984 at Anchorage, Alaska.

Joan M. Katz
Hearing Officer

ORDER

The proposed decision of the hearing officer is hereby ADOPTED. IT IS ORDERED that Dr. Merrick shall be and is hereby censured for the professional incompetence he demonstrated in responding to and diagnosing the complaint presented by Patrick Daniels. Such censure shall be made public. IT IS FURTHER ORDERED that Dr. Merrick's license shall be limited to exclude the practice of emergency room medicine.

DATED this ____ day of ____________, 1984.

STATE MEDICAL BOARD

____
Chairperson

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STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

JAN 14 1987

STATE OF ALASKA

BEFORE THE STATE MEDICAL BOARD

DIVISION OF
OCCUPATIONAL LICENSING

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

DEC 12 1986

DIVISION OF
OCCUPATIONAL LICENSING

In the Matter of:)
)
MICHAEL E. MERRICK, M.D.)
)
)

No. ME 84-01
AG File Nos. 221-83-0777
and 221-87-0152

ORDER MODIFYING REQUIREMENTS FOR
REINSTATEMENT OF UNRESTRICTED MEDICAL LICENSE

On the petition of respondent Michael E. Merrick, M.D., IT IS HEREBY ORDERED that the board's order of October 1, 1984, is modified; Dr. Merrick's medical license will be reinstated, without a restriction regarding the practice of emergency medicine, upon Dr. Merrick's satisfaction of the following conditions:

1. Dr. Merrick shall provide verification that he attended a program on "cardiology for noncardiologists" at Providence Hospital in October 1984.

2. Dr. Merrick shall provide a letter from Dr. Rheinschmidt of the cariology service at the University of Oregon confirming that Dr. Merrick spent approximately four days in July 1984 at the university interpreting electrocardiograms (EKGs), that his interpretation of those EKGs was reviewed by qualified individuals at the hospital, and that his interpretation was satisfactory.

3. Dr. Merrick shall obtain ASLS and ATLS certification.

4. Dr. Merrick shall obtain at least 80 hours of supervised practice with a physician or group that is board certified in emergency medicine. The practice must involve actual treatment of patients, and may not involved mere observation by Dr. Merrick. The supervised practice must be at an emergency room having an activity level similar to that of the emergency room at Providence Hospital in Anchorage, Alaska.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
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The supervising physician or a member of the supervising group must provide a written or oral report to the board regarding Dr. Merrick's performance, and the board must be satisfied that Dr. Merrick's performance was satisfactory and that he is qualified to safely practice emergency room medicine.

5. All of the foregoing must be accomplished not later than September 30, 1989.

IT IS HEREBY FURTHER ORDERED that the current restriction on Dr. Merrick's medical license restricting him from practicing in an emergency room is hereby modified to expressly permit him to practice for up to 100 hours in an emergency room under the supervision of a board certified physician or group in order to comply with paragraph 4 above.

DATED this 2nd day of DECEMBER, 1986, at ~~Anchorage~~ Ketchikan, Alaska.

ALASKA STATE MEDICAL BOARD

By: [signature]
Dr. T. L. Conley
Chairman

This is to certify that a copy of the foregoing is being mailed or caused to be mailed to the following attorneys or parties of record:

Dr. Michael Merrick

[signature] 11-26-86
Irene H. Rhodes Date

CERTIFICATION

I hereby certify that 7 members out of a total of 7 members were present at the meeting of the State Medical Board held October 23, 1986, when the above Order Modifying Requirements for Reinstatement of Unrestricted Medical License was considered and that the vote in favor of the above order was 7 AYES 0 NAYES and 0 absent, 0 abstaining, or 0 positions vacant.

STATE MEDICAL BOARD

BY: [signature]
THOMAS L. CONLEY, M.D., Chairman

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

JAN 14 1987

DIVISION OF
OCCUPATIONAL LICENSING

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Board of Medical Examiners

317 S.W. ALDER ST., RM. #1002, PORTLAND, OREGON 97204-2584 PH. (503) 229-5770

November 21, 1986

Alaska Board of Medical Examiners
Pouch D
Juneau, Alaska 99811

RE: MICHAEL E. MERRICK, M. D.

Dear Sir:

Recently we have received information from the Federation of State Medical Boards that your Board has taken action against the above physician. Since Dr. Merrick is also licensed in this state, our Board would appreciate receving copies of any disciplinary action taken against Dr. Merrick for our files.

Thank you for your help in this matter.

Very truly yours,

JOHN J. ULWELLING
Executive Secretary

Ms. Jan Baggenstos
License Administrator
JJU:JB:dlm

11/28/86 Sent copy of board's motion at 11/23-24/86 meeting regarding Merrick / copy of opposition to approve CME and supervised practice requirement + Request to waive
KDW

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
NOV 28 1986
DIVISION OF OCCUPATIONAL LICENSING

OCCUPATIONAL
LICENSING ANCHORAGE
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JUN 1 01 PM '84

ALASKA DEPT. OF
COMMERCE & ECONOMIC
DEVELOPMENT

STATE OF ALASKA

BEFORE THE STATE MEDICAL BOARD

In the Matter of:
MICHAEL E. MERRICK, M.D.,
Respondent

Case ME 84-01

MOTION FOR REDELEGATION TO HEARING OFFICER

At its last regular meeting, the Medical Board determined that it would hear this matter itself. At that time, the Attorney General's office anticipated that a settlement in the case would be reached by May 30, 1984. Thus, the Board would only have been required to spend a small portion of one day reviewing the proposed stipulated settlement.

Settlement negotiations have broken down, however, and the Attorney General's office is now committed to taking the matter to hearing. Although it appears the hearing will not require more than one day, it will likely occur in Kenai, where most of the witnesses reside. In addition, the Attorney General's office does not wish to further delay the matter to coincide with the next regular Board meeting.

For the forgoing reasons, the State believes this matter would most conveniently and appropriately be heard by the hearing officer sitting alone. The State therefore requests that the Board redelegate the hearing on this matter to the hearing officer.

DATED this 29th day of May, 1984, at Anchorage, Alaska.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Kay E. M. Gouwens
Kay E. Maassen Gouwens
Assistant Attorney General

ORDER

IT IS SO ORDERED.

ALASKA STATE MEDICAL BOARD

By: Hubert J. Gellert
Hugh Gellert, Chairman

May 30, 1984

The undersigned hereby certifies that on the 31 day of May, 19 84, the attached documents were mailed to the attorneys of record.
Michael Merrick
Roger Holmes
[illegible]
Subscribed and sworn to before me the date last written
[illegible signature]
Notary Public
My Commission Expires 7-28-86

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1 STATE OF ALASKA

2 BEFORE THE STATE MEDICAL BOARD

3 In the Matter of:)
4 Michael E. Merrick,)
5 Respondent.)
6)

7 No. ME 84-01

8 ORDER OF THE STATE MEDICAL BOARD

9

10 The State Medical Board convened on September 14, 1984 to consider
11 the proposed decision of the hearing officer in the above-referenced case.
12 Joan M. Katz, the hearing officer, Dr. Michael Merrick, the respondent, and
13 Kay Gouwens, Assistant Attorney General, were present during the deliber-
14 ations. Each had the opportunity to address the board. Having reviewed the
15 proposed decision and deliberated thereon, it is the board's order that:
16 1. The proposed decision of the hearing officer is adopted in its
17 entirety.
18 2. As a means of implementing that portion of the decision on
19 page 12 which contemplates that the board may at some future date lift the
20 condition on Dr. Merrick's license prohibiting emergency room practice, the
21 following procedures are prescribed:
22 a. The prohibition against emergency room practice shall continue
23 in effect, except for the practicum described in paragraph b(ii) below, at
24 least from September 14, 1984 to September 14, 1985.
25 b. At any time after September 14, 1985, and prior to
26 September 14, 1989, Dr. Merrick may apply to the board to lift the condition
27 prohibiting emergency room practice from his license. In order for such
28 condition to be lifted, Dr. Merrick will have to establish that subsequent
29 to September 14, 1984, he satisfactorily completed (i) at least 50 hours of
30 board-approved continuing medical education in the fields of cardiology and
31 emergency room medicine; and (ii) at least 80 hours of emergency room prac-
32 tice under the direct supervision of a board certified emergency room phy-
sician. The 80 hours may be accomplished in one period of no more than

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
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fourteen days or two periods of no more than seven days each. The entire 80 hours must be accomplished within one year of the date that respondent applies to the board for relief from the condition proscribing emergency room practice. Finally, the supervising physician must be approved by the board before Dr. Merrick undertakes the practicum, and such physician must certify to the board after completion of the practicum that respondent has exhibited a level of professional competence in the emergency room such as to warrant lifting the restriction on his license against such practice.

3. Notice of censure shall be placed in local newspaper(s). The notice shall state that the board has censured Dr. Merrick as a result of professional incompetence demonstrated by him in responding to and diagnosing a patient's complaint on April 21, 1983. The patient's name shall not be included in the notice. The language of the notice shall reflect the board's intent to censure Dr. Merrick as a result of his conduct relating to this single incident only.

DATED at Anchorage, Alaska this 1st day of October, 1984.

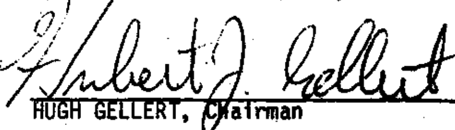
STATE MEDICAL BOARD

HUGH GELLERT, Chairman

CERTIFICATION

I hereby certify that 6 members of this board out of a total of 7 members were present for consideration of the above order and that the vote in favor of the above order was 6 AYES and 0 NAYES with 1 absent.

STATE MEDICAL BOARD



HUGH GELLERT, Chairman

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STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
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STATE OF ALASKA

BEFORE THE STATE MEDICAL BOARD

In the Matter of:)
)
MICHAEL E. MERRICK, M.D.)
)
)

No. ME 84-01
AG File Nos. 221-83-0777
and 221-87-0152

OPPOSITION TO REQUEST TO
APPROVE CME AND TO WAIVE
SUPERVISED PRACTICE REQUIREMENT

I. Introduction

On October 1, 1984, the Medical Board determined that Dr. Michael Merrick demonstrated professional incompetence in the practice of emergency room medicine when, on April 21, 1983, he failed to diagnose that 26-year old Patrick Daniels was suffering an acute inferior wall myocardial infarction. The patient died a few hours later of myocardial infarction.

In its October 1, 1984 decision, the board restricted Dr. Merrick's license to prohibit his practice of emergency room medicine. The board agreed that it would remove the restriction when, among other things, Dr. Merrick: (1) satisfactorily completed 50 credit hours of board-approved Continuing Medical Education in cardiology and emergency room medicine; and (2) completed 80 hours of emergency room practice under the direct supervision of a board-certified emergency room physician approved by the board, provided the supervisor certifies to the board that Dr. Merrick's competency in the emergency room warrants lifting the license restriction.

Dr. Merrick has asked that the board: (1) approve 55 hours of CME credits he has recently taken; and (2) accept additional CME credits in lieu of the supervised emergency room practice.

The Office of the Attorney General opposes both these requests, for the reasons described below.

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II. The Nature of Dr. Merrick's Shortcomings in Emergency Room Medicine

To determine whether the supervised practice requirement should be waived, it is necessary to review the nature of the problems demonstrated by Dr. Merrick.

The board determined that Dr. Merrick had incompetently interpreted a 12-lead EKG run on Mr. Daniels. Merrick determined that the EKG was normal. In fact, the EKG -- which "was not a subtle EKG, difficult of interpretation" -- was "a classical representation of a myocardial infarction." Decision at 9. In the judgment of the expert witness in this case, "any student completing medical school should have been able to reach the correct" interpretation of the EKG. Decision at 9. Dr. Merrick has freely acknowledged that he misread the EKG.

However, the Medical Board also determined that Dr. Merrick's incompetency went beyond the misreading of the EKG, to problems Dr. Merrick did not acknowledge. First, the board determined that Merrick failed to take steps necessary to find out what treatment Daniel received from paramedics en route to the hospital. Merrick failed to determine that morphine had been administered; the masking of Daniel's pain caused by the morphine contributed to the misdiagnosis. 1/

Second, the board found that Merrick evidenced incompetence by failing to inquire into Daniel's medical history to determine whether cardiac risk factors were present. The board rejected Dr. Merrick's argument that such inquiry was not "appropriate in a crisis, emergency room situation." Decision pp. 4, 9.

1/ The paramedics testified that they told Merrick about the morphine. Merrick testified they did not. The board concluded it was Merrick's duty to obtain the information by asking appropriate questions of the paramedics, the patient, and the patient's family. Decision at 8.

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Finally, the board noted that Dr. Merrick attempted to justify his behavior in the case by referring to the "chaotic" atmosphere of the emergency room. 2/ Dr. Merrick testified at hearing that certain procedures, such as eliciting cardiac risk factors, need not be followed in an emergency situation. Dr. Merrick also emphasized the fact that he had a burn patient to attend to at the same time that Daniel was in the emergency room. The board rejected those defenses, noting that "the business of an emergency room physician is to respond to more than one major trauma at once, and to elicit the vital information in each instance." Decision, p. 12. Dr. Merrick's behavior indicated that he used poor judgment in responding to crises. Decision, p. 12.

Dr. Merrick's shortcomings in the Emergency Room were thus of two kinds. First, Dr. Merrick demonstrated a lack of "text-book" type knowledge by, among other things, misreading the EKG. Second, he demonstrated an inability to apply sound medical judgment in the context of the crises that epitomize emergency room practice, and to fully appreciate the extent of his responsibilities as an emergency room physician.

III. The Training Required by the Board

Recognizing the dual nature of Dr. Merrick's problems in the emergency room, the board restricted Dr. Merrick from further practice of emergency room medicine until such time as he improved both his raw medical knowledge of cardiology and emergency room medicine and procedure, and his medical judgment in emergency room practice. The board's requirements were well-tailored to Dr. Merrick's shortcomings.

2/ Merrick was the only physician on duty. Shortly after Daniel arrived at the emergency room, a burn patient arrived, whom Merrick treated competently. Two other patients, one with a broken bone and one with bleeding gums, were also present at or about the time Daniel was in the emergency room. Family members of the various patients were also in the emergency room. Decision pp. 4, 7.

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IV. The Requirement of Supervised Emergency Room Practice Should Not Be Waived

Dr. Merrick has asked that the board accept "additional hours of CME in lieu of work in an emergency room." In support of this request, Dr. Merrick cites the difficulty he has encountered in arranging supervised practice on his own. Merrick Letter of July 8, 1986.

The Office of the Attorney General opposes substituting additional CME credit for the practical emergency room training. The record in this case described above clearly demonstrates that the practical training is necessary to adequately protect the public.

If practical training is in fact unavailable to Dr. Merrick, the public must not be placed at risk for this shortcoming in continuing medical education programs. However, it appears that Dr. Merrick has made inquiry of only two hospitals: Providence Hospital in Anchorage and the University of Oregon Medical School. This office believes Dr. Merrick's very limited efforts to find a suitable program do not demonstrate that no program is available. Apparently Providence Hospital is unwilling to provide the supervised practice because it is not a teaching hospital; however, there must be many teaching hospitals to which Dr. Merrick has not applied. The obstacles to receiving the training in Oregon are, according to Dr. Merrick, two-fold. First, he would require an active license to practice there; however, Dr. Merrick gives no explanation of why that obstacle cannot be surmounted. Second, the hospital in Oregon was apparently daunted by the board's requirement that Dr. Merrick's supervising physician "certify to the board . . . that [Dr. Merrick] has exhibited a level of professional competence in the emergency room such as to warrant lifting the restrictions on his license against such practice." Other hospitals may not be daunted by that requirement. If they prove to be, this office would not object to a modification of the certification requirement, as described below.

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V. Modification of the "Certification Requirement Would be Acceptable

Further efforts to locate an appropriate program may reveal that is the board's requirement that the supervising physician "certify" Dr. Merrick's competency is a real stumbling block. If this proves to be the case, this office would not object to instead requiring that Dr. Merrick's supervisor report orally to the board regarding Dr. Merrick's performance, to enable the board to itself determine from the report whether lifting the restrictions would be consistent with the public interest. (Any travel costs incurred by the supervisor to meet with the board should, of course, be borne by Dr. Merrick and not by the board.)

VI. Objection to CME Credits Submitted

Along with his request regarding the supervised emergency room training, Dr. Merrick has submitted to the board records "indicating recent CME activities I completed to remove the restriction on my medical license . . . ."

The board required that Dr. Merrick satisfactorily complete "at least 50 hours of board-approved continuing medical education in the fields of cardiology and emergency room medicine." The courses taken by Dr. Merrick do not satisfy that requirement. He attended 37 hours of the 17th Annual Family Practice Review held at the School of Medicine of the Oregon Health Sciences University. Dr. Merrick does not indicate which, if any, of those credit hours dealt with cardiology or emergency room medicine. He also attended 15 hours of a "Primary Care Conference" held in Seattle. The course agenda lists only one 3-hour lecture that deals with emergency room medicine or cardiology, i.e., the one hour lecture by Dr. George I. Frank, M.D. on "Myocardial Infarction: 1986." Finally, Dr. Merrick attended a 3-credit hour course given by the Medical Indemnity Corporation of America on the "Anatomy of a Lawsuit."

While those courses are no doubt very appropriate to Dr. Merrick's current general practice, only one credit hour

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deals with the required subjects of cardiology or emergency medicine. Dr. Merrick has therefore yet to take 49 hours of appropriate CME courses before he satisfies the board's non-clinical education requirement.

IV. Conclusion

For the forgoing reasons, the Office of the Attorney General asks that the board deny Dr. Merrick's request that he be permitted to substitute additional CMEs for the required supervised practice. The board is also requested to approve only one of the 55 credit hours submitted by Dr. Merrick. However, this office would not object to allowing Dr. Merrick's emergency room supervisor to simply report orally to the board, rather than requiring that he or she certify Merrick's competency to the board.

DATED this 21st day of October, 1986, at Anchorage, Alaska.

HAROLD M. BROWN
ATTORNEY GENERAL

By: [signature]
Kay E. Maassen Gouwens
Assistant Attorney General

This is to certify that a copy of the foregoing is being shipped DHL or caused to be shipped to the following attorneys or parties of record:

Dr. Michael Merrick
Dena'ina Medical Associates
416 Frontage Road, Suite 200
Kenai, Alaska 99611

[signature] 10-21-86
Irene H. Rhodes Date

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