

STATE OF ALASKA
BEFORE THE STATE MEDICAL BOARD

In the Matter of:)
)
MICHAEL E. MERRICK,)
)
 Respondent.)
_____)

No. ME 84-01

PROPOSED DECISION

Introduction

Harry Treager, Director of the Division of Occupational Licensing, filed an accusation against Dr. Michael E. Merrick on August 4, 1983, seeking suspension or revocation, and/or other appropriate disposition, of Dr. Merrick's license, pursuant to AS 08.64.330(b). On September 22, 1983, the undersigned hearing officer was appointed by the Governor to preside over this case. After attempts at informal resolution proved unsuccessful, this matter came to hearing on August 13, 1984 in Kenai, Alaska. The testimony of six witnesses was admitted by affidavit, in accordance with AS 44.62.470 and a further, explicit waiver on the record by respondent. Dr. Merrick was called as a witness by the State and testified additionally in his own behalf.

The State also submitted documentary evidence and introduced the testimony of expert witness Dr. Frank Hollingshead. At the close of the proceedings, Assistant Attorney General Kay E. Maasen Gouwens requested that the Board impose sanctions on Dr. Merrick consisting of a six-month suspension of his license and a perpetual limitation thereon precluding him from practicing emergency room medicine.

As a result of the evidence and argument presented in this case, and the independent research conducted by the hearing officer, it is recommended that the Board find that Dr. Merrick has demonstrated professional incompetence. It is further recommended that the Board sanction Dr. Merrick by censuring him

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

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.

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

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 diagnosis 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 collapsed on the bed. Mrs. Daniels summoned the paramedics and administered mouth to mouth resuscitation. Affidavit of Theresa

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.

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

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

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

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

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.

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.

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

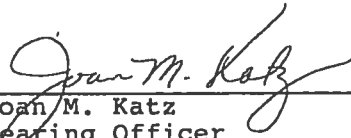
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such action, moreover, the Board will place Dr. Merrick on notice respecting the seriousness with which it regards this incident of professional incompetence.

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 23rd 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

JOAN M. KATZ
ATTORNEY AT LAW
840 L STREET
SUITE 802
ANCHORAGE, AK 99501
(907) 274-7634

STATE OF ALASKA
BEFORE THE STATE MEDICAL BOARD

In the Matter of:)
Michael E. Merrick;)
Respondent.)

No. ME 84-01

ORDER OF THE STATE MEDICAL BOARD

The State Medical Board convened on September 14, 1984 to consider the proposed decision of the hearing officer in the above-referenced case. Joan M. Katz, the hearing officer, Dr. Michael Merrick, the respondent, and Kay Gouwens, Assistant Attorney General, were present during the deliberations. Each had the opportunity to address the board. Having reviewed the proposed decision and deliberated thereon, it is the board's order that:

1. The proposed decision of the hearing officer is adopted in its entirety.

2. As a means of implementing that portion of the decision on page 12 which contemplates that the board may at some future date lift the condition on Dr. Merrick's license prohibiting emergency room practice, the following procedures are prescribed:

a. The prohibition against emergency room practice shall continue in effect, except for the practicum described in paragraph b(ii) below, at least from September 14, 1984 to September 14, 1985.

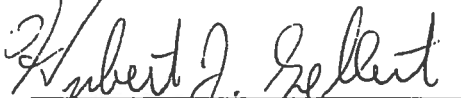
b. At any time after September 14, 1985, and prior to September 14, 1989, Dr. Merrick may apply to the board to lift the condition prohibiting emergency room practice from his license. In order for such condition to be lifted, Dr. Merrick will have to establish that subsequent to September 14, 1984, he satisfactorily completed (i) at least 50 hours of board-approved continuing medical education in the fields of cardiology and emergency room medicine; and (ii) at least 80 hours of emergency room practice under the direct supervision of a board certified emergency room physician. The 80 hours may be accomplished in one period of no more than

1 fourteen days or two periods of no more than seven days each. The entire 80
2 hours must be accomplished within one year of the date that respondent ap-
3 plies to the board for relief from the condition proscribing emergency room
4 practice. Finally, the supervising physician must be approved by the board
5 before Dr. Merrick undertakes the practicum, and such physician must certify
6 to the board after completion of the practicum that respondent has exhibited
7 a level of professional competence in the emergency room such as to warrant
8 lifting the restriction on his license against such practice.

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

16 DATED at Anchorage, Alaska this 1st day of October,
17 1984.

18
19 STATE MEDICAL BOARD

20 
21 HUGH GELLERT, Chairman

22
23 CERTIFICATION

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

27 STATE MEDICAL BOARD

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29 HUGH GELLERT, Chairman

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