

THE SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

IN THE MATTER OF THE
APPLICATION FOR SOUTH DAKOTA
MEDICAL LICENSURE SUBMITTED
BY DENISE CRUTE, MD

ORDER APPROVING
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Whereas, Leo Disburg, Hearing Examiner with the Office of Hearing Examiners, prepared and entered his Proposed Decision with Reasoning and Findings of Fact and Conclusions of Law dated October 1, 2008, and the parties were duly served thereon;

Whereas, the Proposed Decision with Reasoning and Findings of Fact and Conclusions of Law were reviewed by board members along with the record of the proceedings;

Whereas, the applicant Denise Crute, MD, filed exceptions and presented briefs and oral argument to the members of the board;

Whereas, the members of the board having reviewed the entire record, listened to the argument of counsel for Dr. Crute, and having been advised in the premises, did affirm the Proposed Decision with Reasoning and Findings of Fact and Conclusions of Law in their entirety, and for good cause shown, it is hereby ORDERED that the Findings of Fact and Conclusions of Law with Proposed Decision and Reasoning dated November 13, 2008 are approved and affirmed in their entirety.

Dated this 13 day of November 2008

SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

STATE OF SOUTH DAKOTA } S.S.
MINNEHAHA COUNTY }
I hereby certify that the foregoing
instrument is a true and correct copy
of the original as the same appears
on the record in my office.

Robert L. Ferrell, MD, President

Executive Secretary
By MBH by JTP
Date 11-13-08

James Reynolds, Vice-President
James Reynolds Date: 11/13/08

**STATE OF SOUTH DAKOTA
BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS**

**IN THE MATTER OF THE LICENSE
APPLICATION OF
DENISE CRUTE, M.D.**

**PROPOSED DECISION
MED 8-01**

This matter came on for hearing on May 20 and 21, 2008. Edwin Evans and Sandra Hogleund Hanson appeared on behalf of the applicant, Dr. Denise Crute ("Dr. Crute" or "the doctor"). Craig Kennedy appeared on behalf of the Board of Medical and Osteopathic Examiners ("the Board").

ISSUE

Whether the Board erred in denying Dr. Crute's application for a license to practice medicine.

Based on the evidence presented, the Hearing Examiner enters the following:

FINDINGS OF FACT

I.

Dr. Crute is a neurosurgeon certified by the American Board of Neurosurgery in 2001.

II.

Dr. Crute graduated from the medical school of the University of North Carolina in May 1988 (Ex. 1, p. 4). She completed her internship and residency at Northwestern University Hospitals.

III.

From January 1997 through August 2005, Dr. Crute practiced neurosurgery in Pueblo, Colorado.

IV.

On July 12, 2004, Inquiry Panel A ("the Panel") of the Colorado State Board of Medical Examiners issued to Dr. Crute a "Notice of Right to Request Pre-Suspension Hearing" to determine whether summary suspension of her

medical license was warranted pursuant to Colorado statute (Ex. 9, Tab 15, p 76).

V.

In lieu of a license suspension, the Panel and Dr. Crute agreed upon a "Stipulation For Interim Evaluation And Monitoring of Practice" ("the interim stipulation") pending further investigation of the doctor's practice to determine what further action might be warranted (Ex. 9, Tab 15, and p. 76).

VI.

As part of the interim stipulation, Dr. Crute agreed to comply with all recommendations made by the Colorado Physician Health Program and to have all her surgeries observed by a board-certified neurosurgeon approved by the Panel. The surgical monitor was required to provide the Panel with monthly reports of the monitor's evaluation of Dr. Crute's practice.

VII.

The interim stipulation also provided that "in no event shall [Dr. Crute] perform a surgical procedure while this Interim Stipulation is in effect that is not monitored as described above by either the surgical monitor or the alternate surgical monitor" (Ex. 9, Tab 15, p. 78).

VIII.

That interim stipulation was for an indefinite term.

IX.

The interim stipulation further provided that "nothing in this Interim Stipulation will preclude or limit the Panel from initiating disciplinary action ... or seeking any sanctions ... or taking any other lawful action" (Ex. 9, Tab 15, p. 78).

X.

In June 2005, the Panel reviewed some of its files concerning Dr. Crute's practice and referred her case to the Colorado Attorney General.

XI.

On March 21, 2005, the Attorney General commenced disciplinary action before the Colorado Board of Medical Examiners concerning Dr. Crute (Ex. 9, Tab 22, pp. 140 – 187).

XII.

The purpose of the disciplinary proceedings was to determine whether Dr. Crute had engaged in unprofessional conduct as set forth by Colorado statutes and whether her medical license should be revoked, suspended or otherwise disciplined (Ex. 9, Tab 22, p. 185).

XIII.

The formal complaint against Dr. Crute alleged she had committed a number of acts of unprofessional conduct involving seventeen patients.

XIV.

Prior to a scheduled hearing, Dr. Crute and the Colorado Board of Medical Examiners entered into a "Stipulation And Final Agency Order" ("stipulation") (Ex. 9, Tab 27, pp. 271-277). In that stipulation, Dr. Crute specifically admitted to four instances of unprofessional conduct (defined by Colorado statute as "any act or omission which fails to meet generally accepted standards of medical practice") in her treatment of patients.

XV.

In the stipulation, Dr. Crute admitted she had performed a wrong-site burr hole surgery on a patient "C". Dr. Crute also admitted that she failed to perform a "time-out" prior to initiating the surgical procedure in order to verify she was operating on the correct side of patient "C's" head (Ex. 8, Tab 27 p. 272, para. 9a.)

XVI.

Dr. Crute admitted (Findings of Fact # 14) having instructed her physicians assistant (PA) to proceed with opening a surgical incision on patient "N" after the doctor left the hospital to attend to an emergency at a second hospital. Dr. Crute admitted having failed to provide personal and responsible direction and supervision of her PA under the circumstances (Ex. 9, Tab 27, p. 72, para. 9b.)

XVII.

Dr. Crute admitted (Findings of Fact # 14) having performed a diskectomy at the wrong level on patient "O". The doctor performed an L3-4 microendoscopic diskectomy with L4 laminectomy, when the intended diskectomy was L4-5 (Ex. 9, Tab 27, p. 272, para. 9c).

XVIII.

Dr. Crute admitted (Findings of Fact # 14) having failed to obtain and review the radiology report of a CT scan for patient "Q" prior to discharging that patient (Ex. 9, Tab 27, p. 273, para. 9d).

XIX.

Dr. Crute and the Panel further stipulated (Findings of Fact # 14) that as of September 1, 2005, the doctor's license would go into inactive status (Ex. 9, Tab 27, p. 273).

XX.

The parties signed the stipulation and it became effective July 13, 2005 (Ex. 9, Tab 27, p. 274).

XXI.

In November 2005, Dr. Crute submitted her application for a medical license in South Dakota (Ex. 1).

XXII.

On December 7, 2005, the State of New York issued Dr. Crute a medical license (Ex. 9, Tab 32).

XXIII.

At its March 15, 2006 meeting, the Board discussed Dr. Crute's application. A motion to issue Dr. Crute a license with stipulations was defeated. After further discussion, the Board passed a motion to employ a consultant to review Dr. Crute's application and materials and offer an opinion (Ex. 11, p. 4).

XXIV.

In May 2006, after a review of the Colorado proceedings, the State of Illinois reactivated Dr. Crute's medical license there.

XXV.

In June 2006, the Board elected to consider Dr. Crute's application without a consultant's review or opinion. The Board voted to deny her application.

XXVI.

Any additional findings included in the Reasoning section of this decision are incorporated herein by this reference.

XXVII.

To the extent any of the foregoing are improperly designated and are instead conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

REASONING

Any person wishing to practice medicine in South Dakota is required to apply to the Board for a license. SDCL 36-4-11. The applicant bears the burden of demonstrating qualification for a license. The Board may refuse to grant a license on the grounds that an applicant has committed unprofessional, immoral, or dishonorable conduct. SDCL 36-4-28. Acts which are considered unprofessional conduct for purposes of SDCL Ch. 36-4 include "Any practice or conduct which tends to constitute of danger to the health, welfare, or safety of the public or patients..." SDCL 36-4-30(22).

In this case, Dr. Crute admitted to four instances where she provided sub-standard care. Each of those four instances constituted unprofessional conduct as that term is used in SDCL Ch. 36-4.

Dr. Crute complains that the Board evaluated her application without employing an expert consultant. Although the Board initially voted to employ a consultant, there is nothing which requires them to do so and the members were free to change their minds (as they obviously did) and make a decision on her application without consulting an expert. Certainly no expert was needed to establish Dr. Crute's violations of the appropriate standard of care – that was not disputed.

The question then became, should this applicant be granted a license in South Dakota? The resolution of that question was for the Board and did

not require the assistance of an expert. It is also a matter upon which reasonable persons might disagree. The fact that the States of Illinois and New York licensed Dr. Crute is *evidence* of her qualifications, but does not bind this Board, nor does it decide the question. The Board's primary duty is always to protect the public. That duty cannot be delegated and should never be compromised.

Did the Board abuse its discretion in denying Dr. Crute a license? Abuse of discretion has been defined as "...a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." Arneson v. Arneson, 670 NW2d, 904, 910 (S.D. 2003).

Dr. Crute has employed skilled and able counsel and presented a good case. Her counsel has not shown, however, that the Board's decision to deny Dr. Crute's application was fundamentally erroneous and denial is certainly within the range of possible choices. Again, the Board's primary duty is to protect the public. The record as a whole demonstrates that this Board, in the exercise of its duty, elected to be cautious. Caution is neither arbitrary nor unreasonable. The decision to deny Dr. Crute's application was not an abuse of the Board's discretion.

CONCLUSIONS OF LAW

I.

The South Dakota Board of Medical and Osteopathic Examiners has jurisdiction over the parties and subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision in this matter pursuant to the provisions of SDCL 1-26.

II.

As the applicant, Dr. Crute bears the burden of proof that she possesses the qualifications for a license to practice medicine. SDCL 36-4-11.

III.

The Board may refuse to grant a license for unprofessional conduct on the part of an applicant. SDCL 36-4-28.

IV.

For purposes of SDCL Ch. 36-4, acts of unprofessional conduct include "Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of the public or patients ...". SDCL 36-4-30(22).

V.

Dr. Crute's wrong-site surgery on Patient "C", instructing her physician's assistant to proceed with opening a surgical incision after the doctor had left the hospital, wrong level disectomy on Patient "O", and failure to obtain and review the radiology of a CT scan of Patient "Q" prior to discharging that patient, were acts or omissions which failed to meet generally accepted standards of medical practice. Those admitted acts or omissions are also "...practice or conduct which tends to constitute a danger to the health, welfare, or safety of the public or patients..." and are unprofessional conduct pursuant to SDCL 36-4-30.

VI.

Each of Dr. Crute's four admitted acts of unprofessional conduct (Findings of Fact 14 – 18, Conclusions of Law # 5) constitute grounds for the Board to refuse to grant her a license. SDCL 36-4-28.

VII.

The formal complaint against Dr. Crute filed by the Colorado Attorney General with that state's Board of Medical Examiners (Findings of Fact # 11) is a matter "...the nature, circumstances or results ..." of which the South Dakota Board of Medical and Osteopathic Examiners must consider in evaluating her application. SDCL 36-4-19.1.

VIII.

The evidence as a whole does not establish that the Board abused its discretion in denying Dr. Crute's application for a license to practice medicine.

IX.

The evidence as a whole does not establish that the Board erred in denying Dr. Crute's application for a license to practice medicine.

X.

Any additional conclusions of law included in the Reasoning section of this decision are incorporated herein by this reference.

XI.

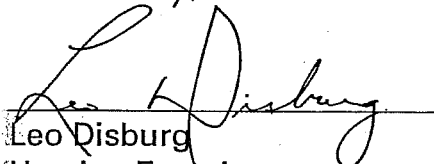
To the extent that any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

Based on the above Findings of Fact, Reasoning, and Conclusions of Law, the Hearing Examiner proposes the following:

ORDER

It is ordered that the South Dakota Board of Medical and Osteopathic Examiners decision to deny Denise Crute a license to practice medicine in this state be affirmed.

Dated this 1st day of October, 2008.


Leo Disburg
Hearing Examiner
Office of Hearing Examiners
210 E. Fourth Street
Pierre, SD 57501

THE SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

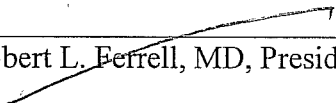
IN THE MATTER OF THE
APPLICATION FOR SOUTH DAKOTA
MEDICAL LICENSURE SUBMITTED
BY DENISE CRUTE, MD

ORDER OF DENIAL
OF MEDICAL LICENSE

The above-entitled matter having come on for a hearing before the South Dakota Board of Medical and Osteopathic Examiners, with Denise Crute, MD, applicant for medical licensure appearing in person and through her attorneys Davenport Evans Hurwitz & Smith, and the Board through one of its attorneys, Craig A. Kennedy of Kennedy, Rokahr, Pier & Knoff, LLP, and the Board having heard the evidence presented including all of the files, records, and arguments herein, and being fully advised in the premises, and the Board having heretofore made and entered its Findings Of Fact And Conclusions Of Law, it is therefore ORDERED that the application for South Dakota medical licensure submitted by Dr. Denise Crute is denied.

Dated this 13 day of November, 2008

SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS


Robert L. Ferrell, MD, President

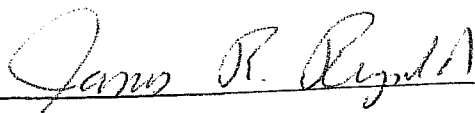
STATE OF SOUTH DAKOTA } S.S.
MINNEHAHA COUNTY

I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on the record in my office.

Executive Secretary

By MBA by JIP

Date 11-13-08


Dr. James Reynolds, Vice-President