

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

**IN THE MATTER OF THE LICENSE
APPLICATION OF
GRANT M. WALKER, M.D.**

PROPOSED DECISION

This matter came on for hearing on May 16 – 17 and August 6, 2007. The applicant, Dr. Grant Walker, was represented by David Bunde and James Moore. The South Dakota Board of Medical and Osteopathic Examiners (“the Board”) was represented by Craig Kennedy.

ISSUE

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

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

FINDINGS OF FACT

I.

Dr. Walker graduated from Albany Medical College in 1992.

II.

After his graduation from Medical School, Dr. Walker completed an internship at the University of Colorado Health Sciences Center. He then continued his training at the University of Colorado, but did not complete his residency. On his South Dakota license application form, Dr. Walker indicated that his failure to complete that residency was due to a “...personality conflict with Chairman...”. Board Ex. 1, p. 5.

III.

During Dr. Walker’s residency at the University of Colorado Health Sciences Center, the chairman of the Department of Orthopedics placed him on probation for dishonesty and other unprofessional and unacceptable behavior. Board Ex. 29

IV.

The University of Colorado Health Science Center administration elected not to retain Dr. Walker as an orthopedic resident "...based upon insufficient knowledge base and lack of clinical surgical judgment." Board Ex. 73, p. 206.

V.

After he left the University of Colorado residency, Dr. Walker began another residency at the Carolinas Medical Center in North Carolina. On his South Dakota license application form, Dr. Walker did not explain his failure to complete that residency program. He stated only that it "didn't work out." Board Ex. 1, p. 5.

VI.

The Carolinas Medical Center administration terminated Dr. Walker's residency there for misconduct, specifically, biting a nurse. HT, p. 310.

VII.

Dr. Walker completed the application for a South Dakota medical license on July 11, 2006. That application form contains a section for information concerning an applicant's residency and post-graduate training. The general instructions for the application state: "If more space is needed than provided on the application, please attach additional sheets and reference the question being answered." Board Ex 1.

VIII.

The section on the license application form concerning residency and post-graduate training again instructs applicants, "If additional space is required, attach a separate sheet." Board Ex. 1, p. 5.

IX.

On the South Dakota license application form, in a section titled "Affidavit, Release, Immunity and Authorization," the applicant is asked to swear to several statements. The concluding statement in that section provides as follows:

I have carefully read the questions in the foregoing application and I have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my

answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such acts shall constitute cause for the denial, suspension or revocation of my license to practice medicine and surgery in the State of South Dakota, or clinical privileges, participation as a provider for any third party payer or other health care entity utilizing and relying upon this application or membership in any professional society.

Board Ex. 1, pp. 18-19. Dr. Walker swore to that statement on July 11, 2006.

X.

In his South Dakota application, Dr. Walker misrepresented the reasons for his failure to successfully complete his residency at the University of Colorado Health Sciences Center.

XI.

In his South Dakota application, Dr. Walker misrepresented the reasons for his failure to successfully complete his residency at the Carolinas Medical Center.

XII.

Dr. Walker appeared before the Board at its September 12, 2006 meeting.

XIII.

Testimony from Dr. Robert Ferrell, Board president, Donald Srstka, Board counsel, and Dr. Walker himself, indicates that during his appearance at the September 2006 Board meeting, Dr. Walker was not candid about his problems with his residencies in Colorado and North Carolina and the full and complete reasons for his failure to successfully complete those residencies.

XIV.

On January 12, 2006, a woman filed a complaint in the United States District Court for Idaho alleging that on March 2, 2005, Dr. Walker choked her at the hospital where he practiced.

XV.

When Dr. Walker met with the Board of September 2006, he did not advise the Board members of the civil suit filed against him eight months earlier.

XVI.

At its December 2006 meeting, the Board denied Dr. Walker's application.

XVII.

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

XVIII.

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

SDCL 36-4-11 requires any person wishing to practice medicine in this state to apply to the Board for a license. That statute also grants the Board the authority to determine the information to be required of applicants.

One of the requirements for a license to practice medicine is that the applicant give "satisfactory proof...of good moral character...." SDCL 36-4-11. The Board may refuse to grant a license for "...unprofessional, immoral, or dishonorable conduct on the part of the applicant." SDCL 36-4-28. Examples of unprofessional or dishonorable conduct are listed in SDCL 36-4-30. One of those examples is "...making false statements or misrepresentations in any application or information presented:" *Id.*, sub. (16).

Dr. Walker's history is cause for concern on two points: 1) his earlier problems with his residencies and allegations of misconduct; and 2) his more recent lack of candor and honesty regarding those earlier problems. The first point itself raises serious doubts about Dr. Walker's character and fitness. One must ask, how is it that "...an excellent physician...well trained and completely dedicated to his patients" (Post-Trial Brief of Dr. Grant M. Walker, p. 2), has found so much difficulty with both his superiors and his

subordinates throughout his career, and has been accused of such outrageous misconduct as biting a nurse and choking a nursing assistant?

The second point – Dr. Walker’s lack of candor and honesty regarding his residencies and allegations of misconduct – is of even greater concern, because it is both more recent and more certain. The Board members have witnessed some of it first hand: Dr. Walker’s vague, incomplete, and one-sided and misleading responses on his application and his evasive answers to questions at his appearance before the Board. Dr. Walker argues that his responses on the application were incomplete, but were intended to raise “red flags” for the Board and prompt further inquiry. That approach – essentially requiring of the Board that it take on the task of finding the truth – is contrary to the clear instructions for completing the application and contrary to Dr. Walker’s sworn statement that “I have carefully read the questions in the foregoing application and have answered them *completely, without reservations of any kind*, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct” (emphasis added). Board Ex. 1, p. 18. Dr. Walker’s responses concerning his problems with his first two residencies were certainly not complete and he definitely did reserve much of the facts of the actual explanations.

Dr. Walker’s counsel minimizes the problems the doctor created for himself with his application and appearance before the Board. “The Board also seems to allege that Dr. Walker should be denied a license simply because of the way he filled out the South Dakota application and the way he answered the Board’s questions. This goes beyond petty and elevates form over substance to such a degree that it borders on the ridiculous.” Post-Trial Brief of Dr. Grant M. Walker, p. 5. Sneers and sarcasm are no substitute for facts, analysis or comprehension. “The way he filled out the South Dakota application” was neither candid nor honest. “The way he answered the Board’s questions” was evasive.

In the Board’s first brief (p. 6), the Board cites the case of Gentile v. Department of Professional Regulation, Board of Medical Examiners, 448 So.2d 1087 (FlaApp 1 Dist. 1984) in which the Court stated the following:

Obviously, making false or misleading statements on his application is relevant to whether the appellant is of good morale character and can safely engage in the practice of medicine. The propellant perjured himself by intentionally falsifying his application or untruthfully responding to Board inquiries, this is a valid ground for denying him a license. *Indeed the Board might well have been remiss in performing its duties had applicant’s lack of candor on the application been ignored.” Id., 1090 (emphasis added).*

This Board, too, noted this applicant's lack of candor and acted appropriately.

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.

Dr. Walker's one-sided, incomplete and inadequate responses concerning his first two residencies constitute false statements or misrepresentations and are unprofessional or dishonorable conduct pursuant to SDCL 36-4-30.

III.

The evidence as a whole – the problems which led to Dr. Walker's failure to complete his first two residencies, the incomplete responses on the application which constitute misrepresentations, the evasiveness and lack of candor before the Board – casts doubt upon Dr. Walker's character and fitness.

IV.

Pursuant to SDCL 36-4-28, the Board may properly refuse to grant Dr. Walker a license based upon the proceeding examples of unprofessional and dishonorable conduct.

V.

As the applicant, Dr. Walker bears the burden of proving good moral character. Dr. Walker did not meet that burden by satisfactory proof.

VI.

The Board did not err in denying Dr. Walker's application for a license to practice medicine.

VII.

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

VIII.

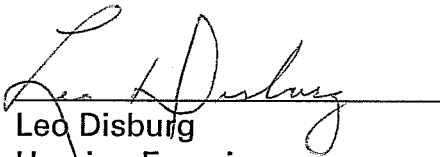
To the extent that any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

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

PROPOSED ORDER

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

Dated this 5th day of November, 2007.



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 GRANT E. WALKER, 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 November 5, 2007, and the parties were duly served thereon;


Whereas, the applicant Grant E. Walker, MD was afforded the opportunity to file exceptions and present briefs and oral argument to the members of the board, and has waived his right 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 members of the board 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 5, 2007 is approved and affirmed in their entirety.

Dated this 4 day of December, 2007

SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS


Robert L. Ferrell, MD, President

THE SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS


IN THE MATTER OF THE
APPLICATION FOR SOUTH DAKOTA
MEDICAL LICENSURE SUBMITTED
BY GRANT E. WALKER, 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 Grant Walker, MD, applicant for medical licensure appearing in person and through his attorneys David P. Bunde and James E. Moore of Woods, Fuller, Shultz & Smith, PC, 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 and upon all of the files and records 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. Grant E. Walker is denied.

Dated this 4 day of December, 2007

SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS


Robert L. Ferrell, MD, President