



COMMONWEALTH of VIRGINIA

Robert A. Nebiker
Director

Department of Health Professions
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712

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October 17, 2005

Joan M. Resk, D.O.
5303 Clearbrook Village Lane
Roanoke, Virginia 24014

UPS OVERNIGHT
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RE: License No.: 0102-050166

Dear Dr. Resk:

In accordance with Sections 54.1-105, 54.1-110, 54.1-2400, 2.2-4020 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), you are hereby given notice that the Virginia Board of Medicine ("Board") will convene a formal administrative hearing to receive and act upon evidence that you may have violated certain laws governing the practice of osteopathy and surgery in the Commonwealth of Virginia, as set forth in the attached Statement of Particulars.

The formal administrative hearing will be held in accordance with the provisions of Sections 54.1-2400(11) and 2.2-4024.F of the Code, before a panel of the Board, with a member of the Board presiding. You have been scheduled to appear before the Board on **November 17-19, 2005, in the offices of the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.** You will receive written confirmation of the specific date and time of your hearing. A map is enclosed for your convenience. Your presence is required thirty (30) minutes in advance of the appointed time. Please report to the fifth floor receptionist, who will direct you to a waiting room. Please be seated in the waiting room and you will be called when the Board is ready to meet with you.

You have the following rights, among others: to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. Should you wish to subpoena witnesses, requests for subpoenas must be made, in writing, in accordance with the enclosed Instructions for Requesting Subpoenas.

The Board has engaged the services of Suzanne Lagosky, D.O., and Robert Lynn Quarles, D.O., whose curriculum vitae and written reports are included in the material enclosed with this letter. Drs. Lagosky and Quarles will be present at the formal administrative hearing to serve as osteopathic experts, which will include providing their expert opinions regarding the treatment and services you provided.

Please carefully read the following paragraphs, which contain date-sensitive and important information regarding this proceeding.

COMMONWEALTH'S EVIDENCE

You have the right to the information that will be used by the Board in reaching a decision regarding this matter; therefore, I enclose the Commonwealth's evidence. Please note that these documents are enclosed only with the original notice sent by certified mail and must be claimed at the post office. Further, these materials are being provided this date to your counsel, Paul G. Beers, Esquire. If you have any questions or objections regarding the content of this package, you must contact Assistant Attorney General William C. Garrett at (804) 786-2071. Should you wish to file any objections to the Commonwealth's evidence, you must file your objections in writing, addressed to me at the Board office, no later than **October 27, 2005**. If you have not filed any objections by October 27, 2005, the exhibits will be distributed to the Board members for their consideration when discussing the allegations with you and when deliberating upon your case. If you do file objections, the Commonwealth has until **October 31, 2005** to file a response to the objections, in writing and addressed to me at the Board office. The chairperson of the proceeding will rule on the motion.

RESPONDENT'S EVIDENCE

Further, should you wish for the Board to consider additional information relative to this proceeding, you must submit fifteen (15) copies of any such documents to Reneé S. Dixon, Discipline Case Manager, Virginia Board of Medicine, 6603 West Broad Street, Fifth Floor, Richmond, Virginia 23230-1712, by **October 28, 2005**. You may not submit your documents by facsimile. The Commonwealth must file any objections to your submissions in writing, addressed to me at the Board office, no later than **November 1, 2005**. If no objections have been received by **November 1, 2005**, the evidence will be distributed to the Board members for their review, and will be considered by the Board as evidence when it deliberates upon your case. If the Commonwealth raises objections, you have until **November 3, 2005** to file your response to the objections, in writing and addressed to me at the Board office. The chairperson of the proceeding will rule on the motion.

OTHER PRE-HEARING MOTIONS

If you or Assistant Attorney General William C. Garrett wish to make any pre-hearing motions regarding matters other than the exhibits, including offers of settlement, each of you is directed to file motions, in writing, addressed to me at the Board office by **October 27, 2005**. Responses to motions filed must be submitted by **October 31, 2005**. The chairperson of the proceeding will rule on the motion.

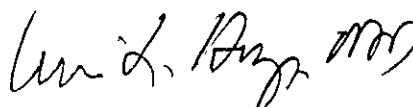
REQUEST FOR A CONTINUANCE

Absent exigent circumstances, such as personal or family illness, a request for a continuance after **October 31, 2005** will not be considered. A motion for a continuance due to the unavailability of counsel will not be considered unless received by **October 31, 2005**.

Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of osteopathy and other healing arts in Virginia cited in this notice can be found at <http://leg1.state.va.us>. To access this information, please click on *Code of Virginia* for laws and *Virginia Administrative Code* for regulations.

Please indicate, by letter to this office, your intention to be present.

Sincerely,



William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

WLH:fd1017N3.fahnot.resk.05
LLP/ReskNFH.doc

Enclosures:

Commonwealth's Exhibits 1 - 11
Statement of Particulars
Attachment I
Instructions for Requesting Subpoenas
Map

cc: Thomas B. Leecost, D.P.M., President, Virginia Board of Medicine
Robert A. Nebiker, Director, Department of Health Professions
Reneé S. Dixon, Discipline Case Manager
Lorraine McGehee, Deputy Director, Administrative Proceedings Division
William C. Garrett, Assistant Attorney General [with enclosures]
Lori L. Pound, Adjudication Specialist
Suzanne Lagosky, D.O. [with enclosures]
Robert Lynn Quarles, D.O. [with enclosures]
Paul G. Beers, Esquire [with enclosures] BY UPS (1Z2360872210009259)
Patricia Fisher, Investigator [83685, 83982, 84010, 84217]
J. Christy Southall, J.D., Senior Administrative Investigator [90646]

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: JOAN M. RESK, D.O.
License No.: 0102-050166

STATEMENT OF PARTICULARS

The Virginia Board of Medicine ("Board") alleges that:

1. Dr. Resk may have violated Section 54.1-2915.A (13) and (16) [*formerly Sections 54.1-2914.A (8) and (11)*] of the Code of Virginia (1950), as amended ("Code"), in her care and treatment of Patient A, a 71 year-old male, who first presented to her on or about June 29, 2001. Specifically:

a. On or about July 30, 2001, Dr. Resk diagnosed Patient A with neuropathy of the right hand, without performing a sensory examination or documenting other findings to support such a diagnosis.

b. On or about August 6, 2001, Dr. Resk diagnosed Patient A with a zinc deficiency, despite laboratory results that indicated a zinc level within the normal range.

2. Dr. Resk may have violated Sections 54.1-2915.A (1) and (16) [*formerly Section 54.1-2915.A (1) and Section 54.1-2914.A (11)*] of the Code with respect to her billing practices. Specifically, on at least seven (7) occasions from on or about July 30, 2001, until on or about September 5, 2001, Dr. Resk deviated from Current Procedural Terminology ("CPT") standards by billing Patient A for the total number of Osteopathic Manipulative Treatments ("OMTs") performed, instead of based on the number of body regions involved.

3. Dr. Resk may have violated Sections 54.1-2915.A (1) and (16) [*formerly Section 54.1-2915.A (1) and Section 54.1-2914.A (11)*] of the Code with respect to her billing practices.

Specifically:

a. On or about October 19, 2001, Patient B presented to Dr. Resk with complaints of back and leg pain. Dr. Resk billed Patient B for an initial high complexity visit (CPT Code 99205); however, Dr. Resk's progress notes support only an initial detailed visit (CPT Code 99203).

b. On or about October 19, 2001, Dr. Resk ordered cervical x-rays for Patient B, despite a lack of complaints of neck pain from the patient.

c. On or about October 23, 2001, Dr. Resk deviated from CPT standards by billing Patient B for the total number of OMTs performed, instead of based on the number of body regions involved.

4. Dr. Resk may have violated Sections 54.1-2915.A (1) and (16) [*formerly Section 54.1-2915.A (1) and Section 54.1-2914.A (11)*] of the Code with respect to her billing practices. Specifically, on or about April 2, 2001, Dr. Resk billed Patient C separately for the review of radiological films taken elsewhere, when this service should have been included in the fee for an initial detailed visit (CPT Code 99203).

5. Dr. Resk may have violated Sections 54.1-2915.A (1) and (16) [*formerly Section 54.1-2915.A (1) and Section 54.1-2914.A (11)*] of the Code with respect to her billing practices.

Specifically:

a. On or about November 22, 2000, Patient D presented to Dr. Resk with complaints of knee pain. Dr. Resk billed Patient D for an initial moderate complexity

visit (CPT Code 99204); however, her progress notes support only an initial detailed visit (CPT Code 99203).

b. On or about November 22, 2000, Dr. Resk deviated from CPT standards by billing Patient D for the total number of OMTs performed, instead of based on the number of body regions involved.

6. Dr. Resk may have violated Sections 54.1-2915.A (3) and (13) [*formerly Section 54.1-2915.A (4) and Section 54.1-2914.A (8)*] of the Code in her care and treatment of Patient E, a 49 year-old female. Specifically, on or about June 5, 2002, Dr. Resk removed a lesion from Patient E's right cheek and subsequently failed to notify her of the pathological results, indicating basal cell carcinoma, with margins involved.

7. Dr. Resk may have violated Sections 54.1-2915.A (1) and (16) [*formerly Section 54.1-2915.A (1) and Section 54.1-2914.A (11)*] of the Code with respect to her billing practices. Specifically:

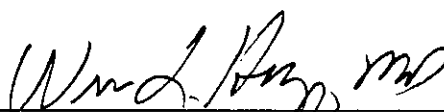
a. On or about February 15, 2002, Patient E presented to Dr. Resk for evaluation of a lesion on her right cheek. Dr. Resk billed Patient E for an initial detailed visit (CPT Code 99203); however, Dr. Resk's progress notes support only an initial expanded problem visit (CPT Code 99202).

b. On or about June 5, 2002, Dr. Resk removed the lesion from Patient E's right cheek and sent it for pathological analysis. Dr. Resk incorrectly informed Patient E that the cost of the pathology report would depend on whether the lesion was malignant or benign.

c. The pathological laboratory charged Dr. Resk for Level IV Surgical Pathology (CPT Code 88305) of the excised lesion. A Statement of Account provided to the patient indicates Dr. Resk charged her for a Level V pathology report (CPT Code 88307).

Please see Attachment I for the identity of the patients listed above.

FOR THE BOARD



William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

DATE: 10/17/05

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

**IN RE: JOAN M. RESK, D.O.
 License No.: 0102-050166**

ORDER

In accordance with the provisions of Sections 54.1-105, 54.1-110, 2.2-4020 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was convened before the Virginia Board of Medicine ("Board"), on November 18, 2005, in Richmond, Virginia, to receive and act upon evidence that Joan M. Resk, D.O., may have violated certain laws governing the practice of osteopathic medicine in the Commonwealth of Virginia. These matters are set forth in the Board's Notice of Hearing and Statement of Particulars dated October 17, 2005.

Pursuant to Sections 2.2-4024.F and 54.1-2400(11) of the Code, the hearing was held before a panel of the Board with a member of the Board presiding. Howard M. Casway, Senior Assistant Attorney General, was present as legal counsel for the Board. The proceedings were recorded by a certified court reporter. The case was prosecuted by William C. Garrett, Assistant Attorney General, and Lori L. Pound, Adjudication Specialist, for the Department of Health Professions. Dr. Resk appeared at the formal administrative hearing and was represented by legal counsel, Paul G. Beers, Esquire.

FINDINGS OF FACT

Now, having properly considered the evidence and testimony presented, the Board makes the following findings of fact by clear and convincing evidence:

1. Joan M. Resk, D.O., was issued license number 0102-050166 by the Board to practice osteopathy and surgery in the Commonwealth of Virginia on February 9, 1998. Said license is currently active and will expire on May 31, 2006, unless renewed or restricted.

2. Dr. Resk first treated Patient A using Osteopathic Manipulative Treatments ("OMTs") on or about July 30, 2001, and continued until on or about September 5, 2001. Dr. Resk deviated from Current Procedural Terminology ("CPT") standards by billing Patient A for the total number of OMTs performed, instead of based on the number of body regions involved.

3. Dr. Resk failed to bill appropriately Patient B for services rendered. Specifically, on or about October 23, 2001, Dr. Resk deviated from CPT standards by billing Patient B for the total number of OMTs performed, instead of based on the number of body regions involved.

4. On or about April 2, 2001, Dr. Resk billed Patient C separately for the review of what she admitted to be non-diagnostic radiological films taken elsewhere, and for improperly utilizing CPT Code 76140. This service should have been included in the fee for an initial detailed visit (CPT Code 99203), with a modifier for prolonged face-to-face contact.

5. On or about June 5, 2002, Dr. Resk removed a lesion from the right cheek of Patient E and failed to notify her of the pathological results indicating a requirement for further surgery because of basal cell carcinoma, with margins involved.

6. Dr. Resk failed to bill appropriately Patient E for services rendered. Specifically, the pathological laboratory charged Dr. Resk for Surgical Pathology (CPT Code 88305) of the excised lesion. A Statement of Account provided to the patient indicates Dr.

Resk charged her for the examination and interpretation of the pathologic specimen (CPT Code 88307).

7. Dr. Resk testified that she has an office policy in place whereby she does not accept insurance and no longer utilizes CPT codes, yet offers to provide patients with a "completed insurance form for [their] ultimate reimbursement from [their] insurance company after [their] bill is paid," which is included in copies of an office policy statement provided to all patients, as well as on the Explanation of Charges form signed by patients.

CONCLUSIONS OF LAW

1. Finding of Fact 2 constitutes a violation of Section 54.1-2915.A (3), as further defined in Section 54.1-2914.A (11) of the Code, as codified prior to July 1, 2005.
2. Finding of Fact 3 constitutes a violation of Section 54.1-2915.A (3), as further defined in Section 54.1-2914.A (11) of the Code, as codified prior to July 1, 2005.
3. Finding of Fact 4 constitutes a violation of Section 54.1-2915.A (3), as further defined in Section 54.1-2914.A (11) of the Code, as codified prior to July 1, 2005.
4. Finding of Fact 5 constitutes a violation of Section 54.1-2915.A (3), as further defined in Section 54.1-2914.A (8) of the Code, as codified prior to July 1, 2005.
5. Finding of Fact 6 constitutes a violation of Section 54.1-2915.A (3), as further defined in Section 54.1-2914.A (11) of the Code, as codified prior to July 1, 2005.

ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Joan M. Resk, D.O., be, and hereby is, issued a REPRIMAND.

Further, it is ORDERED that a MONETARY PENALTY of five thousand dollars (\$5,000.00) [one thousand dollars (\$1,000.00) per violation], be imposed upon Joan M. Resk, D.O. This monetary penalty shall be paid within forty-five (45) days of entry of this Order.

Further, it is ORDERED that within ninety (90) days of entry of this Order, if Dr. Resk continues to provide a completed insurance form, as per her office policy, or an Explanation of Charges form utilizing CPT codes or International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9") codes, she shall provide proof of having completed a course in medical coding. The Executive Director of the Board shall approve such course in advance of registration. Within twenty-one (21) days of completion of this course, Dr. Resk shall submit a certificate, or other evidence satisfactory to the Board, of completion to the Board. Any continuing education ("CE") hours obtained for the requirement of license renewal shall not be used towards compliance with this term.

Upon payment of the monetary penalty and submission of evidence of successful completion of the coding course, the Executive Director of the Board is authorized to close this matter without further proceedings.


Violation of this Order shall constitute grounds for the revocation of the license of Joan M. Resk, D.O. In the event Dr. Resk violates this Order, an administrative proceeding may be convened to determine whether her license should be revoked.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Dr. Resk has thirty (30) days from the date of service (the date she actually received this decision or the date it was mailed to her, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with William L. Harp, M.D., Executive Director, Virginia Board of

Medicine, 6603 West Broad Street, Fifth Floor, Richmond, Virginia 23230-1712. In the event that this decision is served by mail, three (3) days are added to that period.

Pursuant to Section 54.1-2400.2(F) of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

FOR THE BOARD



William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 11/30/05



COMMONWEALTH of VIRGINIA

Robert A. Nebiker
Director

Department of Health Professions
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712

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January 11, 2006

Paul G. Beers, Esquire
Glenn, Feldmann, Darby, Goodlatte
210 1st Street, S. W., Suite 200
Roanoke, Virginia 24001

BY FACSIMILE
(540) 224-8050

RE: Joan M. Resk, D.O. / License No.: 0102-050166
Stay of Board Order

Dear Mr. Beers:

Pursuant to Va. Code §54.1-2400(13) the members of the Virginia Board of Medicine who served on the formal hearing panel regarding your client, Dr. Resk, on November 18, 2005, met by telephone conference call on January 10, 2006. The purpose of this meeting was to consider your request for a stay of imposition of the Board's Order entered November 30, 2005 pending Dr. Resk's appeal to the Circuit Court of Roanoke County, as permitted by Va. Code §2.2-4028.

All members of the panel participated in this call: Thomas Leecost, D.P.M., Chair; Patrick Clougherty, M.D.; Suzanne Everhart, D.O.; Valerie Hoffman, D.C.; and Christine Ober Bridge. Emily Wingfield, Assistant Attorney General and Board Counsel; William L. Harp, M.D., Executive Director for the Board; and Karen W. Perrine, Deputy Executive Director, Discipline were present during the call. Also on the call were Wm. Clay Garrett, Assistant Attorney General and Lori L. Pound, Adjudication Specialist, who had presented the case on behalf of the Commonwealth at the formal hearing in November.

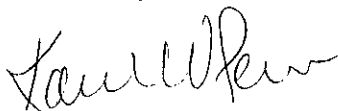
The Board received oral argument regarding your request to stay imposition of the Board's Order pending the Roanoke County Circuit Court's final ruling on Dr. Resk's appeal.

Letter - Mr. Beers
RE: Joan M. Resk, D.O.
January 11, 2006
Page 2

After careful consideration, the Board modified its Order of November 30, 2005 as follows: payment of the monetary penalty imposed in the amount of \$5000.00 is STAYED pending the ruling of the Roanoke County Circuit Court regarding Dr. Resk's appeal. Should the court deny Dr. Resk's appeal and uphold the Board's Order, the stay shall be lifted and the monetary penalty shall be paid within 15 days of such decision. The remaining terms of the Order are still in full force and effect.

Pursuant to Va. Code §54.1-2400.2(F), a signed copy of this letter shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Sincerely,


for William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

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cc: Joan M. Resk, D.O.
Emily Wingfield, Assistant Attorney General
Reneé S. Dixon, Discipline Case Manager, Board of Medicine
Wm. Clay Garrett, Assistant Attorney General
Lori L. Pound, Adjudication Specialist
Ann Tiller, Compliance Manager