



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Stephen L. Smith, MD  
Docket No.: 05-01-A-1038MD  
Document: Final Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

The identity of the complainant if the person is a consumer, health care provider, or employee, pursuant to RCW 43.70.075 (Identity of Whistleblower Protected) and/or the identity of a patient, pursuant to RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

Information regarding an individual's health care, including where they received health care services, their medical condition, care provided, etc., pursuant to RCW 42.17.312 (Public Records Disclosure) and RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center  
P.O. Box 47865  
Olympia, WA 98504-7865  
Phone: (360) 236-4700  
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice ) as a Physician and Surgeon of: )	Docket No. 05-01-A-1038MD
STEPHEN L. SMITH, M.D., ) License No. MD00019257, )	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER
Respondent. ) _____ )	

**APPEARANCES:**

Respondent, Stephen L. Smith, M.D., by  
Miller, Mertens & Spanner, P.L.L.C., per  
Christopher J. Mertens, Attorney at Law

The Department of Health Physician Program, by  
The Office of the Attorney General, per  
Stephen Carpenter, Assistant Attorney General

**PRESIDING OFFICER:** Lin D. O'Dell, Health Law Judge

**COMMISSION PANEL:** Gilbert Rodriguez, M.D., Panel Chair  
Sunanda Uberoi, M.D.  
Judy Tobin, Public Member

The Medical Quality Assurance Commission (the Commission) convened a hearing on January 13–14, 2006 in Renton, Washington. The Department of Health issued a Statement of Charges alleging the Respondent had violated the Uniform Disciplinary Act. Charges Confirmed.

**ISSUES**

Did the Respondent's conduct regarding the placement of a Mediport to infuse hydrogen peroxide into Patient One constitute unprofessional conduct under RCW 18.130.180(4)?

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

If the Department proved unprofessional conduct, then what are the appropriate sanctions under RCW 18.130.160?

### **PROCEDURAL HISTORY**

On May 6, 2005, a Statement of Charges was served upon the Respondent alleging unprofessional conduct in violation of RCW 18.130.180(4). On June 20, 2005, the Respondent filed his answer denying the allegations and pleading an affirmative defense under CR 12(b)(6).

On June 22, 2005, the Adjudicative Service Unit filed a Scheduling Order/Notice of Hearing setting a prehearing conference for October 17, 2005 and a hearing for November 18-19, 2005. The Respondent notified the Adjudicative Service Unit of a scheduling conflict and on July 1, 2005 an Amended Scheduling Order was served.

On December 20, 2005, the telephonic prehearing was held. At the prehearing conference the Department stated an Amended Statement of Charges would be filed deleting Paragraph 1.9.6 and 1.10 of the Statement of Charges. The Respondent did not object. The Respondent was given until January 4, 2006 to file an objection to the deletions.

On January 3, 2006, the Department filed an Amended Statement of Charges as outlined above. On January 4, 2006, the Respondent filed a motion to dismiss under CR 12(b)(6).

### **MOTIONS**

1. On January 4, 2006, the Respondent filed a Motion to Dismiss for failure to state a claim under CR 12(b)(6). The Presiding Officer shall assume the facts

alleged by the Department to be true and rule whether there are any set of facts in the Statement of Charges where relief can be granted. The Respondent states the basis of the Department's allegations is the use of hydrogen peroxide therapy on Patient One. He states since there was no harm to the patient from the therapy, the charges should be dismissed. In addition he argues the use of the Mediport under RCW 7.70.040 should be measured under the responsible prudent physician standard and since the Mediport was not the proximate cause of any injury to the patient, the charges should be dismissed.

The action before the Commission is a disciplinary hearing under chapter 18.130 RCW and not a law suit for professional malpractice. The charges contained in the Amended Statement of Charges do not just address the administration of hydrogen peroxide, rather, whether it was appropriate to order a Mediport to administer hydrogen peroxide and whether the Respondent made appropriate diagnosis and administered appropriate tests before ordering hydrogen peroxide therapy. The Respondent's motion was denied.

2. The Department moved to permit it's expert witness to remain in the hearing room during the hearing. ER 703 states in part:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.

The Respondent showed no actual prejudice to his case. The Department's motion was granted and all expert witnesses were allowed to remain in the hearing room.

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3. The Respondent filed an objection to *Prehearing Order No. 2: Report on Proceeding and Prehearing Orders* on January 9, 2006. The prehearing conference was held on December 20, 2005. At that time the Department indicated it was deleting two paragraphs contained in the Statement of Charges. The Respondent was given until January 4, 2006 to file an objection to the Amended Statement of Charges and/or file an Amended Answer. The Respondent filed a motion to dismiss but did not request additional time to file an Amended Answer until three days before the hearing. The Respondent's motion was untimely and the Respondent was not prejudiced by the deletion of charges. The Respondent's motion was denied.

#### **SUMMARY OF EVIDENCE**

The Department presented the testimony of the Respondent, three lay witnesses and one expert witness. The Respondent testified on his behalf and presented the testimony of two lay witnesses and three expert witnesses. There was one rebuttal witness. There were fifteen (15) exhibits presented which had all been previously admitted at the prehearing conference as set forth below:

- Exhibit 1: Patient's medical records from [REDACTED]
- Exhibit 2: Patient's medical records from [REDACTED]
- Exhibit 3: Patient's medical records from [REDACTED]
- Exhibit 4: Patient's medical records from [REDACTED]
- Exhibit 5: Patient's medical records from [REDACTED] Medical Center.
- Exhibit 6: Patient's medical records from [REDACTED]
- Exhibit 7: Patient's medical records from the Respondent.

- Exhibit 8 – 15: Not admitted.
- Exhibit 16: The Respondent's statement, dated April 8, 2004, pp 285-287.
- Exhibit 17: The Respondent's statement, dated April 8, 2004, pp 371-373.
- Exhibit 18: The Respondent's statement, dated Sept. 10, 2004.
- Exhibit 19: The Respondent's statement, dated Dec. 20, 2004.
- Exhibit 20: The Respondent's statement, undated.
- Exhibit 21: Not admitted.
- Exhibit 22: Dr. Steven Bratman's Curriculum Vitae.
- Exhibit 23 - 27: Not admitted.
- Exhibit 28: Dr. Penney Stringer's Curriculum Vitae.
- Exhibit 29: Not admitted.
- Exhibit 30: Patient's medical records from [REDACTED] Center, PLLC.

The following exhibits were admitted at the hearing by stipulation of the parties:

- Exhibit 31: Informed Consent signed by [REDACTED] dated February 9, 2004.
- Exhibit 32: Surgical Pathology Report dated December [REDACTED] 2004.
- Exhibit 33: Dr. Garry Gordon's Curriculum Vitae.

The hearing was recorded by Jennifer D. Lewis, Certified Court Reporter and Robert H. Lewis, Certified Court Reporter.

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

## I. FINDINGS OF FACT

1.1 Stephen L. Smith, M.D., (the Respondent), was issued a license to practice as a physician and surgeon by the State of Washington in June 1981.

1.2 The Respondent graduated from medical school in 1980. He worked in urgent care for one year before opening his own urgent care center in 1982. The Respondent had no formal residency period. He has received additional medical training, mostly in alternative medicine, by attending seminars. The Respondent practices allopathic medicine as well as alternative medicine.

1.3 Patient One was [REDACTED] years old when she first sought treatment from the Respondent on January [REDACTED] 2003. She first experienced tremors and lower extremity weakness. Later she complained of abdominal pain, nausea, vomiting, and fatigue. Patient One had seen multiple physicians before she consulted with the Respondent.

1.4 On January [REDACTED], 2003, the Respondent performed a history and physical on Patient One. During the initial physical examination, the Respondent noted Patient One's liver was enlarged and her liver, gall bladder, and skin were extremely sensitive to palpation. An ultrasound of the liver showed enlargement. The Respondent ordered no additional tests nor did he monitor Patient One's liver function tests. An enlarged liver is unusual in a teenager and such a finding would warrant additional workup.

1.5 The Respondent diagnosed mercury toxicity based on a previous hair analysis and urine chelated challenge showing heavy metal toxicity. The Respondent believed rapid detoxification of mercury and other metals by a previous physician may

have caused organ inflammation. He also diagnosed chronic viral infection and possible Lyme disease.

1.6 The Respondent prescribed multiple traditional and non-traditional medications in response to the diagnoses of mercury toxicity. He recorded some relief but in November 2003 he noted an exacerbation of symptoms with weight loss and continued skin, muscle, and abdominal tenderness.

1.7 On November [REDACTED] 2003, the Respondent administered .03% hydrogen peroxide by intravenous administration to Patient One. The hydrogen peroxide was infused as oxidative therapy for a possible viral infection. The Respondent's nurse was unable to find peripheral intravenous access after one infusion.

1.8 On February [REDACTED] 2004, the Respondent referred Patient One to Dr. [REDACTED] [REDACTED] for placement of a right sub-clavian vein Mediport for administration of the hydrogen peroxide. Dr. [REDACTED] believed the central line was because intravenous access was needed for possible Lyme disease treatment and a history of multiple episodes of severe dehydration. Dr. [REDACTED] was not aware hydrogen peroxide was to be infused via the MediPort.

1.9 The more common risks of a central line such as a Mediport are puncture of a vein or lungs during placement, thrombosis, infection, pain and scarring. The Mediport was placed under general anesthetic which also poses risks to the patient. Alternative venous access was not explored. Parental consent to placement of a central line does not justify its placement.

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1.10 The Mediport was used for infusions of hydrogen peroxide on February █ 2004, February █ 2004 and February █ 2004. A registered nurse in the Respondent's office infused the liquid and flushed the port. The patient had no abatement of symptoms from these infusions.

1.11 On March █ 2004, the patient went to the emergency room complaining of pain and numbness in her right upper extremity. A thrombosis was diagnosed and on March █ 2004 the Mediport was removed.

1.12 The Respondent last saw Patient One on February █ 2004. Patient One was referred to another physician and later had a cholecystectomy. The physician noted elevated results on liver function tests and after a liver biopsy Patient One was diagnosed with auto-immune hepatitis.

1.13 The Respondent noted in the chart several working diagnosis including mold contamination, organ inflammation due to rapid detoxification, mercury toxicity from tuna fish ingestion, probable Lyme disease, and viral inflammation in the abdomen. The Respondent formulated no specific diagnosis with a specific plan for treatment.

1.14 The Respondent's care of Patient One presents a confusing clinical picture. His evaluation and assessment is unclear and does not result in convincing evidence of diagnosis warranting a significant medical procedure such as a Mediport without further diagnostic workup. The Respondent's treatment of Patient One demonstrates a fundamental lack of clinical-medical knowledge essential to formulate a valid diagnosis.

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1.15 The Respondent's use of alternative medicine does not in itself constitute unprofessional conduct; however, the Respondent created a clinical situation that allowed him to use his alternative medicine without taking additional tests or referring Patient One to a hospital setting for intensive testing.

## **II. CONCLUSIONS OF LAW**

2.1 The Commission has jurisdiction over the Respondent's license and over the subject matter of this proceeding. RCW 18.71; RCW 18.130.

2.2 The Commission used its experience, competency and specialized knowledge to evaluate the evidence presented in this case. RCW 34.05.461.

2.3 The Washington Supreme Court held that the standard of proof in disciplinary proceedings against physicians before the Washington State Medical Quality Assurance Commission is proof by clear and convincing evidence. *Nguyen v. Department of Health*, 144 Wn.2d 516, 534, cert. denied, 535 U.S. 904 (2002).

2.4 Based upon Findings of Fact 1.2 through 1.15 above, the Commission concludes that the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(4). This violation constitutes unprofessional conduct and is grounds for disciplinary action.

## **III. ORDER**

Based on the foregoing, the Commission hereby issues in this case the following ORDERS:

3.1 The Respondent shall take the Physician Assessment and Clinical Education Program (PACE) course and evaluation within 180 days from the effective

date of this order. The effective date of this Order is the date that the Adjudicative Service Unit places the signed order into the U.S. mail.

3.2 The Respondent shall have a copy of the evaluation sent direct to:

Medical Quality Assurance Commission  
PO Box 47866  
Olympia, WA 98504-7866

3.3 Within sixty (60) days of completion of the PACE course, the Respondent shall appear before the Commission or Reviewing Commission Member, with a plan to fulfill the recommendations set forth by PACE. The Commission may at its discretion add additional requirements.

3.4 In the event the Respondent does not take the PACE course within 180 days of this Order as set forth above or appear before the Commission within 60 days of completion of the PACE course, his license shall then be **SUSPENDED** until the requirements of this Order are fulfilled in full.

3.5 The Respondent shall pay a fine to the Commission in the amount of Five Thousand Dollars (\$5000.00) which must be received by the Commission within six months from the date of entry of this order. The fine shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Medical Commission, P.O. Box 1099, Olympia, WA 98507-1099.

3.6 The Respondent shall assume all costs of complying with this order.

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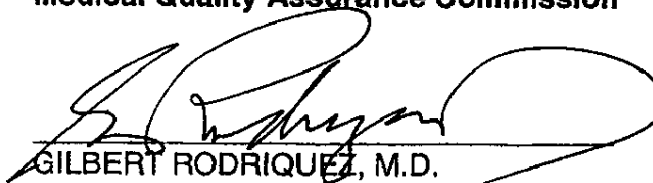
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

#### IV. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension of the credential after a show cause hearing. If the Respondent fails to comply with the terms and conditions of this order, the Commission may hold a hearing to require the Respondent to show cause why the credential should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, the Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

Dated this 21<sup>st</sup> day of February, 2006.

**Medical Quality Assurance Commission**

  
GILBERT RODRIQUEZ, M.D.  
Panel Chair

**FOR INTERNAL USE ONLY:** (Internal tracking numbers)  
Program No. 2004-03-0036

#### CLERK'S SUMMARY

Charge	Action
RCW 18.130.180(4)	Violated

#### VI. NOTICE TO PARTIES

This Order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

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requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a petition for reconsideration. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

And a copy must be sent to:

Medical Quality Assurance Commission  
P.O. Box 47866  
Olympia, WA 98504-7866

The petition shall state the specific grounds upon which relief is requested. The petition for reconsideration shall not stay the effectiveness of this Final Order. The petition is deemed to have been denied within 20 days of the date of its filing, the Adjudicative Service Unit has not disposed of acted on the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed within 30 days after you have been served with this Final Order. RCW 34.05.542. The procedures are identified in Chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon resolution of that petition. RCW 34.05.470(3).

The order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States Mail. RCW 34.05.010(19).

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ATTORNEY GENERAL  
OF WASHINGTON

JUL 24 2006

GOVERNMENT COMPLIANCE  
& ENFORCEMENT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF BENTON

IN THE MATTER OF:

STEPHEN L. SMITH, MD,

Petitioner.

NO. 06-2-00593-4

ORDER GRANTING  
MOTION FOR A STAY

THIS MATTER, having come before this Court on Petitioner's Motion for a Stay, and the Court, having heard argument from Christopher J. Mertens, counsel from Petitioner and Stephen Carpenter, Assistant Attorney General for the Department of Health, and after reviewing the documents on file herein, finds that the motion should be granted.

IT IS ORDERED, ADJUDGED AND DECREED that the Final Order issued by the Medical Quality Assurance Commission is hereby stayed pending the outcome of this appeal.

SIGNED this 14th day of April 2006.

  
JUDGE

Presented by:

MILLER, MERTENS, SPANNER & COMFORT, PLLC

By:

  
CHRISTOPHER J. MERTENS, WSBA #13591  
Attorneys for Petitioner

[JCM147/APPEAL/MTN STAY ORDER 060414]

ORDER GRANTING MOTION FOR A STAY - Page 1

MILLER, MERTENS, SPANNER & COMFORT, P.L.L.C.  
1020 North Center Parkway, Suite D  
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(309) 374-4200

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MILLER

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