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**BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON**

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IN THE MATTER OF )  
 )  
RALPH LEWIS READ, MD ) FINAL ORDER  
License No. MD 22066 )  
 )

**HISTORY OF THE CASE**

On January 8, 2009, the Oregon Medical Board (Board) issued a Complaint and Notice of Proposed Disciplinary Action to Ralph Lewis Read, MD (Licensee). On January 16, 2009, Licensee requested a hearing. On February 2, 2009, the Board referred the hearing request to the Office of Administrative Hearings (OAH).

On February 3, 2009, Senior Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside over the matter. On March 25, 2009, a pre-hearing telephone conference was held. ALJ Gutman presided. Licensee appeared and represented himself. Senior Assistant Attorney General (AAG) Warren Foote represented the Board. On March 25, 2009, ALJ Gutman issued a Pre-Hearing Order that set forth the issues for hearing, the schedule for exchange of proposed exhibits and witness lists, and the date for the contested case hearing.

On April 20, 2009, Licensee filed a Document Request, a Request to Allow Maryellen Read to be Present at Hearing, a Motion to Deny Costs and Civil Penalties, and a Motion to Exclude Exhibit A7. On April 23, 2009, the Board filed its Reply with attachments.

On April 24, 2009, Licensee filed a Request for Document Production, a Request for the Identity of the Unknown Board Member who Recommended that Licensee Undergo an Evaluation, a Request that a Subpoena be issued to John Doe/Jane Doe, a Motion for the Hearing to be Public, and a Motion to Dismiss Allegations 3.4, 3.5, and 3.6. On April 28, 2009, the Board filed its Reply. On April 28, 2009, ALJ Gutman issued a Ruling on the First Set of Requests and Motions Filed by Licensee. On April 29, 2009, ALJ Gutman issued a Ruling on the Second Set of Requests and Motions Filed by Licensee.

On May 4, 2009, Licensee filed a Document Request From Medical Board regarding the communications between the Board and the Center for Personalized Education for Physicians (Document Request No. 1), and a Document Request From Medical Board regarding matters pertaining to Licensee's arrest (Document Request No. 2). On May 13, 2009, the Board filed its Reply. On May 19, 2009, ALJ Gutman issued a Ruling on the Third Set of Requests Filed by Licensee.

On May 28, 2009, an in-person hearing was held at the Board's offices in Portland, Oregon. ALJ Gutman presided. Licensee represented himself. AAG Foote represented the Board. Licensee; Dr. Phil Parshley, the Board's Medical Director; Michael Bielaski, the Board's

1 Administrative Specialist; and Officers Lisa Fort and Timmy Evans, of the Portland Police  
2 Department, all provided testimony. The record closed on May 28, 2009.

3  
4 **ISSUES**

- 5  
6 1. Whether Licensee engaged in unprofessional or dishonorable conduct, pursuant to  
7 ORS 677.190(1)(a).  
8  
9 2. Whether Licensee willfully violated a Board order, pursuant to ORS 677.190(18).  
10  
11 3. Whether Licensee's license shall be revoked, pursuant to ORS 677.205.  
12  
13 4. Whether civil penalties in the amount of \$10,000 and the costs of the disciplinary  
14 proceedings shall be assessed against Licensee, pursuant to ORS 677.205.

15  
16 **EVIDENTIARY RULING<sup>1</sup>**

17  
18 The Board's Exhibits A1 through A10 were admitted into evidence without objection.  
19 Licensee's Exhibits R1 through R7, R9 through R16, and R18 through R29 were admitted into  
20 evidence without objection. The Board objected to Licensee's Exhibits R8 and R17 on the basis  
21 that the documents contained argumentative handwritten notations by Licensee. The Board  
22 located unmarked copies of Exhibits R8 and R17 for consideration. Exhibits R8 and R17, as  
23 "marked," were excluded from evidence. Exhibits R8 and R17, as "unmarked," were admitted  
24 into evidence.  
25

26 **PRELIMINARY MATTERS**

27  
28 On May 26, 2009, Licensee filed a Request for Accommodations at Hearing. Licensee  
29 requested that short recesses be taken to address urinary frequency. Licensee also requested that  
30 he be allowed to present his testimony and final argument in writing.  
31

32 On May 28, 2009, Licensee's request for short recesses was granted. Licensee's request  
33 to submit direct testimony in writing was granted as to Licensee's direct examination of himself,  
34 but denied as to the Board's direct and cross-examination of Licensee. Licensee's request to  
35 submit final argument in writing was granted.  
36

37 Licensee subsequently submitted what he labeled "Response to Complaint of Jan 2009"  
38 as both his direct testimony and his closing argument.  
39

40 **MOTION TO AMEND**

41  
42 During the hearing, the Board made a Motion to Amend its Complaint by interlineation.  
43 Licensee had no objection to the request.  
44

45 Oregon Administrative Rule (OAR) 137-003-0530 is titled "Late Filing and Amendment  
46

47 <sup>1</sup> The Board's pleadings, P1 through P4, were also admitted into the record.  
48

1 of Documents” and provides, in pertinent part:  
2

3 (4) Notwithstanding any other provision of these rules, at any time  
4 after the issuance of the notice required by ORS 183.415, an  
5 agency may issue an amended notice. If an agency issues an  
6 amended notice, any party may obtain, upon request, a continuance  
7 determined to be reasonably necessary to enable the party to file an  
8 amended response, if required by agency rules, or to respond to  
9 any new material contained in the amended notice. If the agency  
10 files an amended notice after the evidentiary record has been  
11 closed, the agency shall inform the administrative law judge, who  
12 will reopen the record and conduct any further hearing or listen to  
13 additional argument required by new matters in the amended  
14 notice. If the administrative law judge has issued a proposed  
15 order, the administrative law judge shall prepare an amended  
16 proposed order after completion of any further hearing.  
17

18 (5) Unless otherwise provided by law, when a party or agency files  
19 any document for the contested case proceeding, the agency or the  
20 administrative law judge may permit the party or agency to file an  
21 amended document if the agency or administrative law judge  
22 determines that permitting the amendment will not unduly delay  
23 the proceeding or unfairly prejudice the parties or the agency.  
24

25 The Board requested that the word “cruelty” in allegation 3.1 be stricken and replaced  
26 with “abuse in the second degree.” The Board also requested that the date of “August 25, 2007”  
27 in allegation 3.1 be stricken and replaced with the date of “August 25, 2006.” Because Licensee  
28 did not object to the request, the Motion was GRANTED.  
29

### 30 CREDIBILITY DETERMINATION 31

32 A witness testifying under oath or affirmation is presumed to be truthful unless it can be  
33 demonstrated otherwise. ORS 44.370 provides, in relevant part:  
34

35 A witness is presumed to speak the truth. This presumption,  
36 however, may be overcome by the manner in which the witness  
37 testified, by the character of the testimony of the witness, or by  
38 evidence affecting the character or motives of the witness, or by  
39 contradictory evidence.  
40

41 A determination of a witness’ credibility can be based on a number of factors other than  
42 the manner of testifying, including the inherent probability of the evidence, internal  
43 inconsistencies, whether or not the evidence is corroborated, and whether human experience  
44 demonstrates that the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).  
45

46 Licensee initially testified that he underwent an evaluation by the Center for Personalized  
47 Education for Physicians (CPEP), but later admitted that he did not pay money to CPEP for an  
48 evaluation, he did not travel to Colorado to meet with anyone from CPEP, he did not go inside

1 the CPEP office or facility, and he did not get an evaluation. A witness false in one part of his  
2 testimony may be distrusted in others. *See* ORS 10.095(3).  
3

4 In addition, throughout the hearing, Licensee engaged in word repartee, his answers to  
5 questions posed were evasive and non-responsive, and he made gratuitous self-serving  
6 comments. Accordingly, the ALJ found that the testimony provided by Licensee was not  
7 credible and that she would not rely upon his testimony when it contradicts evidence presented  
8 by the Board. The Board concurs with this credibility finding by the ALJ.  
9

## 10 FINDINGS OF FACT

### 11 Background

12 1. Licensee is a diagnostic radiologist. He received a license from the Board to practice  
13 medicine in Oregon on October 15, 1999. (Test. of Read; Ex. A2.)  
14

15 2. Licensee has been unemployed since July 2003. He has not practiced as a diagnostic  
16 radiologist since 2003. Licensee has no records of completing any continuing medical education  
17 courses during the past five years. (Test. of Read; Ex. A4.)  
18

19 3. On August 25, 2006, Licensee was arrested and charged with animal abuse in the  
20 second degree by Officers Lisa Fort and Timmy Evans, of the Portland Police Department.  
21 During the investigation, Officer Fort spoke to the complainant, Carrie Anne Chronis, who  
22 alleged that she observed Licensee, while walking his dog, jerk the leash and lift the dog off the  
23 ground by at least a foot in the air, hanging the dog by its collar. Ms. Chronis also alleged that  
24 when Licensee put the dog back on the ground, the dog rolled around yelping like it was in pain.  
25 Officer Fort tried to interview Licensee regarding the allegation of animal abuse, but Licensee  
26 was uncooperative, belligerent, indignant, and argumentative. Subsequent to the arrest, Licensee  
27 was charged with Disorderly Conduct by the District Attorney's office. (Test. of Fort; Ex. A3 at  
28 2-16.)  
29

30 4. On December 4, 2006, the charges against Licensee were dismissed in Multnomah  
31 County Circuit Court. (Ex. A3 at 1.)  
32

### 33 Application for renewal

34 5. On or about November 30, 2007, Licensee filed a License Renewal Application  
35 (Application) with the Board. (Ex. A4.) Licensee requested "active" status. (*Id.* At 1.)  
36

37 6. The Application instructed Licensee to, among other things, "Provide Your Primary  
38 Practice Address." Licensee wrote "Unemployed" and "Home address 503-892-9614." (Ex. A4  
39 at 1.) The Application also instructed Licensee to "Answer all the questions in both Category I  
40 and II." (*Id.* at 2.)  
41

42 7. Category I of the Application set forth thirteen questions that Licensee was required to  
43 answer for the period of "1/1/06 TO THE PRESENT." (Ex. A4 at 2.) Category I, question five  
44 stated, in pertinent part:  
45  
46  
47  
48

1 Have you been arrested, convicted of, or pled guilty or “nolo  
2 contendere” to ANY offense in any state in the United States or  
3 any foreign country, other than minor traffic violations, or a  
4 substance use related offense which has been evaluated by the  
5 Oregon Health Professionals Program and you are in compliance  
6 with their recommendations?  
7

8 \*\*\*\*\*  
9

10 If “yes,” provide full details of the arrest, dates, places, and  
11 disposition of the case. Provide a certified copy of all documents  
12 (court, police/arresting agency, etc.). If documents were purged by  
13 the arresting agency and/or the court, a letter of explanation  
14 directly from these agencies is required.  
15

16 (Ex. A4 at 2.) Licensee answered “Y” (yes) to question five. (*Id.*) At the end of the application,  
17 Licensee wrote “I-5 Arrested 28 Aug 2006 charged with disorderly conduct dismissed by judge,  
18 with prejudice.” (Ex. A4 at 5.)  
19

20 8. Category I, question twelve stated:  
21

22 Have you interrupted the practice of your health care profession for  
23 one year or more?  
24

25 Yes, I ceased practice from \_\_\_\_ to \_\_\_\_.  
26 I obtained \_\_\_\_ hours of Category I continuing medical education  
27 during this period.  
28

29 If “yes,” provide length of time you did not practice medicine and  
30 the reason you ceased practice, as well as your activities (medical  
31 or non-medical) for that period of time. Include the number of  
32 hours of any CME you obtained during this period of time.  
33

34 (Ex. A4 at 3.) Licensee answered “Y” (yes) and “N” (no) to question twelve. (*Id.*) Licensee  
35 also wrote “unemployed since July 2003.” (*Id.*)  
36

37 9. Category I, question thirteen stated:  
38

39 Have you ceased the active practice of medicine in your specialty?  
40 If “yes,” provide the length of time you ceased the practice of your  
41 specialty and the reason.  
42

43 (Ex. A4 at 3.) Licensee answered “Y” (yes) and “N” (no) to question thirteen. (*Id.*) Licensee  
44 also wrote “unemployed since July 2003.” (*Id.*)  
45

46 10. On December 20, 2007, Licensee sent a letter to the Board that stated, in pertinent  
47 part:  
48

Further explanation of activity since 2003:

1 I have not been employed by any hospital or radiology group since  
2 my employment with Woodland Park Hospital ended (when they  
3 became bankrupt and never paid me what they owed.) I applied  
4 for other jobs but met what I consider considerable "age  
5 discrimination" which I had earlier found at O.H.S.U. (where I was  
6 employed for more than a year, but would not be given a contract –  
7 they were looking for someone younger and eventually found one.)  
8 I am involved in consultation regarding radiology and medicine,  
9 quality control, and NOT in direct patient care. As you are aware,  
10 the Federal Government and VA system generally require  
11 licensure in a STATE, but not necessarily the one in which the  
12 doctor is providing service. Also licensure makes it much easier  
13 for prospective employers to evaluate me, even if my service does  
14 not necessarily "require" a license to practice medicine. I have not  
15 prescribed any restricted medication; and no longer have an active  
16 DEA number. If you would like my assistance in investigating  
17 "age-discrimination" I would be happy to help – but I get the  
18 feeling that you really don't have anything to do with that?  
19 [R]ight?  
20

21 (Ex. A4 at 6.)  
22

23 11. On February 29, 2008, Licensee sent a letter to the Board that stated, in material part:  
24

25 While I have not been doing procedures or providing DIRECT  
26 patient care during the past few years, I have been doing work that  
27 I consider "practice of medicine." My "current" medical license is  
28 a prime requirement for consultation, second opinions, and  
29 radiology quality control evaluation that I have been involved in. I  
30 do not issue reports of individual radiology exams for the patients  
31 [sic] charts, but I do review exams and their reports. Current  
32 licensure is important to anyone obtaining second opinions, or  
33 having medical care evaluated for quality concerns. I choose to  
34 not provide DIRECT patient care to individuals for a variety of  
35 reasons which include COST, INSURANCE, and scheduling.  
36 Also, I encountered rather pervasive age discrimination, which I do  
37 not expect you or anyone else to be able to change. That is not  
38 your concern, is it? I believe there are many doctors who are doing  
39 administrative type of work and NOT providing direct patient care.  
40 Do you hassle all of them too?

41 (Ex. A5 at 1.)  
42

43 12. On March 12, 2008, the Board's Administrative Affairs Committee (AAC) reviewed  
44 Licensee's application. The AAC made a recommendation to the Board that Licensee be found  
45 ineligible for active license status. By majority vote, the Board subsequently ratified the  
46 recommendation. (Exs. A6, A9, R8.)  
47

48 13. An active license implies that the physician is actively practicing medicine. If a  
physician indicates that he or she has not practiced medicine or does not have a practice location,

1 then the status of the license is changed to inactive. (Test. of Bielaski.)  
2

3 14. On April 14, 2008, the Board informed Licensee that he was not eligible for active  
4 status, and that his license would be changed to inactive. The Board also informed Licensee that  
5 if he wanted his license returned to active status, he needed to undergo an evaluation from either  
6 the Center for Personalized Education for Physicians (CPEP) or Physician Assessment and  
7 Clinical Education Program (PACE). The Board further informed Licensee that the evaluation  
8 should assess Licensee's medical knowledge and clinical skills, and must include a psychiatric  
9 evaluation. (Ex. R15.)  
10

11 15. CPEP is a nationally recognized and respected program.<sup>2</sup> The Board has relied on  
12 CPEP evaluations in the past to evaluate the medical knowledge and clinical judgment of  
13 physicians. CPEP evaluations provide the Board with documented evidence of a physician's  
14 ability level. (Test. of Parshley.)  
15

16 16. The Board's mission is to protect the citizens of the state of Oregon and promote  
17 quality health care. If a physician has been out of practice for more than two years, the Board is  
18 concerned that the physician has failed to keep up with the rapid changes that occur in the  
19 medical field. The Board is also concerned that the physician's clinical skills, knowledge and  
20 judgment has diminished with the passage of time. (Test. of Parshley; Ex. A7 at 8.)  
21

22 17. The Board has ordered CPEP evaluations for physicians that have been out of  
23 practice for a number of years. The Board has also ordered CPEP evaluations if there is any  
24 concern about the general knowledge or ability of the physician to practice medicine in their  
25 specialty. (Test. of Parshley.)  
26

27 18. On April 24, 2008, Licensee requested an investigative interview with the Board to  
28 appeal the Board's decision. (Ex. A5 at 4.)  
29

30 19. On May 15, 2008, the Board sent a letter to Licensee requesting his presence for an  
31 interview on June 5, 2008, by the Board's Investigation Committee, pursuant to ORS 677.320(2),  
32 (5) and ORS 677.415(7). The letter stated in pertinent part:  
33

34 Pursuant to ORS 677.320(5), the current investigative summary as  
35 provided by the case investigator follows: You have requested an  
36 interview with the Board's Investigation Committee related to your  
37

38 request for a review and reversal of having your license placed in  
39 inactive status.  
40

41 Additionally, concerns have been raised that you have been  
42 unemployed and not practicing medicine since July, 2003, per your  
43 most recent license renewal form, and you are seeking an Active  
44 license status. The Board also has concerns related to your 2006  
45

46 <sup>2</sup> The CPEP program has three components: Competence assessment, educational intervention, and post  
47 education evaluation. (See, [www.cpepdoc.org/competence.htm](http://www.cpepdoc.org/competence.htm).)  
48

1 arrest by the police that was precipitated by a citizen's report that  
2 you were observed abusing your dog.

3  
4 Please come to the interview prepared to discuss the concerns  
5 listed above. Please bring any documents, including billing  
6 records and patient charts, if applicable, regarding the concerns  
7 listed above that will aid you in your response to Committee  
8 questions during your interview. In addition to questions regarding  
9 the concerns listed above, please be prepared to answer questions  
10 regarding your education and experience as well as your current  
11 practice situation. Also complete the enclosed form listing your  
12 last three years of continuing medical education; attach additional  
13 pages as necessary and bring the form and any attachments with  
14 you to the interview.

15  
16 Legally you are advised that under the provisions of ORS  
17 677.190(23), the Board has the authority to discipline a licensee for  
18 refusing an invitation for an interview before the Investigation  
19 Committee. You should plan on your appearance before the  
20 Committee lasting approximately 90 or so minutes. You have a  
21 right to be accompanied by an attorney if you so desire.

22  
23 (Exs. R16, R17.)

24  
25 20. On June 5, 2008, the Board's Investigation Committee conducted an investigative  
26 interview with Licensee. The committee members included Dr. Lisa Cornelius, Dr. Douglas  
27 Kirkpatrick, Dr. Magnus Lakovics, Kathleen Haley, Jay Drum, and Michael Bielaski. (Ex. A7.)  
28 The committee members attempted to question Licensee regarding his qualifications to practice  
29 medicine and his efforts to maintain his medical skills, but Licensee's answers were evasive,  
30 argumentative, and non-responsive as set forth below:

31  
32 BY MS. HALEY:

33  
34 Q. The reason you're here, in part, is you asked to meet with some  
35 of the Board.

36  
37 A. No. I asked to meet with the Board so that I could exhaust my  
38 administrative appeal. There's no point in paying a lawyer until  
39 you've used up your –

40  
41 Q. This is your opportunity to meet with the Board.

42  
43 A. Yeah, okay.

44  
45 Q. Okay.



1 BY DR. CORNELIUS:  
2

3 Q. And by doing so, is why we would like to ask you some  
4 specific questions –

5  
6 A. Right.  
7

8 Q. – so that we have additional information to give you the  
9 opportunity to explain to those of us present as well.  
10

11 A. Okay.  
12

13 Q. So, again Dr. Read, I'd like to start out by asking if you could  
14 please tell us your specific background.  
15

16 A. Okay. Well, let me go back. Maybe I didn't make it clear. A  
17 decision's already been made. I would like to discuss what was  
18 involved in that decision, not try to –  
19

20 Q. I believe we will get to that.  
21

22 A. I mean if you would like to justify that decision by asking me  
23 questions that are eventually finding something that you can use to  
24 justify a decision that's already been made, I'm not interested in  
25 doing that. I don't have a lawyer with me, but why would I want  
26 to add additional information when you have enough information  
27 to make the decision that's been made, right?  
28

29 \*\*\*\*\*  
30

31 BY DR. LAKOVICS:  
32

33 Q. Maybe I can clarify, if it's okay with everybody. You  
34 answered the question about, "Have you interrupted the practice of  
35 medicine for more than a year?" "Yes." Then your qualifying  
36 statement –  
37

38 A. Right.  
39

40 Q. – that, "I have been unemployed." And, then you added a  
41 statement about, "I have not been employed by any hospital  
42 radiology group since my employment with Woodland Park  
43 Hospital ended. I applied for other jobs. I met age  
44 discrimination," etcetera, "I'm involved with consultation  
45 regarding radiology medicine and quality control and not in direct  
46 patient care. As you're aware," etcetera, "requires someone to  
47 have a license in the state, also licensure makes it easier," etcetera,  
48 "am not prescribing – I no longer have a DEA license. If you

1 would like my assistance in investigating," etcetera. So, the issue  
2 here that's also partly going to be clarified is what these statements  
3 mean, what you meant by continuing to practice medicine and just  
4 consulting, and the purpose of this is to get your information about  
5 this as well.

6  
7 A. Well, actually, in all of those things, I have advertised and held  
8 out to the public and represented in many manners that I'm  
9 authorized to practice medicine in this state.

10  
11 Q. Right. But part of practicing medicine is actually practicing.

12  
13 A. Right. But, in fact, this constitutes the practice of medicine.

14  
15 Q. That's partly what this interview is about.

16  
17 A. This constitutes the practice of medicine. That's pretty  
18 straightforward and clear. You can use that to prosecute someone  
19 for practicing medicine without a license, but somehow you don't  
20 seem to be willing to allow me to practice medicine that way. I  
21 think I'll stick with my answer. I haven't gotten a job in a hospital.  
22 If you're interested in evaluating people who are violating federal  
23 law by, you know, age discrimination, you know, I could have  
24 done that a few years ago and helped with that. But I don't think  
25 you've ever done that, have you?

26  
27 BY MS. HALEY:

28 \*\*\*\*\*

29  
30 Q. Do you want to have a productive discussion this morning?

31  
32 A. I'm having a very productive discussion.

33  
34 BY DR. CORNELIUS:

35  
36 Q. We are not.

37  
38 A. Okay.

39  
40  
41 Q. Because this is not getting clarification on the questions that we  
42 had.

43  
44 A. Okay. Well --

45  
46 Q. Are you willing, Dr. Read, to answer some of these questions?

47  
48 A. I'm absolutely willing to discuss any of the answers I've

1 already given, and I'm interested in learning how this decision was  
2 made since I was never given – you know. I wouldn't use the  
3 terms "arbitrary" and "capricious," but when no reason is given,  
4 when no rule is attached, I can see how it would start to seem that  
5 way to someone.

6  
7 \*\*\*\*\*

8 BY DR. KIRKPATRICK:

9  
10 Q. We have a natural concern when someone's been out of  
11 practice or – is he competent? If he is, okay.

12  
13 A. Okay.

14  
15 Q. No harm, no foul.

16  
17 A. Now I understand this. And maybe you'll understand this. I'm  
18 not asking to be treated specially. I'm asking to be treated like  
19 everybody else.

20  
21 MS. HALEY: You are.

22  
23 DR. CORNELIUS: You are.

24  
25 DR. KIRKPATRICK: You are.

26  
27 DR. READ: I guarantee I am not.

28  
29 BY MS. HALEY:

30  
31 Q. Yes. Because everyone that answered that way you did on the  
32 renewal form would be in the same position.

33  
34 A. Okay. So would you understand, perhaps, that maybe a lot of  
35 people aren't answering correctly?

36  
37 Q. That may be.

38  
39 A. But you don't investigate them. You don't investigate them.  
40 In other words, the fact that I gave a very specific, very complete,  
41 very detailed answer gets your interest. Now, I suspect there are  
42 chiropractors every place in the state that are practicing medicine  
43 without a license based on this, and you don't call them up every  
44 year.

45  
46 MR. BIELASKI: We don't –

47  
48 MS. HALEY: We don't regulate chiropractors.

1 DR. READ: I thought you licensed them.

2  
3 MR. BIELASKI: No.

4  
5 DR. READ: Okay. Well, I was wrong.

6  
7 DR. CORNELIUS: We do not.

8  
9 DR. READ: And I'll admit it when I'm wrong. Okay. So to the  
10 extent that somebody already made this decision, they didn't say  
11 it's because we think you've gotten stupid over five years because  
12 you haven't done anything.

13  
14 BY MS. HALEY:

15  
16 Q. They said we would like to know how your skill level is.

17  
18 A. Well, you don't do that with everyone else. Hey, have a test  
19 every year. I'd be happy to take a test. Require continuing  
20 education. I used to track it, but –

21  
22 BY DR. LAKOVICS:

23  
24 Q. Did you hear what Ms. Haley said?

25  
26 A. Yes.

27  
28 Q. Yes. Everyone is put on inactive status who says they're out of  
29 practice.

30  
31 A. I didn't say I was out of practice. I went into great detail about  
32 the fact that –

33  
34 Q. You said yes to that question.

35  
36 A. I answered yes so that you wouldn't suggest –

37  
38 Q. So this interview is to clarify that answer.

39  
40 A. Yes, I clarified the answer. Would you like me to fill out the  
41 form and do it wrong, and say, no, there's been no change, and  
42 then qualify that?

43  
44 BY MS. HALEY:

45  
46 Q. You asked for the meeting today, right?

47  
48 A. Yeah. I need the meeting because I need to exhaust my  
administrative appeals. I don't expect any of you to act any

1 different from the people who made this decision in the first place.  
2 Why would I expect that? You're used to dealing with drunks,  
3 drug addicts, with people who are abusing their patients, and I  
4 don't expect to get treated better than they get treated, and I'm not  
5 going to. But I need to exhaust my administrative appeal, and you  
6 need to do whatever you do. But I'm not going to answer  
7 questions and have you come up with something that finally  
8 justifies a decision that's already been made.  
9

10 BY DR. CORNELIUS:

11  
12 Q. In order for the Board to take this any further, we feel we need  
13 further information which we do not feel we have received yet.  
14 That is the whole purpose of this morning, is to allow us, for your  
15 benefit, to clarify some of this information.  
16

17 A. And I – you know, I was ready to do that. I thought I clarified  
18 it very clearly in my application. I tried to be precise. You know,  
19 just as a divergence, it turns out that if you are extremely accurate,  
20 it gets people very upset because they're not used to dealing with  
21 all the accuracy; they're used to dealing with kind of half lies. I've  
22 been donating blood for my whole life. One day when it said,  
23 "Have you been exposed to any other person's blood?" I put,  
24 "Yes." Okay? And it was my wife's blood, but I was exposed to  
25 it. And I suspect that there are literally millions of blood donors  
26 who are exposed to their wife's blood now and then. I explained  
27 it, and I was not considered adequate as a donor just because of  
28 that. And when I explained that everyone else was actually lying  
29 or not paying attention, they didn't care. They want them to lie.  
30 Now, are you going to do the same thing to me, take my answer  
31 and try to twist it around and say that I wasn't practicing medicine  
32 because I explained that I wasn't doing radiology in a hospital the  
33 way I would have preferred to? And probably never will be able to  
34 because, you know, they won't test you to see if you can do a good  
35 job. They want somebody young.  
36

37 Q. Having been through your material very carefully several  
38 times, Dr. Read, there were still areas that I felt personally very  
39 confused about.  
40

41 A. Do you have a list of those?  
42

43 Q. And I have some very specific questions that I had hoped to  
44 ask you.  
45

46 A. May I see the list of them?  
47

48 Q. I would like – I would prefer to ask you one at a time here so

1 that we, as a group, can then expound on some of those questions  
2 and your responses.

3  
4 A. And the reason you wish to do them one at a time is?

5  
6 Q. Because, occasionally, in your response, that may bring  
7 something else up that one of us may like to ask to further clarify.

8  
9 A. Okay. Well, okay. So you have – how many of these  
10 questions are there?

11  
12 Q. I have approximately a half dozen to start with.

13  
14 A. Okay. Well, let's start with them.

15  
16 Q. Thank you. I wanted to find out what your practice type had  
17 been prior to the Woodland Park closure. Woodland Park, of  
18 course, closed in July 2003. I wanted to have a better  
19 understanding of what was your practice there prior to its closure.

20  
21 A. At Woodland Park?

22  
23 Q. Yes, sir.

24  
25 A. They didn't ask me this on the application renewal.

26  
27 Q. That's correct.

28  
29 A. And I have a complete answer, so let's go to the next question.

30  
31 Q. What have you been doing professionally since the closure of  
32 Woodland Park?

33  
34 A. Well, I've been representing myself as licensed to practice  
35 medicine – authorized to practice medicine in this state.

36  
37 Q. And you have been doing so in what manner? How have you  
38 been practicing medicine?

39  
40 A. I have been fulfilling "one or more of the following." I've  
41 been doing that one, so that's what the law states, so I'm not going  
42 to go into more detail about that. But I can and – can do that if it's  
43 of value. Nobody asked me that before. I think I explained in  
44 great detail on the form so that people wouldn't misunderstand,  
45 which they did anyway. Let's try the next question.

46  
47 Q. No, I would like to go back to this. I'm trying to understand,  
48 between July of 2003 and today, what have you been doing in  
terms of practice of medicine. Have you continued in radiology in

1 some capacity? In terms of consultations? Or have – I'm trying to  
2 understand what has occurred –

3  
4 A. Do you have my answer there on the form? You know, I don't  
5 want to get one word different, and then have you say that I'm  
6 changing it.

7  
8 Q. On the form at some point, it said that you were involved in  
9 consult regarding radiation and medicine quality control and not in  
10 direct patient care.

11  
12 A. Mostly not in direct patient care in the sense I wasn't authoring  
13 and signing reports. The cases that I've looked at had already been  
14 reported. So in a sense that I –

15  
16 Q. So you've been acting as a consult in regards to second  
17 opinions?

18  
19 A. You know, I'm not going to go into detail of this because I  
20 don't think you do this for everybody else. But if you do and you  
21 can prove that, that will come up. Okay. Let's try the next  
22 question. I'm not going to give you patient lists. I don't have a list  
23 of everything I've done. A lot of it I didn't bill for, but I don't  
24 think I'm required to.

25  
26 BY DR. KIRKPATRICK:

27  
28 Q. Have you billed for any radiology services in the past five  
29 years?

30  
31 A. You mean actually mailed a bill? No, I am not going into  
32 details of that because I don't think I have to tell you whom my  
33 clients and patients are unless you have a complaint. Do you have

34  
35 a complaint? Is there a complaint other than the ones you've  
36 generated yourself?

37  
38 Q. How do we know you're competent to practice radiology?

39  
40 A. How do you know anybody's competent to practice radiology?  
41 Aren't all licensed physicians licensed to practice radiology?

42  
43 BY MS. HALEY:

44  
45 Q. We're not talking about everybody else today. We're talking  
46 about you.

1 A. I know you're not. But it's a simple question. Are they or  
2 aren't they? Yeah they are. They all practice radiology, right?  
3 Some of them do it and bill for it, and some of them don't. How  
4 many of them are qualified? So I look at a lot of the cases that  
5 they miss, so I might have a jaundiced idea of how qualified they  
6 are, but you are not involved in evaluating the quality of  
7 physicians.  
8

9 BY DR. KIRKPATRICK:

10  
11 Q. Our job – bottom line. Okay?  
12

13 A. Uh-huh.  
14

15 Q. Our job is to protect the citizens of the state of Oregon and  
16 promote quality health care. How do we know you are competent  
17 to render quality health care to the citizens of Oregon? This is  
18 your chance today to explain to us how – and maybe we can help  
19 you. You can activate your license, get back to doing what you  
20 want to do, which we presume is practicing radiology. This is your  
21 chance. We're not here to twist anything, to use your phrase.  
22 We're trying to give you a chance to explain to us that you are  
23 capable of practicing quality radiology for the citizens of Oregon.  
24

25 A. Well, I don't have to practice radiology. I could be licensed to  
26 practice medicine, but I could be doing eye surgery, right? I mean  
27 doesn't my license cover that? Well, I'm just asking a simple  
28 question.  
29

30 BY DR. LAKOVICS:

31  
32 Q. Dr. Read, medicine is both a theoretical and practical  
33 discipline.  
34

35 A. Right, right.  
36

37 Q. If you have not actually practiced medicine for three years –  
38 one of the questions that's trying to be established is whether you  
39 actually practiced. You may have great theoretical knowledge,  
40 you may have a scientific basis, but the practice of medicine is a  
41 practical art, and if you have not practiced that art in five years, the  
42 Board would like to know how you have practiced that art in the  
43 last five years.  
44

45 A. You know, the way I look at it, of course, and maybe as a  
46 psychiatrist you recognize that there's more than a little bit of  
47 distrust involved when a group of people appear to be trying to  
48 justify a decision that's already been made, okay? Can you



1 understand my –  
2

3 Q. The decision was made by administrative rule.  
4

5 A. I wasn't told that, so I don't – I don't disbelieve it, but – there  
6 isn't anything that I could tell you that would make you think that I  
7 was qualified to do coronary artery surgery, and yet I believe the  
8 license to practice medicine includes that, and nobody comes to  
9 you and proves to you that they can do coronary artery surgery  
10 well before they can do it. I mean you're treating me in a very  
11 special way here. And in a certain sense, I would say, well, that's  
12 great, you know, somebody made a complaint, there's a reason to  
13 think – If I'd done something that somebody said, wow, he doesn't  
14 know what the heck he's doing – but nobody's done that. And you  
15 trust everybody else in the state to not do things that they're not  
16 qualified to do, but for some reason you've decided to treat me  
17 differently. I find it very pejorative, and I believe you understand  
18 that if somebody did this to you and you had to explain to people,  
19 yeah, they made my license inactive, but it was just an  
20 administrative anything, I didn't do anything, they just did it for –  
21 you know, like no reason, nobody would believe that.  
22

23 \*\*\*\*\*  
24

25 BY MS. HALEY:  
26

27 Q. You know, if you're doing medical-legal work, that's  
28 considered the practice of medicine, too. If that's what you've  
29 been doing and you want to share that with the Board, the Board  
30 understands that that's what a lot of physicians do once they're not  
31 doing the clinical work anymore. I mean if you give them some  
32 information, then they can know that you've been engaging your  
33 mind in the medical world.

34 A. I've done consulting for lawyers. I don't have dates on it. I  
35 didn't bring you the records because I don't think I should have to  
36 show you my records. I haven't testified in court, I know that.  
37

38 \*\*\*\*\*  
39

40 BY DR. CORNELIUS:  
41

42 \*\*\*\*\*  
43

44 Q. As I have already stated, I have no idea at this point, Dr. Read,  
45 what you have been doing in terms of the practice of medicine and  
46 your professional work for the past five years.  
47  
48

1 A. Maybe someone who's not involved as much could explain  
2 what I've been doing.

3  
4 BY MR. BIELASKI:

5  
6 Q. Perhaps if you could explain -- I mean perhaps you've been  
7 reading medical journals, maybe you've been -- and we don't need  
8 a list of patient names. We don't need any of that. But if you  
9 could explain, "I've been reading these journals," you know, "four  
10 every year," or however many a month, however many hours.  
11 "I've done," you know, "22 consultations in the last year for  
12 radiology." Anything like that. Or you've been attending CME or  
13 anything like that.

14  
15 A. That's a good idea. Except I don't think it's required of  
16 everyone else. I may not --

17  
18 \*\*\*\*\*

19  
20 BY DR. CORNELIUS:

21  
22 \*\*\*\*\*

23  
24 Q. You are not getting special treatment. Anybody else -- anyone  
25 else who had answered the application renewal in the manner that  
26 you did would be in the exact same position. This is not special  
27 treatment in any way. We are doing our best to give you the  
28 opportunity to clarify this information.

29  
30 A. Then I can do that right now. The answer that I gave on the  
31 form may have been confusing to people who read it, they may  
32 have thought that because I wasn't doing diagnostic radiology,  
33 authoring reports on patients who are sick in the hospital, they may  
34 have thought that I was not actively practicing medicine, but, in  
35 fact, I have been. So my answer was wrong. I have clarified it.

36  
37 BY DR. LAKOVICS:

38  
39 Q. Those are the details that we'd like to hear about. How have  
40 you been practicing medicine?

41  
42 A. So everyone who changes their practice comes to you and  
43 explains how they're competent to do what?

44  
45 Q. You're asking a rhetorical question.

46  
47 A. I'm asking you because I don't know how I'm going to explain  
48 to you that I'm competent to do anything when I don't know what

1 it is that I'm supposed to be competent to do.

2  
3 Q. Okay. I'll give you an example. Say you consulted for  
4 lawyers. How many lawyers did you consult with? On what kind  
5 of cases? Were there five cases? Fifty cases? A hundred cases?  
6 Did you testify in court? You said you didn't, okay. Did you write  
7 any reports? What kind of quality evaluations did you do? How  
8 many of those? What kind of continuing education have you had?  
9 These are all part of the kind of questions that you can answer  
10 specifically.

11  
12 A. And if you're requiring that of everyone in my situation, then --

13  
14 Q. In this situation, yes. That's what Dr. Cornelius told you.

15  
16 A. No, no. Now that I've clarified that my answer was confusing  
17 and, in a sense, wrong, if it gave the wrong impression, I just don't  
18 -- you know what? I can't imagine anything I can tell you that's  
19 going to change your decision. I mean what kind of competence  
20 do I have to show in what area before I would change your  
21 decision? I've been practicing medicine according to the  
22 definition of the law. I could have been prosecuted if I wasn't  
23 licensed for doing what I have done.

24  
25 BY MR. BIELASKI:

26  
27 Q. But you haven't told us what you've done. The only thing that  
28 you've said is that you're continuing to --

29  
30 A. And if you're not asking everyone else what they've done, then  
31 I'm not going to -- we start with that.

32  
33 Q. We didn't ask everybody on the renewal forms. The people  
34 that did not -- that had periods of no practice like yourself, we  
35 followed up with all of them. A majority of them --

36  
37 A. I didn't have a period of no practice. I explained that that  
38 answer was misleading in the sense that I was trying to be  
39 accurate.

40  
41 BY DR. LAKOVICS:

42  
43 Q. Because of your response, Dr. Read, to Question No. 12 and  
44 13, both, on the application form, in your own writing, it states  
45 you're unemployed since July 2003.

46  
47 A. Yes.  
48

1 Q. I don't know what that means.

2  
3 A. Haven't I explained that in great detail to you today?

4  
5 Q. No, you have not.

6  
7 A. Well, I bet the transcript shows that I have, so I'll stick with the  
8 transcript.

9  
10 BY MS. HALEY:

11 \*\*\*\*\*

12  
13 Q. Are you doing any volunteer work?

14  
15 A. How would that change anything? How much volunteer work  
16 do I have to do to change your decision?

17  
18 BY MR. BIELASKI:

19  
20 Q. Well, okay, is there a reason why you're not willing to answer  
21 if you've done the volunteer work?

22  
23 A. Right. Because other people aren't required to answer, and I  
24 can't imagine any answer that would satisfy you \*\*\*.

25  
26 (Ex. A7.)

27  
28 21. On June 11, 2008, the Board informed Licensee that his Oregon medical license  
29 would remain inactive due to his failure to provide the Board with the additional information  
30 requested by the Investigations staff. (Ex. A8.)

31  
32 22. On July 20, 2008, Licensee requested that his license be changed to active status. He  
33 also requested administrative review of the Board's decision. (Exs. A5 at 5, R19.)

34  
35 23. On September 3, 2008, the Board issued an Order for Evaluation (Order) to  
36 Licensee. The Order provided, in relevant part:

37  
38 Pursuant to ORS 677.420, the Board orders Licensee to undergo a  
39 comprehensive evaluation for the purpose of determining  
40 Licensee's fitness to practice medicine with skill and safety as  
41 follows:

42  
43 3.1 Licensee shall successfully complete a comprehensive  
44 evaluation at the Center for Personalized Education for Physicians  
45 (CPEP) in Colorado. **This evaluation shall include a psychiatric**  
46 **evaluation.**

1 3.2 Licensee shall sign any and all releases to allow for complete  
2 communication between the Board and the evaluators and to  
3 ensure that CPEP will send a copy of the evaluation (to include the  
4 psychiatric evaluation) directly to the Board.  
5

6 3.3 The costs of this evaluation, including travel, lodging and all  
7 testing expenses will be borne by Licensee.  
8

9 3.4 Licensee shall schedule this evaluation within 30-days of the  
10 date this Order is signed by the Board Chair. The evaluation shall  
11 be completed within 90-days after the date the Order is signed by  
12 the Board Chair.  
13

14 3.5 Failure to comply with this Order will violate ORS  
15 677.190(18) and may result in disciplinary action by this Board.  
16

17 (Ex. A10.) (Emphasis added.)  
18

19 24. On its website, CPEP provides the following pertinent information:  
20

21 **The Physician Assessment does not address psychiatric or**  
22 **substance abuse issues**, ethical or fraudulent behavior, and/or  
23 boundary or behavior issues. If the referring agency suspects  
24 problems in these areas (whether or not they may be related to the  
25 performance or competence concerns), it is recommended that the  
26 physician be evaluated prior to carrying out the Physician  
27 Assessment. If the above issues are identified during the course of  
28 the Physician Assessment, the Assessment Report will include  
29 recommendations for further evaluation through appropriate  
30 resources.<sup>3</sup>  
31

32 (Ex. R3.) (Emphasis added.)  
33

34 25. Dr. Phil Parshley, the Board's Medical Director, does not know if CPEP provides  
35 psychiatric evaluations. (Test. of Parshley.)  
36

37 26. On September 8, 2008, Licensee sent CPEP an e-mail, which stated, in material part:  
38

39 I have been ORDERED by the Oregon Board of Medical  
40 Examiners, to schedule "evaluation" at your facility, although I  
41 would prefer to NOT travel to Denver, if that is possible. The  
42 Board has not really told me anything about why they want  
43 evaluation or WHAT evaluation they want (except that it includes  
44 psychiatric evaluation – I assume that is because I have not been  
45 very toady to their various machinations which have delayed  
46 renewal of my medical license.) I believe this "evaluation" is a  
47

48 <sup>3</sup> See [www.cpepdoc.org/faq.htm](http://www.cpepdoc.org/faq.htm)

1 way to punish me, not really an evaluation. And I am totally  
2 certain that there is no way to evaluate anyone and be certain they  
3 would be qualified to practice medicine. But it might be a good  
4 way to generate a lot of reasons to NOT let someone practice  
5 medicine. I assume that is what you do, but would be interested in  
6 hearing the weasel words you use to describe it. Since I have no  
7 idea how long your evaluation takes, or when it can be done, I  
8 would appreciate any information you can give me. Also the  
9 qualifications of your evaluators? [sic] That might be a great job  
10 for me now that I am not licensed to practice medicine, and  
11 probably will not be (based on the disingenuous attitude of the  
12 various Oregon Medical Board members so far). IF they have  
13 mentioned in any communication that I “refused” to answer  
14 questions, I would point out that they almost certainly did not  
15 mention that when I asked to read the questions, they refused to let  
16 me read them. So I did not answer questions that they did not ask  
17 me. That is their idea of REFUSAL! And cost. What amount of  
18 “fine” is in order. [sic] Or is a sliding scale? Slides up until it is  
19 so unreasonable that I will choose to not pay it? The “problem” I  
20 have is that I have been unemployed. Apparently, without any  
21 legal reason, the Board is worried because of this. I did offer to  
22 help “out” any employers who are discriminating on basis of age  
23 (but the Board was not worried about doctors violating this Federal  
24 law, only about the idea I might be “unsafe”.) And there have  
25 been no complaints against me. For obvious reasons, there is  
26 nothing to complain about. Maybe they will tell YOU what they  
27 are really doing, I would appreciate knowing for myself, as I  
28 suspect there IS an agenda, but it is illegal so they can’t talk about  
29 it? By the way: [sic] I noted that your HOME page seems to be  
30 poorly designed – despite the ad for the design firm. \*\*\* By  
31 “poorly designed” I mean that that [sic] the text letters in the main  
32 part of the page are TIGHT against the left edge- look at the page  
33 and you will see that is simply a matter of adding another <TD>  
34 and putting a space or two in it. I am surprised to see a page like  
35 that? [I]t suggests that you are not looking at your own website  
36 very much, so I thought you might appreciate my help. I will try to  
37 attach a pic [sic] of area of webpage I am referring to.  
38

39 (Exs. R9, R10.) CPEP did not respond to Licensee’s e-mail. (Test. of Read.)  
40

41 27. Licensee did not contact CPEP again until sometime after January 8, 2009. Licensee  
42 did not undergo or complete an evaluation at CPEP. (Test. of Read.)  
43

44 28. On January 8, 2009, the Board issued a Complaint and Notice of Proposed  
45 Disciplinary Action to Licensee, which provided, in relevant part:  
46  
47  
48

1  
2  
3  
4  
5  
6  
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48

2.

The Board proposes to take disciplinary action pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit ORS 677.190(1)(a) unprofessional or dishonorable conduct as defined in ORS 677.188(4)(a); and ORS 677.190(18) willfully violating a board order.

3.

Licensee is a diagnostic radiologist and currently holds an inactive medical license in Oregon. The acts and conduct alleged to violate the Medical Practice Act are as follows:

3.1 Licensee submitted an application for renewal that the Board received on November 30, 2007. Licensee disclosed in his application that he had not practiced medicine since July 2003 and had been arrested by the Portland police for animal cruelty and disorderly conduct on August 25, 2007. The animal cruelty and disorderly conduct charges were later dismissed.

3.2 Licensee appeared before the Board's Investigation Committee (IC) on June 5, 2008 to respond to questions the Board had in regard to his application. Licensee insisted during the course of this interview that he should have an active license and be able to practice medicine, even though he has not worked as a physician since July of 2003. Licensee was asked various questions, such as "[h]ave you billed for any radiology services in the last five years?" and "[h]ow do we know you're competent to practice radiology?" Licensee declined or evaded answering most of the questions posed to him.

3.3 In view of Licensee's insistence that he wanted to have an active license to practice medicine and his failure to provide satisfactory information to the Board pertaining to his qualifications to practice medicine and his efforts to maintain his medical skills over the past five years, the Board ordered Licensee to undergo a comprehensive evaluation within 90-days for the purpose of determining his fitness to practice medicine with reasonable skill and safety. The Board's order of evaluation was signed on September 3, 2008. Licensee has failed to schedule and complete the evaluation within the time specified by the Order.

4.

Licensee is entitled to a hearing as provided by the Administrative Procedures Act (chapter 183), Oregon Revised Statutes. Licensee may be represented by counsel at the hearing. If Licensee desires a

1 hearing, the Board must receive Licensee's written request for  
2 hearing within twenty-one (21) days of the mailing of this Notice  
3 to Licensee. Upon receipt of a request for a hearing, the Board  
4 will notify Licensee of the time and place of the hearing.  
5

6 5.  
7

8 If Licensee requests a hearing, Licensee will be given information  
9 on the procedures, right of representation, and other rights of  
10 parties relating to the conduct of the hearing as required under  
11 ORS 183.413(2) before commencement of the hearing.  
12

13 6.  
14

15 Failure to request a hearing or failure to appear at any hearing  
16 scheduled by the Board will constitute waiver of the right to a  
17 contested case hearing and will result in a default order by the  
18 Board, including the assessment of such penalty and costs as the  
19 Board deems appropriate under ORS 677.205. If a default order is  
20 issued, the record of the proceeding to date, including Licensee's  
21 file with the Board and any information on the subject of the  
22 contested case automatically becomes part of the contested case  
23 record for the purpose of proving a *prima facie* case, ORS  
24 183.415(6).  
25

26 (P1.)  
27

28 29. On January 16, 2009, Licensee wrote a letter to the Board in which he stated that he  
29 was surrendering his medical license to the Board and requested a hearing. (P2.)  
30

31 **CONCLUSIONS OF LAW**  
32

33 1. Licensee engaged in unprofessional or dishonorable conduct, pursuant to ORS  
34 677.190(1)(a).  
35

36 2. Contrary to ALJ Gutman's recommended finding, the Board finds that Licensee did  
37 willfully violate a Board order, pursuant to ORS 677.190(18).  
38

39 3. Licensee's license shall be revoked, pursuant to ORS 677.205.  
40

41 4. Civil penalties in the amount of \$10,000 and the costs of the disciplinary proceedings  
42 shall be assessed against Licensee, pursuant to ORS 677.205.  
43

44 **OPINION**  
45

46 The Board contends that Licensee engaged in unprofessional or dishonorable conduct and  
47 willfully violated a Board order. The Board further contends that Licensee should have his  
48 license revoked and civil penalties imposed. The Board has the burden of proving the allegations



1 by a preponderance of the evidence. See ORS 183.450(2) and (5); *Cook v. Employment*  
2 *Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the  
3 evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that  
4 the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*,  
5 303 Or 390 (1987). As modified below, the Board has met its burden.

6  
7 **1. Whether Licensee engaged in unprofessional or dishonorable conduct, pursuant**  
8 **to ORS 677.190(1)(a).**  
9

10 The Board supervises the practice of medicine in the State of Oregon. The Board is  
11 authorized to establish standards and tests to determine the moral, intellectual, educational,  
12 scientific, technical and professional qualifications required of applicants for medical licenses.  
13 ORS 677.265. The Board’s mission is to protect the public from the practice of medicine by  
14 unauthorized or unqualified persons and from unprofessional conduct by persons licensed to  
15 practice. ORS 677.015.  
16

17 ORS 677.190 is titled “Grounds for suspending, revoking or refusing to grant license,  
18 registration or certification; alternative medicine not unprofessional conduct” and provides, in  
19 material part:  
20

21 The Oregon Medical Board may refuse to grant, or may suspend or  
22 revoke a license to practice for any of the following reasons:  
23

24 (1)(a) Unprofessional or dishonorable conduct.  
25

26 ORS 677.188(4) provides, in pertinent part:  
27

28 “Unprofessional or dishonorable conduct” means conduct  
29 unbecoming a person licensed to practice medicine or podiatry, or  
30 detrimental to the best interests of the public, and includes:  
31

32 (a) Any conduct or practice contrary to recognized  
33 standards of ethics of the medical or podiatric profession or  
34 any conduct or practice which does or might constitute a  
35 danger to the health or safety of a patient or the public or  
36 any conduct, practice or condition which does or might  
37 impair a physician’s or podiatric physician and surgeon’s  
38 ability safely and skillfully to practice medicine or  
39 podiatry[.]  
40

41 **a. Licensee’s refusal to answer questions posed by the Investigation Committee**  
42

43 The Board alleged in its notice that Licensee engaged in unprofessional or dishonorable  
44 conduct by refusing to answer questions posed by the Board’s Investigation Committee on June  
45 5, 2008. ALJ Gutman agreed.  
46

47 On November 30, 2007, Licensee filed a License Renewal Application (Application)  
48 with the Board for an active license. In the Application, Licensee indicated, among other things,

1 that he was “unemployed since July 2003.”  
2

3 If a person licensed to practice ceases to practice for a period of 12 or more consecutive  
4 months, the Board may require the person to prove to its satisfaction that the licensee has  
5 maintained competence. ORS 677.175(2).  
6

7 After reviewing all the information that Licensee submitted, the Board determined that  
8 Licensee was ineligible for active status. ALJ Gutman characterized what happened next as:  
9 “Licensee appealed the Board’s decision and requested an investigative interview. Licensee’s  
10 request was granted.” This represents a misunderstanding of the investigative process. What  
11 actually happened is that the Board opened an investigation into Licensee’s qualifications for  
12 licensure (A7, p. 3) and invited him to appear before the Board’s Investigation Committee.  
13

14 On June 5, 2008, an investigative interview was held to determine Licensee’s  
15 qualifications to practice medicine and his efforts to maintain his medical skills during the period  
16 of unemployment. However, as set forth in the record, Licensee refused to answer questions  
17 about his level of competence, about what he had been doing since July 2003, and about his  
18 current practice. In addition, Licensee engaged in word repartee, and he was argumentative and  
19 evasive with the committee members. As a medical professional and applicant for license  
20 renewal, Licensee was required to provide complete and truthful evidence of his qualifications to  
21 practice medicine in the State of Oregon. ORS 677.100(1)(d), and (3); ORS 677.175(2); see  
22 also, Ex. A4. Licensee failed to do so in this matter.  
23

24 Accordingly, ALJ Gutman found by a preponderance of the evidence that on June 5,  
25 2008, Licensee engaged in conduct unbecoming a person licensed to practice medicine. As such,  
26 Licensee engaged in unprofessional or dishonorable conduct, in violation of ORS 677.190(1)(a).  
27 The Board agrees.  
28

29 Licensee argued that the questions posed at the investigative interview were not related to  
30 the practice of medicine. Licensee is incorrect. As set forth in great detail in finding of fact  
31 (FOF) 20, the Board’s Investigation Committee asked questions regarding Licensee’s  
32 qualifications to practice medicine and his efforts to maintain his medical skills during the period  
33 of unemployment. Thus, Licensee’s argument is without merit.  
34

35 Licensee also argued that the investigative interview was a sham that was done to justify  
36 an order for evaluation. ALJ Gutman disagreed. Although it was the Board that requested  
37 Licensee to appear for the interview, it was Licensee who refused to answer the most basic of  
38 questions regarding his competence and skill level. As such, Licensee’s argument is  
39 unpersuasive.  
40

41 Licensee next argued that the questions that were asked at the investigative interview  
42 were kept secret from Licensee. ALJ Gutman disagreed. Licensee was notified via letter from  
43 the Board on May 15, 2008, regarding the issues that were going to be discussed at the  
44 investigative interview. The Board specifically instructed Licensee to “be prepared to answer  
45 questions regarding your education and experience as well as your current practice situation.”  
46 There is nothing secretive about that statement. It clearly sets forth some of the topics that the  
47 committee wanted to explore with Licensee. Accordingly, Licensee’s argument is without merit.  
48

1 Licensee also argued that he did not refuse to answer questions posed by the committee.  
2 However, FOF 20 establishes evidence to the contrary. Therefore, Licensee's argument is  
3 unpersuasive.  
4

5 Licensee next argued that he offered to answer the questions in writing. However,  
6 Licensee appeared before the investigative interview and, once there, he agreed to answer the  
7 questions posed by the committee. (See FOF 20.) Hence, Licensee's argument is without merit.  
8

9 Licensee also argued that the pretense of the investigation was a means to deny him due  
10 process. ALJ Gutman disagreed. As stated previously, Licensee appeared before the  
11 Investigation Committee, which is part of the Board's regular procedure when an investigation is  
12 conducted prior to proceeding to disciplinary action. See ORS 677.190.320(5). And as ALJ  
13 Gutman pointed out, Licensee did request to be interviewed. It was not set up by the Board for  
14 some nefarious purpose. In addition, the committee members made it clear that they were trying  
15 to determine if Licensee is competent to hold an active license in the State of Oregon.  
16 Furthermore, Licensee had the right to request a contested case hearing, and exercised that right.  
17 Licensee's argument is unpersuasive.  
18

19 Licensee next argued that he told the committee that he was practicing medicine by  
20 advertising or holding himself out to the public that he was authorized to practice medicine.  
21 While Licensee did make this representation to the Investigation Committee, the committee was  
22 authorized to inquire into Licensee's competency to practice medicine in order to protect the  
23 citizens of the State of Oregon. That authorization included questioning Licensee's medical  
24 education and experience, as well as Licensee's current practice situation. As such, Licensee's  
25 argument is unpersuasive.  
26

27 Licensee finally argued that the complaint was vague and failed to identify any specific  
28 act or acts committed by Licensee that are considered a violation. However, FOF 28 establishes  
29 evidence to the contrary. Accordingly, Licensee's argument is without merit.  
30

### 31 **b. Licensee's arrest and subsequent charge** 32

33 The Board next alleged that Licensee engaged in unprofessional or dishonorable conduct  
34 when he was arrested for animal abuse in the second degree on August 25, 2006, and when he  
35 was subsequently charged with disorderly conduct by the District Attorney's office. However,  
36 ALJ Gutman was not persuaded by the Board's assertion.  
37

38 First, the Board presented hearsay regarding the alleged abuse rather than testimony from  
39 the complainant, Ms. Chronis. ALJ Gutman stated that she could not evaluate the credibility of  
40 Ms. Chronis without her presence and testimony at hearing.<sup>4</sup> Second, Officers Fort and Evans  
41 did not charge Licensee with disorderly conduct despite being the officers on scene, nor did they  
42 affirm what conduct Licensee actually engaged in that warranted the subsequent charge by the  
43

---

44 <sup>4</sup> Although the "state of the opposing evidence" favors the Board, the remaining *Reguero* factors (the  
45 alternative to relying on the hearsay evidence; the importance of the facts sought to be proved by the  
46 hearsay statements; the consequences of the decision; and the degree of lack of efficacy of cross-  
47 examination with respect to the hearsay statements) all favor Licensee. See *Reguero v. Teacher*  
48 *Standards and Practices*, 312 Or 402, 418 (1991).

1 District Attorney's office. Consequently, ALJ Gutman found that the Board did not meet its  
2 burden in this matter. The Board will not disturb that finding.

3  
4 **2. Whether Licensee willfully violated a Board order, pursuant to ORS 677.190(18).**

5  
6 ORS 677.190 further provides:

7  
8 The Oregon Medical Board may refuse to grant, or may suspend or  
9 revoke a license to practice for any of the following reasons:

10  
11 (18) Willfully violating any provision of this chapter or any rule  
12 adopted by the board, board order, or failing to comply with a  
13 board request pursuant to ORS 677.320.

14  
15 Licensee contends that it was impossible to comply with the Board's order. ALJ Gutman  
16 agreed.

17  
18 "Impossible" is defined as "Incapable of existing or taking place" and "Unlikely to  
19 happen or be accomplished." *Webster's II New College Dictionary*, 569 (3<sup>rd</sup> ed 2005).

20  
21 In this case, Licensee was ordered to complete a comprehensive evaluation at CPEP,  
22 which included a psychiatric evaluation. ALJ Gutman found that CPEP does not address  
23 psychiatric issues, and therefore, the reasonable inference is that CPEP does not conduct  
24 psychiatric evaluations. Thus, the psychiatric evaluation, as ordered by the Board, was both  
25 incapable of taking place and unlikely to happen at CPEP. Therefore, ALJ Gutman found by a  
26 preponderance of the evidence that it was impossible for Licensee to comply with the Board's  
27 order as written. ALJ Gutman further found that because the order was impossible to comply  
28 with, Licensee did not willfully violate the Board order.

29  
30 The Board argued that it was Licensee's responsibility to contact the Board if he found it  
31 was impossible to comply with the order. ALJ Gutman agreed. Nevertheless, because ALJ  
32 Gutman found that it was impossible for Licensee to comply with the Board's order, she said that  
33 Licensee cannot be found to have willfully violated the order regardless of his lack of  
34 responsibility.

35  
36 The Board does not accept this conclusion of law. The ALJ found that Licensee admitted  
37 that he did not pay money to CPEP for an evaluation, that he did not travel to Colorado to meet  
38 with anyone from CPEP, that he did not go inside the CPEP office or facility, and that he did not  
39 undergo an evaluation. The written record we have of Licensee's communication with CPEP is  
40 an e-mail that Licensee sent to CPEP on September 8, 2008 (R.9) in which Licensee argued why  
41 he didn't like the order for evaluation, as well as his suggestions to CPEP as to why the CPEP  
42 home page "seems to be poorly designed." CPEP did not respond to this e-mail. The Order for  
43 Evaluation called for Licensee to "undergo a comprehensive evaluation for the purpose of  
44 determining Licensee's fitness to practice medicine with skill and safety...." (A10, p. 1). The  
45 order specified that "Licensee shall successfully complete a comprehensive evaluation at the  
46 Center for Personalized Education for Physicians (CPEP) in Colorado. This evaluation shall  
47 include a psychiatric evaluation."  
48

1 The psychiatric evaluation was just one component of the ordered evaluation. Licensee  
2 did not ask the Board to amend the order. He simply chose not to comply. At the very least,  
3 Licensee could have scheduled an evaluation within 30 days of the date of the Order, which he  
4 did not do. There is no evidence whatsoever that it was impossible for Licensee not to schedule  
5 the evaluation within 30 days of September 3, 2008—the date the Order was signed by the Board  
6 Chair. Licensee failed to comply with that aspect of the Order on his own accord. In addition,  
7 Licensee failed to complete the evaluation within 90 days. Even if CPEP did not offer a  
8 psychiatric evaluation, he could have complied with the evaluation of his fitness to practice  
9 medicine with skill and safety in view of his lengthy absence from the active practice of  
10 medicine. (Licensee reported that he interrupted the practice of medicine and has been  
11 unemployed since July 2003.) The Board has concerns about any physician that has not actively  
12 practiced medicine for over five years, and yet requests renewal of an active license. In order to  
13 protect the public from a physician that may be unqualified to practice competently and safely  
14 due to an extended lapse from active medicine, the Board has relied upon evaluation centers such  
15 as CPEP to evaluate a physician’s medical knowledge and clinical judgment. Such an evaluation  
16 will correspond with a physician’s specialty (in this case, it would have been diagnostic  
17 radiology.) Licensee’s arguments as to why he did not comply with the ordered evaluation have  
18 been considered and are without merit. It was not impossible for Licensee to enroll with CPEP  
19 for an evaluation within 30 days from the signing of the order. Neither did Licensee show that it  
20 was impossible to comply with the order to complete the evaluation within 90 days. Licensee  
21 willfully failed to comply with the order.  
22

23 **3. Whether Licensee’s license shall be revoked, pursuant to ORS 677.205.**  
24

25 ORS 677.205 is titled “Grounds for discipline; action by board; penalties” and provides,  
26 in relevant part:  
27

28 (1) The Oregon Medical Board may discipline as provided in this  
29 section any person licensed, registered or certified under this  
30 chapter who has:  
31

32 \*\*\*\*\*  
33

34 (b) Been found to be in violation of one or more of the  
35 grounds for disciplinary action of a licensee as set forth in  
36 this chapter;  
37

38 \*\*\*\*\*  
39

40 (2) In disciplining a licensee as authorized by subsection (1) of this  
41 section, the board may use any or all of the following methods:  
42

43 \*\*\*\*\*  
44

45 (d) Revoke the license.  
46

47 \*\*\*\*\*  
48

1 (f) Take such other disciplinary action as the board in its  
2 discretion finds proper, including assessment of the costs of  
3 the disciplinary proceedings as a civil penalty or assessment  
4 of a civil penalty not to exceed \$10,000, or both.  
5

6 The Board's counsel contended at the hearing that Licensee's license should be revoked.  
7 ALJ Gutman agreed.  
8

9 As set forth above, the Board may revoke the license of a person who has been found to  
10 be in violation of one of the grounds for disciplinary action set forth in ORS Chapter 677. In  
11 accordance with ALJ Gutman's findings that Licensee violated ORS 677.190(1)(a), which is one  
12 of the grounds for disciplinary action set forth in ORS Chapter 677, the Board may revoke  
13 Licensee's medical license. In addition, the Board has also found that Licensee violated ORS  
14 677.190(18) by willfully violating a Board Order.  
15

16 **4. Whether civil penalties in the amount of \$10,000 and the costs of the disciplinary**  
17 **proceedings shall be assessed against Licensee, pursuant to ORS 677.205.**  
18

19 The Board's counsel contended at the hearing that civil penalties in the amount of  
20 \$10,000 and the costs of the disciplinary proceedings should be assessed against Licensee. ALJ  
21 Gutman agreed.  
22

23 Pursuant to ORS 677.205(2)(f), the Board is authorized to impose the costs of the  
24 disciplinary proceedings, as well as civil penalties not to exceed \$10,000. After reviewing the  
25 record in its entirety, and taking into account Licensee's behavior during the hearing and during  
26 the investigative interview, ALJ Gutman found that the proposed sanction is appropriate in this  
27 matter. The Board agrees. Therefore, civil penalties in the amount of \$10,000 and the costs of  
28 the disciplinary proceedings shall be assessed against Licensee.  
29

30 **LICENSEE'S EXCEPTIONS**  
31

32 Licensee filed 22 pages of written exceptions with the Board, dated July 20, 2009. The  
33 Board sent a letter to Licensee inviting him to appear before the Board on October 8, 2009 at  
34 8:05 am. Licensee chose not to appear. The Board subsequently went into deliberation, reviewed  
35 Licensee's exceptions and the ALJ's proposed order, made certain changes to the order, and  
36 issued a Proposed Final Order. The Board submitted the Proposed Final Order to Licensee on  
37 October 20, 2009, who submitted exceptions to the order that were received by the Board on  
38 October 29, 2009. The Board has considered his exceptions, the record and the Proposed Final  
39 Order. Licensee's exception that he did not "fail" to appear before the Board on October 8, 2009  
40 is accepted, and this Order has been revised to so reflect. Licensee's remaining exceptions have  
41 been reviewed, are largely argumentative, and have been found to lack merit.  
42

43 **FINAL ORDER**  
44

45 The Board issues the following Final Order:  
46

- 47 1. Licensee engaged in unprofessional or dishonorable conduct, pursuant to ORS  
48 677.190(1)(a).

- 1  
2 2. Licensee willfully violated a Board order, pursuant to ORS 677.190(18).  
3  
4 3. The license of Licensee to practice medicine is revoked, pursuant to ORS 677.205.  
5  
6 4. Civil penalties are assessed in the amount of \$10,000, to be paid in full within 60 days  
7 from the date this Order is signed by the Board Chair.  
8  
9 5. The costs of the disciplinary proceedings shall be assessed against Licensee, pursuant  
10 to ORS 677.205. These costs are to be paid in full within 90 days from the date the  
11 Board issues its Bill of Costs.  
12

13  
14  
15 DATED this 14 day of January 2010.

16  
17 OREGON MEDICAL BOARD  
18 State of Oregon

19  
20 < Signature Redacted on Copies

21  
22 ~~DOUGLAS B. KIRKPATRICK, MD~~  
23 BOARD CHAIR  
24

25  
26  
27 **APPEAL**

28  
29 If you wish to appeal the final order, you must file a petition for review with the Oregon Court of  
30 Appeals within 60 days after the final order is served upon you. See ORS 183.480 et seq.  
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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of: )  
 )  
RALPH LEWIS READ, MD ) BILL OF COSTS  
License No. MD22066 )  
 )

1.

On January 14, 2010 the Oregon Medical Board (Board) issued a Final Order in the matter of Ralph Lewis Read, MD (Licensee). In this Order, Licensee was assessed the costs related to his Contested Case Hearing held on May 28, 2009. This payment is due within 90 days from the date this Bill of Costs is signed by the Board's Executive Director.

2.

The State of Oregon, by and through its Board of Medical Examiners, claims costs related to the May 28, 2009 Contested Case Hearing in the above-captioned case as follows:

Board Counsel - Warren Foote	\$6,071.26
Administrative Law Judge – Dove L. Gutman, JD	\$7,185.04
Court Reporter Appearance - Naegeli Corp	\$1,342.75
<b>TOTAL COSTS DUE:</b>	<b>\$14,599.05</b>

The above costs are certified as a correct accounting of actual costs incurred preparing for and participating in the Contested Case Hearing in this matter.

Dated this 23<sup>rd</sup> of February, 2010  
OREGON MEDICAL BOARD  
State of Oregon

Signature Redacted on Copies

\_\_\_\_\_  
KATHLEEN HALEY, JD  
EXECUTIVE DIRECTOR