

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2017-032

In the Matter of)
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MARC E. EICHLER, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Marc E. Eichler, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No 15-361.

Biographical Information

1. The Respondent was born on February 21, 1961. He graduated from the Washington University School of Medicine in 1988. He has been licensed to practice medicine in Massachusetts under certificate number 160084 since 1999. He specializes in Neurological Surgery.
2. On December 17, 2015, the Respondent entered into a voluntary agreement not to practice medicine in Massachusetts.

Factual Allegations

Criminal Conviction

3. On June 8, 2016, the Respondent was arraigned in the United States District Court for the District of North Dakota Western Division (Federal Court) on charges which included two counts of Production of Materials Depicting the Sexual Exploitation of Minors; two counts of Attempted Production of Materials Depicting the Sexual Exploitation of Minors; one count of Receipt of Materials Involving the Sexual Exploitation of Minors; one count of Attempted Receipt of Materials Involving the Sexual Exploitation of Minors and one count of Transfer of Obscene Materials to Minors.

4. On February 21, 2017, the Respondent entered into a plea agreement in which he agreed to plead guilty to one count of the federal indictment. In the plea agreement, the Respondent acknowledged that

From in or about December, 2014, to in or about October, 2015,... the [Respondent], knowingly possessed, and accessed with intent to view, numerous computer files containing visual depictions ...[involving] the use of minors engaging in sexually explicitly conduct....

5. On May 25, 2017, the Respondent's guilty plea was accepted to one count of Possession of Materials Involving the Sexual Exploitation of Minors. The remaining charges were dismissed.

6. The Respondent was sentenced to 36 months in prison with credit for time served.

Out-of-State-Discipline

7. On February 5, 2016, the North Dakota State Board of Medicine (North Dakota Board) disciplined the Respondent. The North Dakota Board's Stipulation is attached hereto as Attachment A and incorporated herein by reference.

8. On May 24, 2017, the Tennessee Board of Medical Examiners (Tennessee Board) disciplined the Respondent. The Tennessee Board's Consent Order, is attached hereto as Attachment B and incorporated herein by reference.

Legal Basis for Proposed Relief

A. Pursuant to 243 CMR 1.03(5)(a)7, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has been convicted of a crime.

B. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

C. Pursuant to 243 CMR 1.03(5)(a)12, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, § 5 or 243 CMR 1.03(5)—to wit:

1. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician lacks good moral character and has engaged in

conduct that undermines the public confidence in the integrity of the medical profession.

2. Pursuant to 243 CMR 1.03(5)(a)7, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has been convicted of a crime.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair

Date: September 14, 2017

STATE OF NORTH DAKOTA

Respondent.

STIPULATION

THEREFORE, IT IS HEREBY agreed by and between the parties to this action and the

North Dakota State Board of Medicine:

1. The Respondent hereby waives any procedural irregularity herein and his right to a hearing on the Complaint now pending in this action;

2. The Respondent agrees that his license to practice medicine in the State of North Dakota should be indefinitely suspended.

3. Respondent retains the right to reapply for reinstatement of his medical license in North Dakota; however, any petition for reinstatement of his license shall be subject to the sole discretion of the Board.

4. Respondent shall be responsible for paying the costs and attorney's fees incurred by the Board in the investigation and prosecution of this action in an amount not to exceed \$2,500. The Board will notify the Respondent of any such costs within a reasonable time after the Stipulation is approved by the Board and Respondent shall make payment within (30) days from receiving such notification.

5. If Respondent shall fail, neglect, or refuse to comply with any of the terms, provisions, or conditions herein, the Board shall take action against the Respondent that is in accordance with the law.

6. In the event the Board, in its discretion, does not approve this settlement, this Stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this Stipulation, and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto.

7. This agreement for the disposition of the above-entitled contested case is a matter

of public record and the obligations of the Board with respect thereto shall be governed by the laws of North Dakota and current Board policy.

8. All parties hereto recognize that the Board representatives who have engaged in discussions relative to an agreed disposition of this matter can only make recommendations to the North Dakota Board of Medicine, which recommendations can in no way be considered as binding upon the full membership of the Board who would ultimately decide the pending contested case, and this agreement is subject to acceptance by the full membership of the Board.

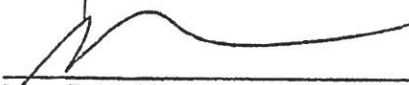
9. Respondent understands that he has the right and has been afforded the opportunity to have this agreement reviewed by an attorney, and he has retained Peter Welte to represent him in this matter.

10. Respondent specifically waives any claim that any disclosures made to the full membership of the Board for the purposes of consideration of this agreement have prejudiced his right to a fair and impartial hearing in the event that this agreement is not accepted by the full Board and if further proceedings ensue.

11. Respondent further agrees that there have been no inducements, threats or promises made in order to obtain his entry into this agreement.

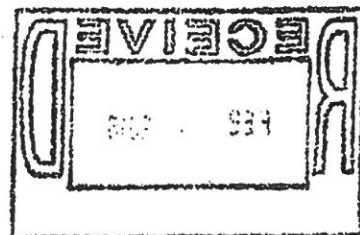
12. The parties further agree that all statements contained herein are based upon the facts known to the Board on the date of execution of this agreement.

Date this 29 day of January, ²⁰¹⁶ ~~2015~~ ^{P.D.W.} per Marc Eichler


Marc E. Eichler M.D.

Dated this 5th day of February, 201⁶.

By Stacy M. Moldenhauer
Stacy M. Moldenhauer (ID #06293)
Special Assistant Attorney General
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
Phone: (701) 258-0630
Facsimile: (701) 258-6498



BEFORE THE NORTH DAKOTA BOARD OF MEDICINE

STATE OF NORTH DAKOTA

North Dakota Board of Medicine
Investigative Panel A,

Complainant,

Marc E. Eichler, M.D.,

Respondent.

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ORDER

WHEREAS the North Dakota Board of Medicine and Respondent executed a Stipulation and Non-Practice Agreement dated November 3, 2015, and;

WHEREAS the North Dakota Board of Medicine issued a Complaint dated December 4, 2015 based upon acts or conduct by the Respondent that constitutes grounds for disciplinary action in accordance with N.D.C.C. § 43-17-31(6).

WHEREAS the Respondent and the Investigative Panel A have entered into a Stipulation dated February 5, 2016, and;

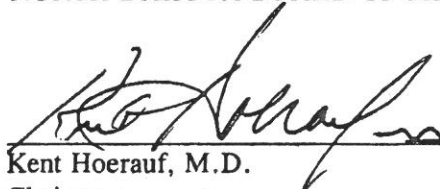
WHEREAS the North Dakota Board of Medicine finds that the terms of that Stipulation are an appropriate disposition of this case; and its terms are incorporated into this Order;

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in the State of North Dakota is indefinitely suspended.
2. Respondent shall be required to pay the costs of the prosecution of this action not to exceed \$ 2,500.00.

This Order is effective March 18, 2016.

NORTH DAKOTA BOARD OF MEDICINE


Kent Hoerauf, M.D.
Chairman

STATE OF NORTH DAKOTA

Respondent.

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COMPLAINT

I.

II.

FACTS

- 1 -

IV.

On October 27, 2015, Respondent was charged with one count of gross sexual imposition and two counts of luring minors by computer or other electronic means. *See Case No. 51-2015-CR-02431.*

V.

Respondent is subject to disciplinary action pursuant to the provisions of N.D.C.C. § 43-17-30.1 based upon Respondent's violations of the North Dakota Medical Practice act, by engaging in conduct that is dishonorable, unethical, or unprofessional, and that is likely to deceive, defraud, or harm the public as proscribed by N.D.C.C. § 43-17-31(6).

WHEREFORE, Complainant respectfully requests Respondent, Marc E. Eichler, M.D., be disciplined for his violations of N.D.C.C. § 43-17-31 and seeks an appropriate sanction(s) for those violations as authorized by N.D.C.C. § 43-17-30.1. Complainant also respectfully requests that the Board be awarded its costs and attorney's fees in having to bring this action pursuant to N.D.C.C. § 43-17-31.1.

NOTICE: Respondent must answer this Complaint within twenty one (21) days after service of the complaint or the allegations may be deemed admitted and may result in a default order revoking the subject license. Such answer must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Dated this 4 day of December, 2015.

By Stacy M. Moldenhauer

Stacy M. Moldenhauer (ID #06293)

Special Assistant Attorney General

122 East Broadway Avenue

P.O. Box 460

Bismarck, ND 58502-0460

Phone: (701) 258-0630

Facsimile: (701) 258-6498

Attorney for: North Dakota Board of
Medicine – Investigative Panel A

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF MEDICAL EXAMINERS
MARC E. EICHLER, M.D.,)	
RESPONDENT)	CASE NO: 201606252
)	
MINOT, NORTH DAKOTA)	
TENNESSEE LICENSE NO.: 40352)	

CONSENT ORDER

Come now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent Marc E. Eichler, M.D. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Medical Examiners (hereinafter the "Board") for approval of this Consent Order affecting Respondent's medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. See Tennessee Medical Practice Act, Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 63-6-101, *et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the *Official Compilation Rules and Regulations of the State of Tennessee* (hereinafter "TENN. COMP. R. & REGS.").

Respondent, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank and/ or similar agency. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. STIPULATIONS OF FACT

1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 40352 by the Board on November 9, 2015, which expires on February 28, 2019.
2. On or about February 21, 2017, Respondent entered into a plea agreement with the United States District Court for the District of North Dakota Western Division.

3. Respondent agreed to plead guilty to one count acknowledging that:

'From in or about December, 2014, to in or about October, 2015, in the District of North Dakota, the Defendant, knowingly possess, and accessed with intent to view, numerous computer files containing visual depictions that had been transported using any means and facilities or interstate and foreign commerce, namely, the internet, the production of which visual depictions involved the use of minors engaging in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and which visual depictions were of such conduct, in violation of Title 18, United States Code, Sections 2252(a)(4)(B) and 2252 (b)(2).'

4. Respondent avers that six (6) images were sent to him via Snapchat by one individual during this time-period. Respondent avers that these images were never downloaded, screenshot, disseminated, or saved on any phone, computer, or other device.

II. GROUNDS FOR DISCIPLINE

The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

5. The facts stipulated in paragraph 2, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(10):

Conviction of a felony, conviction of any offense under state or federal laws relative to drugs or the practice of medicine, conviction of any offense involving moral turpitude or conviction of any offense for which

the person is required to registered as a sex offender or violent sexual offender pursuant to title 40, chapter 39, part 2.

III. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of people in the State of Tennessee and ensure that the public confidence in the integrity of the medical profession is preserved.

IV. ORDER


NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

6. The Tennessee medical license of Marc Eichler, M.D., license number 40352, is hereby **VOLUNTARILY SURRENDERED** effective the date of entry of this Order.
7. Respondent must pay, pursuant to TENN. CODE ANN. §§ 63-6-214 (k) and 63-1-144(a)(4), the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. Said costs shall not exceed one thousand dollars (\$1,000.00).
8. Any and all costs shall be paid in full within thirty (30) days after the issuance of the Assessment of Costs unless Respondent makes arrangements for an extended payment plan for the assessed costs through the Disciplinary Coordinator of the Division of Health Related Boards. Payment shall be made by certified check, cashier's check, or money order, payable


to the State of Tennessee, Department of Health. Any and all payments shall be forwarded to the Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd floor, Nashville, Tennessee 37243. A notation shall be placed on said money order or such check that it is payable for the costs of Marc Eichler, M.D., Case No. 201606252.

9. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (N.P.D.B.) and/or similar agency.

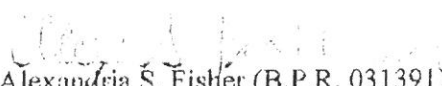
This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 29 day of May, 2017.


Chairperson
Tennessee Board of Medical Examiners

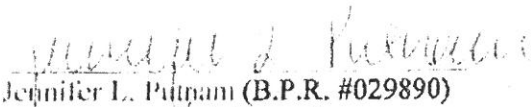
APPROVED FOR ENTRY:


Marc Eichler, M.D.
Respondent

5/17/17
DATE


Alexandria S. Fisher (B.P.R. 031391)
Counsel for Respondent
FROST BROWN TODD, LLC
150 3rd Ave South, Suite 1900
Nashville, Tennessee 37201
(615) 251-5594

5/17/17
DATE



Jennifer L. Putnam (B.P.R. #029890)
Assistant General Counsel
Office of General Counsel
Tennessee Department of Health
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

7/23/17
DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, Marc Eichler, M.D., by and through his counsel, Alexandria S. Fisher, Frost Brown Todd, LLC, 150 3rd Ave South, Suite 1900, Nashville, Tennessee, 37201 and via email at afisher@fbtlaw.com.

This 23rd day of July, 2017.


Jennifer L. Putnam
Assistant General Counsel