

IN THE MATTER OF

TIMOTHY SCOTT TRADER

Respondent

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BEFORE THE MARYLAND

STATE BOARD OF

PHYSICIANS

Case No. 2005-0027

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FINAL DECISION AND ORDER

I. INTRODUCTION

On February 6, 2006, the Board charged Respondent Timothy S. Trader with practicing medicine without a license and with representing to the public by description of services, methods or procedures, or otherwise, that he was authorized to practice medicine in this State, in violation of Md. Health Occ. Code Ann. §§14-601 and 14-602 (a) (2005). Mr. Trader, an unlicensed individual, was employed at the Tanglewood Wellness Center (Tanglewood) in Thurmont, Maryland. Tanglewood's website portrayed Mr. Trader as a board-certified naturopathic doctor.

Individual A, a 22-year-old woman, underwent treatment of her Type 1 diabetes at Tanglewood under the direct supervision of Mr. Trader. Upon her arrival, Mr. Trader questioned her about her medical history and performed a physical examination. He then advised her to discontinue all her insulin and ingest only water. A Type 1 diabetic should never be taken off of insulin because doing so places the person at a high risk of developing diabetic ketoacidosis, which can cause death.

On a daily basis, Mr. Trader measured and recorded her vital signs and blood glucose level, advising her to continue with the program despite her worsening

condition. By the fifth day of this treatment, Individual A became confused and lethargic, slipping in and out of consciousness, with blood glucose readings too high to measure. Mr. Trader then injected her with large quantities of insulin. Injecting insulin alone at this stage of ketoacidosis is ineffective. Late in the afternoon, an ambulance was called. Paramedics administered CPR and took Individual A to Frederick Memorial Hospital where she was determined to be profoundly acidotic. She was transferred to the University of Maryland Medical Center the next day. She was taken off life support and declared dead on the following day, June 12, 2004. The cause of death was diabetic ketoacidosis.

Individual F, a 45-year-old male with coronary artery disease, came to Tanglewood for what was to have been a two-week stay. Individual F was a 47-year-old man who had undergone a quadruple bypass surgery and who five cardiac stent insertions. Upon his arrival, Mr. Trader questioned him about his medical history and performed a physical examination.

Mr. Trader advised Individual F to discontinue all medications previously prescribed to him by his licensed health care providers, including Toprol (prescribed for high blood pressure), Norvasc (prescribed for angina), Plavix (a blood thinner) and Lipitor (a cholesterol-lowering drug) -- because, Mr. Trader advised, these medications were toxins which should be eliminated from his body. Mr. Trader advised him not only to discontinue all medications but also to commence a water-only fast. On a daily basis, Mr. Trader examined Individual F and advised him on the progress of the program. Mr. Trader advised Individual F that fasting causes a loss of strength and perhaps nausea vomiting, blurry vision and diarrhea, but he should not worry about these symptoms if

they occurred, as they were to be expected. After staying two days, Individual F decided to leave Tanglewood, contrary to Mr. Trader's urging.

II. PROCEDURE

The charges were considered in a seven-day evidentiary hearing before an Administrative Law Judge ("ALJ") between May 2, 2006 and June 19, 2006. Mr. Trader did not appear for the hearing but was represented by counsel, Stephen J. Bourexis. The State's case was presented by Administrative Prosecutor, Janet K. Brown. The ALJ issued a Proposed Decision on September 27, 2006, proposing that the Board's charges pursuant to HO §§14-601 and 14-602(a) be upheld, that a public cease and desist order be issued and that Respondent be required to pay a civil fine of \$70,000.00 based on two separate violations of HO §14-601(a).

Counsel for Respondent filed Exceptions to the Proposed Decision of the ALJ, and the State filed responses. An oral hearing on those exceptions was held before the full Board. This Final Decision and Order is the Board's final decision in this case after considering the entire record, the written Exceptions filed by Respondent Trader as well as the State's response and the oral arguments at the Exceptions Hearing.

III. FINDINGS OF FACT

The Board adopts as its own the ALJ's findings of fact numbers 1 through 45 on pages 4 through 13 of the Proposed Decision in their entirety. (The Proposed Decision of the Administrative law Judge is incorporated into this Final Decision and Order and is appended hereto as Attachment A.) In addition, the Board adopts the ALJ's Discussion to the extent set out below.

The Board adopts the ALJ's Discussion section, Proposed Dec. at 13-47, except as follows. The Board does not adopt that part of the ALJ's Discussion which indicates the amount of the fine to be imposed on Mr. Trader should be determined in part by the fact that Mr. Trader's attorney raised specious arguments and filed baseless motions during the proceedings. The Board will not penalize Mr. Trader based upon his counsel's filing of baseless motions and making of specious arguments. Also with respect to disposition, the Board does not adopt the last two paragraphs of the Discussion found at page 47 of the Proposed Decision, as this language seems again to penalize Mr. Trader for the baseless motions filed by his attorney. At the same time, the Board does adopt the ALJ's actual rulings on Mr. Trader's motions, as set out in the Proposed decision. The Board also agrees with the final disposition of the case as recommended by the ALJ.

The Board notes that the ALJ erroneously cited HO §14-602(b) as the basis of one of the Board's charges. The Board, however, did not charge Mr. Trader with violating HO §14-602 (b). The Board thus does not adopt those comments of the ALJ which specifically (Proposed Dec. at 28, 31, 48) or inferentially (Proposed Dec. at 47) refer to a charge or findings based on HO § 14-602 (b). This technical correction of the record, however, does not affect the Board's adoption of the remainder of the ALJ's decision, nor does it affect the Board's agreement with the ALJ's conclusions that: (1) Mr. Trader violated HO § 14-601 and 14-602 (a); (2) these were egregious violations of the law; (3) these violations of the law caused the death of Individual A; and (4) these violations fully justify the imposition of the maximum fine.

IV. CONSIDERATION OF EXCEPTIONS

The Board has considered all of the Exceptions and responses filed in this case by Timothy Trader and by the State before issuing this Final Decision and Order.

Mr. Trader's Exceptions to the Proposed Decision based on the ALJ's discussion of HO § 14-602 (b) were well-founded. As noted above, the Board has excluded from consideration that provision of the law. The elimination of this particular charge from consideration, however, does not negate the findings under the other sections of the law under which Mr. Trader was actually charged; nor, in the Board's opinion, does it lessen Mr. Trader's responsibility for these egregious acts which led to this tragic death of a young woman.

The Board finds no merit in Respondent's argument that he should not be subject to sanction because he was once certified by a naturopathic certifying body. Without regard to past or present credentials held by any individual, if an individual practices medicine in Maryland and that individual is not licensed to practice medicine by the Board, that individual is subject to administrative prosecution and a civil fine for practicing medicine without a license. At the very least, examining a person and advising that person to stop taking medications prescribed by licensed health care practitioners for existing, serious diseases or conditions is the practice of medicine. The Respondent argues that the Board is trying to regulate "fasting," but it is the practice of medicine that is at issue in this case. The fact that the recommended treatment involved fasting among other things is not dispositive. Ceasing to take medications prescribed for serious illnesses is not "fasting." Respondent argues that the fact that the patients entered the facility voluntarily and paid money for the experience shows that

they did not receive medical treatment. The Board notes, however, that most medical treatment is entered into voluntarily and that almost all of it costs money. These factors are not dispositive.

Respondent argues that the fact that a criminal action *could* be brought against him at some future date for his involvement in the death of Individual A means that the administrative proceedings in this case must comply with the Rules of Criminal Procedure. This argument is illogical and unsupported by legal authority. The Board also rejects Respondent's claim that the ALJ erred by not hearing the charges against him in a proceeding separate from that considering the charges against Loren Lockman. A decision regarding severance is committed to the discretion of the ALJ based on considerations of procedural simplicity, administrative fairness and elimination of unjustifiable expense and delay. COMAR 28.02.01.08B(10); see Md. Rule 2-212 and Md. Rule 4-253. The ALJ did not abuse his discretion in determining that the charges against Loren Lockman and Timothy Trader should be heard in a single proceeding.

The Board rejects Respondent's claim that insufficient evidence linked him to Individual A. The available evidence indicated that Respondent was at Tanglewood during the period that Individual A was present, that Respondent examined her and monitored her "progress" on a daily basis and that he personally injected Individual A with huge amounts of insulin on her final day at that facility in an attempt to revive her from her diabetic coma. Despite having the opportunity to do so, Respondent offered no controverting evidence. All of the Respondent's arguments about the insubstantiality of the evidence are rejected. There was substantial evidence to support all of the findings of fact made by the ALJ.

The Board rejects Respondent's claim that the State's expert, Dr. Brown, was not qualified to testify as an expert. The Board adopts the ALJ's resolution of this issue as set out on pp. 22-23 of the Proposed Decision. The Board emphatically rejects the notion that previous supervision of a long-term water-only fast is an essential

prerequisite for an expert in order for that expert to provide relevant testimony. Dr. Brown testified, and the Board agrees, that long-term water-only fasts are an unacceptable medical practice. Under the Respondent's theory, a medical practitioner could not testify that any treatment violates the standard of care unless the medical practitioner has engaged in that treatment himself or herself. Acceptance of this theory would require the Board to ignore the most outrageous and dangerous practices, as the Board would never be able to find credible experts who have used these outrageous and dangerous practices themselves. Dr. Brown was well qualified to provide expert testimony on the effects of water-only fasts on individuals with Type I diabetes as well as on those individuals with medical conditions such as were exhibited by Individual F.

The Board also rejects Respondent's claim that Dr. Brown was erroneously permitted to give an opinion about what "practicing medicine" entailed. Dr. Brown was a physician who had been engaged in the practice of medicine for a significant period of time and was well qualified to describe what persons who practice medicine do and how that differs from what lay persons do. See Md. Rule 5-704 (Even if an expert's opinion concerned issues to be decided by the trier of fact, such testimony "is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact"). The ALJ was correctly concluded that such testimony was admissible.

In general, Mr. Trader raised in his Exceptions the same objections that he raised before the ALJ. The Board adopts the ALJ's treatment of these issues, with the exception of those two specific points noted above in which the Board specifically disagreed with the ALJ's analysis. Nor does the Board perceive any bias on the part of the ALJ. The ALJ methodically and meticulously and correctly ruled on Mr. Trader's often baseless motions and provided a fair forum for the presentation of all of the evidence. The Board has made essentially the same findings on the same record, because those findings are called for by the evidence.

V. CONCLUSIONS OF LAW

The Board adopts the conclusions of law proposed by the ALJ on pages 47 – 48 of the Proposed Decision¹. Specifically, Timothy Trader practiced medicine without a license in violation of Health Occ. §14-601 and represented to the public that he was authorized to practice medicine in violation of Health Occ. §14-602(a). His conduct in this regard was so deplorable and so injurious that a significant fine is justified. In addition, the issuance of a public Cease and Desist Order as authorized by HO § 14-206 (e) is justified and necessary.

VI. SANCTION

Mr. Trader's was egregious. That conduct had the potential to result in serious danger to each of these two individuals. In fact, Mr. Trader's actions resulted in the death of Individual A. The Board agrees with the Administrative Law Judge that the examinations and treatment recommendations given these two separate individuals should be treated as two separate offenses and that it is appropriate in these egregious

¹ The word "Since" should be omitted from the beginning of Conclusion of Law No. 3.

circumstances to impose the maximum fine of \$30,000 for the offense with respect to Individual F and \$40,000 for the offense with respect to Individual A. See COMAR 10.32.02.06B. (4).²

VII. ORDER

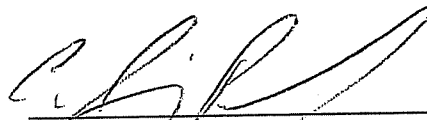
Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent, Timothy Scott Trader, cease and desist from the practice of medicine in this State; and it is further

ORDERED that Respondent Timothy Scott Trader be, and he hereby is, fined in the amount of \$70,000; and it is further

ORDERED that this is a Final Decision of the Maryland State Board of Physicians and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

SO ORDERED this 31st day of August 2007.



C. Irving Pinder, Jr., Executive Director
Maryland State Board of Physicians

² As set out above, the amount of the fine is not in any way influenced by Mr. Trader's attorney's method of representation of his client, nor by any finding that Mr. Trader violated § 14-602 (b). In every other respect, however, the Board agrees with the rationale of the ALJ in imposing this fine.

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. §14-408(b), Mr. Trader has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the date of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, State Gov't Article §10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Mr. Trader files an appeal, the Board is a party and should be served with the court's process. In addition, Mr. Trader should send a copy to the Board's counsel, Thomas W. Keech, Esquire, at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201.

The Administrative Prosecutor is no longer a party to this case and need not be served or copied.

STATE BOARD OF PHYSICIANS

v.

TIMOTHY SCOTT TRADER,

AN UNLICENSED INDIVIDUAL,

RESPONDENT¹

* BEFORE THOMAS G. WELSHKO,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. DHMH-SPB-79-06-11365
* SBP No. 2005-0027
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On or about February 6, 2006, the State issued charges ("the charges") against the Respondent for allegedly violating sections 14-601 and 14-602(a) of the Maryland Medical Practice Act, Md. Code Ann., Health Occ.² §§ 14-601 and 14-602(a) (2005).

I conducted an evidentiary hearing on May 2, 3, 4, 5, 8, and 11 and June 19, 2006 at the Office of Administrative Hearings ("OAH") in Hunt Valley, Maryland,

¹ I conducted this hearing in conjunction with the companion case of *State Board of Physicians v. Loren Lockman*, DHMH-SBP-79-06-11829. Nevertheless, I have only considered evidence specifically relating to Respondent Trader in deciding this case.

² Hereinafter, "Health Occupations Article."

pursuant to Section 14-405 of the Health Occupations Article. Assistant Attorney General Janet Klein Brown represented the State. Stephen P. Bourexis, Attorney-at-Law, represented the Respondent, Timothy Scott Trader.

I allowed the record to remain open for submission of memoranda of law by the parties. I originally set the due date for submission of memoranda as July 19, 2006—30 days from the conclusion of the hearing. Nevertheless, in early July 2006, counsel for Respondent Trader noted that the court reporting service had not issued the Transcript for the final day of hearing, which impeded his ability to draft a complete and accurate memorandum. Consequently, he asked for an extension of the due date for memoranda and represented that the State concurred in his motion. Although counsel for the Respondent asked for a 30-day extension, I granted an extension to Monday, August 7, 2006 for the submission of memoranda. I closed the record after that date.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2005); the Rules of Procedure of the State Board of Physicians, Code of Maryland Regulations ("COMAR") 10.32.02; and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01, govern this proceeding.

ISSUES

1. Did the Respondent violate section 14-601 of the Health Occupations Article by engaging in the practice of medicine in this state without a license?
2. Did the Respondent violate section 14-602(a) of the Health Occupations Article by representing to the public, by description of services, methods, or procedures,

or otherwise, that the he was authorized to practice medicine in this State when he was not licensed?

3. If the Respondent has been found to have practiced medicine without a license, does this misconduct warrant the issuance of a Public Cease and Desist Order?

4. If the Respondent has been found to have practiced medicine without a license, does this misconduct warrant the imposition of a monetary penalty?

SUMMARY OF THE EVIDENCE

Exhibits:

The Board submitted 45 exhibits. The Respondent submitted four exhibits. I admitted all exhibits. (A complete List of Exhibits is attached as an Appendix.)

Testimony

The following witness testified on behalf of the State:

- David R. Brown, M.D., Expert Witness. I admitted Dr. Brown as an expert in Medicine
- Ruth Ann Arty, Compliance Officer for the SBP; Ms. Arty also testified as a rebuttal witness
- Corporal David DeWees, Deputy Sheriff, Frederick County Sheriff's Office
- Individual F³

³ The names of individuals who were clients of Tanglewood Wellness Center and had interaction with the Respondent have been redacted to preserve confidentiality.

- The Mother of Individual A (deceased)⁴
- Frank Bubczyk, former Analyst/Investigator for the SBP

The Respondent did not appear at the hearing and, consequently, did not testify.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. At no time relevant to this proceeding did the Respondent have a license to practice medicine in this State or any other jurisdiction. (Undisputed, Transcript ("T.") at 54; T. at 1338 – 56; (State Exhibit No. ("St.") #45)
2. The Respondent at various times has represented himself as a "N.M.D.," naturopathic medical doctor, and as having an "N.D.," a doctorate in naturopathy. Recently, he has identified himself as an "N.M.D. – retired" on Internet websites. (T. at 1355; St. #8/4B,⁵ #10/6F, #42, #43, #44 and #45)
3. Loren Lockman founded and managed Tanglewood Wellness Center in Thurmont, Maryland ("Tanglewood"), a for-profit fasting center. Individuals went to Tanglewood to stay from periods ranging from several days to several weeks to engage

⁴ Other witnesses testified throughout the seven days of hearing, but their testimony exclusively concerned the conduct of Respondent's co-Respondent, Loren Lockman. I have excluded the names of these witnesses here because I do not find their testimony relevant to the proceeding involving Respondent Trader.

⁵ The SBP marked its exhibits in advance. Parties rarely offer exhibits in the order that they have been pre-marked. Therefore, I have given each of the SBP's pre-marked exhibits two numbers. The first number designates the order in which the exhibit was admitted; the second signifies the pre-marked number. Some exhibits were not pre-marked. They only bear one number. These are the exhibits that I admitted collectively in both cases, although not all of these exhibits specifically concern this Respondent.

in supervised fasting with the purpose of promoting the self-healing of the body. St. #44)

4. The Respondent joined the staff of Tanglewood as a naturopathic doctor in 2003. He functioned as a caregiver to those who engaged in fasting at that facility. (T. at 943 – 44; St. #44)

Facts as They Relate to Individual A.

5. Individual A was a Type I (insulin-dependent) diabetic. She received that diagnosis when she was approximately 15 years old. (T. at 1002)

6. In late 2003, Individual A learned about Tanglewood through the Internet. She became intrigued by testimonials that she read on Tanglewood's website written by diabetics who claimed to have gotten off insulin by participating in Tanglewood's fasting regimen. Getting off insulin was particularly appealing to Individual A since insulin use promotes weight gain, and Individual A was overweight. (T. at 480, 836; St. #5/1 , #10/6A and #10/6F)

7. In early 2004, Individual A sought out additional information from Tanglewood. Eventually she obtained a literature authored by Loren Lockman, as well as videotapes he produced, that promoted fasting as a natural means of healing. She also obtained a book written by Joel Fuhrman, M.D. entitled *Fasting and Eating for Health* that reflected many of Mr. Lockman's ideas about fasting and healing. She eventually made friends with an intern who worked at Tanglewood named Kimberley. (T. at 1009 and 1013)

8. In March 2004, Individual A told her mother that she was going to stay at Tanglewood to fast for six weeks after her community college semester had ended. (T. at 483 – 6, 1009)

9. In April 2004, Individual A paid a total of \$3,300.00 for a six-week stay at Tanglewood beginning in early June 2004. She made her payments by two separate checks—a deposit check for \$750.00 and second check for \$2,550.00, the balance owed. (T. at 1029)

10. On April 10, 2004, Individual A wrote a note to herself so she would remember to send the money that she owed to Tanglewood. That note read, “mail check, Dr. Tim.” (T. at 1030)

11. Individual A scheduled a six-week stay at Tanglewood. She would engage in a water-only fast for 33 days, until July 8, 2004, and then proceed to re-feed from July 9, 2004 through July 17, 2004. (T. at 484 – 86)

12. Individual A’s mother drove Individual A to Tanglewood on Saturday, June 5, 2004. Individual A had to wait to be taken to her room, so during this time, Individual A’s mother had an opportunity to speak with the Respondent. The Respondent assured Individual A’s mother that Tanglewood would closely monitor Individual A during her stay at the facility. (T. at 1024)

13. Individual A packed NovoLog and Lantus insulin⁶ in her luggage and took it with her to Tanglewood. She refrigerated both kinds of insulin as directed so she could use it if needed. (T. at 473 – 74, 885)

⁶ NovoLog insulin is taken after meals; Lantus insulin is taken a bedtime. Individual A also used Humalog insulin after meals, but Humalog insulin is simply a different brand of NovoLog insulin and is, therefore, functionally equivalent. (T. at 472, 475; St. #10/6E)

14. The Respondent completed a "TWC Fasting Intake Form" or "FIF"—a chart resembling a medical record—for Individual A upon her arrival at Tanglewood. He initially took measurements of Individual A's vital signs, specifically, her pulse, blood pressure and blood glucose level, and recorded those measurements in the FIF. He also conducted a physical examination of Individual A and made remarks in his initial entry on the FIF about Individual A's eyes ("R" – for reactive), her lungs ("clear"), along with notations about her pancreas, thyroid, liver, colon, kidneys, adrenals, circulation, heart, skin and stomach. He looked into Individual A's ears with an otoscope and, on the FIF, noted the presence of wax against one of her eardrums. The Respondent also made an entry on the FIF that Individual A's throat was a little red and that her nose was red and inflamed. (T. at 484 – 99, 851; ST. #5/1)

15. On June 5, 2004, Individual A had a temperature of 96.8° F. on arrival. Her pulse was 76 and her blood pressure was 108/88. Individual A's blood glucose levels were 170 at noon, 192 at 7:40 p.m. and 229 at 9:30 p.m. (St. #5/1)

16. At the insistence of the Respondent, Individual A did not use any insulin and consumed only water on June 5, 2004 and throughout the remainder of her stay at Tanglewood. (T. at 955)

17. On June 6, 2004, Individual A's pulse, measured in the morning was 76 and her blood pressure was 118/72. Her blood glucose readings were 206 at 10:00 a.m., 190 at 1:30 p.m. and 204 at 10:30 p.m. Individual A rested and slept during most of the day. She increased her water intake. Her tongue became coated. (St. #5/1)

18. On June 7, 2004, Individual A's pulse, measured in the morning, was 84 and her blood pressure was 112/68. Her blood glucose levels were 194 at 7:40 a.m.,

247 at 11:00 a.m. and 214 at 2:30 p.m. She complained of a backache and stomachache the previous night, but her symptoms dissipated. She slept more on June 7, 2004 than on the previous day and her tongue became very coated. (St. #5/1)

19. On June 8, 2004, Individual A's pulse, measured in the morning, was 100 and her blood pressure was 112/66. Her blood glucose levels were 208 at 6:20 a.m., 232 at 9:20 a.m., 236 at 12:00 noon and 246 at 4:50 p.m. She complained of a stomachache, headache and nausea. She slept much of the time and was slowing down considerably. (St. #5/1)

20. On June 9, 2004, Individual A's pulse, measured in the morning, was 120 and her blood pressure was 120/72. Her blood glucose levels were 255 at 9:00 a.m., 259 at 2:00 a.m., 258 at 6:30 p.m. She continued to complain of a stomachache, headache and nausea. She vomited several times along with experiencing diarrhea. She decreased her water intake to cope with her nausea. She began breathing hard. (St. #5/1)

21. On June 10, 2004, Individual A was confused and lethargic in the morning. She was having difficulty breathing, and it appeared her diaphragm was spasming. Her blood glucose level was 488 at 8:30 a.m. This prompted the Respondent to administer 35 units of NovoLog insulin to her. By 10:00 a.m., Individual A's blood glucose level had risen to the point it could no longer be read. She pulse was 124 and her blood pressure was 148/62. (St. #5/1)

22. Individual A slipped in and out of consciousness on the morning of June 10, 2004. She was incapable of making decisions concerning the administration of insulin. (T. at 499)

23. At 10:30 a.m. on June 10, 2004, the Respondent noticed ketones on Individual A's breath. This indicated that Individual A was going into Diabetic Ketoacidosis. (St. #5/1)

24. Diabetic Ketoacidosis⁷ is the severe decompensation of Type I Diabetes that occurs when an individual with that condition has an inadequate amount of insulin to meet his or her metabolic needs. Individual A was exhibiting the classic symptoms of Diabetic Ketoacidosis on June 10, 2004. (T. at 477, 536 - 37)

25. At 10:45 a.m., the Respondent administered 50 units of NovoLog insulin to Individual A, along with 40 units of Lantus insulin. At this time, Individual A's skin in her trunk and head were flushed and her extremities were pale and cold. (St. #5/1)

26. At about 10:45 a.m. on June 10, 2004, a urinalysis revealed the presence of large amounts of ketones. The pH of Individual A's urine was 5.0 (acidic). (St. #1)

27. At 11:30 a.m., the Respondent administered 200 units of NovLog insulin to Individual A. (St. #5/1)

28. As of 12:15 p.m., Individual A's blood glucose had declined to 408. (St. #5/1)

⁷ In both diabetics and non-diabetics, ketone production (ketosis) is part of the starvation response. After two or three days without consuming glucose, a person's liver will begin to metabolize fatty acids into ketones, which can serve as an energy source for the body just as glucose normally does. In non-diabetics, the supplanting of ketones for glucose allows for near-normal bodily functioning, because insulin also regulates ketone metabolism. In diabetics, however, the absence of insulin allows for uninhibited ketone production. Excessive amounts of ketones are poisonous. The condition known as Diabetic Ketoacidosis occurs when a diabetic's blood ketone level reaches this poisonous threshold. (T. at 537 - 38)

29. At 12:45 p.m., the Respondent administered 200 units of NovoLog insulin to Individual A. At 1:30 p.m., he administered another 200 units of NovoLog insulin to her and 50 units of Lantus insulin. Her breathing was less labored. (St. #5/1)

30. At 2:30 p.m., Individual A's blood glucose level was 352; the Respondent administered another 200 units of NovoLog insulin to her. At 3:25 p.m., Individual A's blood glucose level was 356; the Respondent administered another 200 units of NovoLog insulin to her. Individual A's breathing became increasingly labored. (St. #5/1)

31. At 4:20 p.m., Individual A's blood glucose level was 340. (St. #5/1)

32. In total, the Respondent administered 1,085 unit of NovoLog insulin and 90 units of Lantus insulin to Individual A on June 10, 2004. (St. #5/1)

33. Some time after 4:20 p.m. on June 10, 2004, Individual A lost consciousness and went into pulseless electrical activity (PEA) arrest (i.e., cardiac arrest). The Respondent perform mouth-to-mouth resuscitation on her. The Respondent then called 911 and he and other Tanglewood staff carried her down the hill from the facility to meet the EMS personnel's ambulance. Paramedics administered cardiopulmonary resuscitation (CPR) to her and transferred her to Frederick Memorial Hospital. (T. at 826, St. #10/6C, # 11/7 and #12/8)

34. Individual A arrived at Frederick Memorial Hospital at 5:30 p.m. Upon arrival her pulse was in the 80s and emergency room staff placed her on a ventilator. Her initial blood gas level tested profoundly acidotic (pH 6.7, HCO_3 , 3.8). She was obtunded (lacked mental functioning) with fixed and dilated pupils. (St. #13/9)

35. On June 11, 2004, Frederick Memorial Hospital transferred Individual A to University of Maryland Medical Center, where medical personnel confirmed that she had suffered anoxic brain death. University of Maryland Medical Center terminated life support, and Individual A expired at 10:31 p.m. on June 12, 2004. (St. #14/10)

Facts as They Relate to Individual F.

36. Individual F is a 47-year-old man with a history of cardiac problems. He has chronic arteriosclerosis. To date, he has had a quadruple bypass, a double heart bypass and five stents inserted into the arteries of his heart to promote proper blood flow. (T. at 931)

37. Individual F takes the following medications: Toprol and Norvasc for blood pressure, Plavix, a blood thinner, and Lipitor, an anti-cholesterol medication. He also takes Prevacid to treat gastroesophageal reflux disease. (T. at 932 – 33)

38. In May 2004, he learned about Tanglewood from a friend. He went to Tanglewood's website and obtained information about the facility. Based on what he learned, he believed Tanglewood was a good place for him to go because he was looking for a place to rest. Additionally, he wanted to have a mental-spiritual experience to help him deal with the death of his wife, which occurred some time in March 2004. (T. at 930)

39. Individual F arranged for a two-week stay at Tanglewood beginning on Saturday, June 5, 2004. He paid a nonrefundable \$1,350.00 fee in advance of his stay. He made his check payable to the order of Loren Lockman. (T. at 930, 958)

40. When Individual F arrived at Tanglewood, he sat in a waiting room for about an hour before the Respondent came to greet him. The Respondent presented

Individual F with some paperwork to sign that, among other things, contained a disclaimer. (T. at 935)

41. Although Individual F explained to the Respondent that he came to Tanglewood for emotional, mental and spiritual reasons, the Respondent informed Individual F that fasting would also address his physiological needs as well, which, in turn, would help him better handle the death of his wife. (T. at 936)

42. The points that the Respondent made during his initial conversation with Individual F are summarized as follows:

- Individual F would be on a strict water-only fast during his stay at Tanglewood. Individual F did not need to take any medications because the purpose of fasting was to eliminate toxins from the body and medications could be counted among the kinds of toxins that had to be eliminated. Fasting allowed the body to take care of itself.
- Fasting would detoxify Individual F's body; specifically, it would remove the toxins responsible for causing the creation of plaque, which, in turn, resulted in his arteriosclerosis condition.
- Fasting affects everyone differently, but a loss of strength always accompanies fasting. Since energy loss always results from fasting, he should not worry about it.
- Fasting also causes some individuals to experience physical illness such as nausea, vomiting, diarrhea or headaches. Some people even get blurry vision. These symptoms were also to be expected.

(T. at 937; 942, 945 – 46)

43. Individual F considered the Respondent to be his caregiver while at Tanglewood. Upon arrival, the Respondent took Individual F's blood pressure and looked into the retina of his eyes. He explained to Individual F because looking into the iris of one's eyes gives a sense of that person's wellbeing. He also checked Individual F's glands and performed reflex tests on him. (T. at 942)

44. On the morning of Individual F's second day at Tanglewood, Sunday, June 6, 2004, the Respondent checked Individual F's blood pressure, looked into his eyes and examined his tongue. He told Individual F that his tongue was changing texture and that was a good thing. (T. at 944)

45. On Monday, June 7, 2004, Individual F decided he was not going to stay at Tanglewood. He saw the Respondent and told him that he was going to leave. The Respondent did not want Individual F to leave. He explained to Individual F, "it was natural to second guess yourself" and encouraged him to "stick it out" one more day. He even suggested eating a small amount of food. Individual F was adamant about leaving. He departed Tanglewood later that day. He attempted to have his \$1,350.00 fee refunded, but the Respondent emphasized to Individual F that his fee was non-refundable. (T. at 953 – 54, 958)

DISCUSSION

I. Introduction

The State has shown that the Respondent, Timothy Scott Trader, violated the Maryland Medical Practice Act by practicing medicine without a license. While the Respondent never overtly claimed to be an "M.D.," or to have a license to practice medicine, his activities at Tanglewood, in general, and in his interaction with Individuals A and F, in particular, reveal that he acted in a manner consistent with that of a practicing physician. Moreover, I find the Respondent's efforts to defeat the State's case by using specious arguments and baseless motions particularly disingenuous. The Respondent's use of these disingenuous means in an attempt to avoid the State's authority has played a prominent role in leading me to recommend to the SBP that the

Respondent be subject to the maximum statutory penalt[ies] for his violations of the Medical Practice Act. The reasons for my conclusions are set out in detail below.

II. Response to Motions

At the commencement of hearing process and throughout the hearing, the Respondent made a number of motions challenging, among other things, the State's jurisdiction over him and the fairness of the hearing process. While I orally denied all of these motions, for the sake of completeness, I will address them here as well.

A. Subject Matter Jurisdiction

I previously addressed the Respondent's *Motion to Dismiss* based on the lack of subject matter jurisdiction in my April 19, 2006 *Order on Motion to Dismiss and Prehearing Conference Order*. Suffice it to say, I found that section 14-606(a)(4) of the Health Occupations Article and COMAR 10.32.02.06B give the State the authority to hold a hearing to determine whether an individual should be subject to a monetary penalty for violating sections 14-601 and 14-602(a) of the Health Occupations Article, which deal with the unauthorized practice of medicine. The State has subject matter jurisdiction in this case.

B. Jurisdiction over Person

I also previously addressed the Respondent's *Motion to Dismiss* based on the lack of jurisdiction over person in my April 19, 2006 *Order on Motion to Dismiss and Prehearing Conference Order*. The Respondent made this motion citing lack of sufficient contacts with this State. I will reiterate that under the decisions of *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) and *Presbyterian University Hospital v. Wilson*, 337 Md. 541, 548 – 49, 654 A.2d 1324, 1328 (1995), I found that the

Respondent had sufficient contacts with the State of Maryland by virtue of his working here for almost two years. The State has jurisdiction over the person of the Respondent in this case.

C. No Jurisdiction Based on the Practice of Osteopathy

The Respondent noted that, if anything, his activities at Tanglewood fell within the realm of the practice of osteopathy, not the practice of medicine. He averred that, in many states, there are separate boards of osteopathy regulating that discipline. (Osteopathy or Osteopathic medicine is an alternative medicine approach in which practitioners assume deformation of some part of the skeleton and related interference with the adjacent nerves and blood-vessels cause most diseases. Osteopaths use a holistic approach in treating their patients.) Nevertheless, it is irrelevant how other states regulate osteopaths. In Maryland, the SBP licenses individuals who have obtained an M.D. degree as well of those who have obtained a D.O. (Doctor of Osteopathy) degree. Consequently, one who practices osteopathy in Maryland without a license is also practicing medicine without a license. In addition, the record is devoid of any evidence that the Respondent possesses a D.O. degree. The Respondent's *Motion to Dismiss* in this regard, therefore, is denied.

D. No Jurisdiction Based on the Practice of Naturopathic Medicine

The Respondent contended that he has been certified by the American Naturopathic Medical Certification and Accreditation Board ("ANMCAB") and, thus, that board should have jurisdiction over his activities as opposed to the SBP. Nonetheless, evidence in the record revealed that the ANMCAB was disbanded in 2003 and reorganized as the American Naturopathic Certification Board ("ANCB"). An

investigation by Ruth Ann Arty, Compliance Officer for the SBP, revealed that the Respondent never applied for membership in the ANCB. Possibly that is why his website identifies him as a “retired” naturopathic medical doctor.

Irrespective of the Respondent’s membership in any naturopathic medicine association, the State of Maryland never licensed the Respondent to practice medicine. Just as membership in the American Bar Association does not authorize an individual to practice law, membership in either the ANCB or the ANMCAB does not authorize an individual to practice medicine. The authority to permit the practice of medicine is reserved to governmental authority. Once again, I reject the Respondent’s arguments.

E. Freedom of Association

The Respondent further argued that the State’s intervention here interferes with his First Amendment right of free association. Simply stated, the crux of his argument is that if individuals wish to freely associate to engage in fasting, they may do so. Nevertheless, what occurred at Tanglewood was not the mere free association of people wanting to fast. Tanglewood, as it existed in Thurmont, Maryland, in 2004 was a profit-making enterprise owned by Loren Lockman, who *employed* the Respondent to coordinate and supervise those who came to the facility to fast. Individuals who came to Tanglewood paid significant fees⁸ to participate in a structured program of water-only fasting. Furthermore, as will be discussed in detail below, as part of his duties as a

⁸ Individual A paid \$3,300.00 for a prospective six-week stay at Tanglewood while Individual F paid \$1,350.00 for a prospective two-week stay.

Tanglewood employee, the Respondent misrepresented himself as a practitioner of medicine by examining, diagnosing and treating clients—patients, if you will—who came to the facility.

I agree with the State “that the right to practice medicine is subordinate to the police power of the State to protect and preserve public health.” *Aitchison v. State*, 204 Md. 538, 544 (1954), *cert. denied*, 348 U.S. 880 (1954).⁹ Therefore, I conclude that the State would have been remiss in not exercising its police powers to intervene here, given the nature of the activities that occurred at Tanglewood vis-à-vis Loren Lockman and the Respondent. The Respondent’s “free association” argument must fail.

F. Joinder of Proceedings

The Respondent repeatedly objected throughout the seven days of hearing that he was prejudiced by the joinder of this proceeding with that of his employer, Loren Lockman. He averred that evidence specific to Loren Lockman might tend to “taint” the record as far as he was concerned, resulting in violations solely attributable to Lockman being also attributed to him.

The State responded that joinder was appropriate here since the facts of both cases essentially arose from the same transactions, although it acknowledged that facts regarding Individuals B, C, D, E, and G solely involved Mr. Lockman’s conduct not the Respondent’s. It cited the Rules of Procedure of the Office of Administrative Hearings

⁹ Curiously, the Defendant in *Aitchison* also argued that he was not subject to the State’s licensing requirements as a physician since he too was a practitioner of naturopathic medicine. 204 Md. at 542 – 43. The Court of Appeals rejected that argument. *Id.* at 550.

at COMAR 28.02.01.08B(10), which gives administrative law judges the power “to issue orders as are necessary to secure procedural simplicity and administrative fairness, and to eliminate unjustifiable expense and delay.” It also cited Maryland Rule of Civil Procedure 2-212 and Maryland Rule of Criminal Procedure 4-253(a), by analogy, to support joining the proceedings here. Rule 2-212 permits the joinder of persons in civil matters “if there is asserted against them jointly, severally, or in the alternative any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action.” Rule 4-253(a) similarly states, “a court may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.” Rule 4-253(c) permits a court to sever a joined proceeding “[i]f it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.”

I found that joinder was indeed appropriate here. In the criminal context, the Maryland Appellate Courts have established a two-prong test to determine whether defendants will be prejudiced by joinder as it relates to jury trials. That test is noted as follows:

[T]he analysis of jury trial joinder issues may be reduced to a test that encompasses two questions: (1) is evidence concerning the offense or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. In order to resolve question number one, a court must apply the first step of the “other crimes” analysis announced in [*State v. Faulkner*] 314 Md. 630, 552 A.2d 896

(1989)]. If question number one is answered in the negative, then there is no need to address question number two.

Harper v. State, 162 Md. App. 55, 88 (2005), quoting *Conyers v. State*, 345 Md. 525, 553, 693 A.2d 781 (1997).

Nevertheless, the *Harper* and *Conyers* Courts emphasized “[d]ecisions regarding the joinder or severance of charges for trial are committed to the sound discretion of the trial court. This Court “will only reverse a trial judge's decision [to join] if the decision was a clear abuse of discretion.” *Harper* at 88 – 89, *Conyers* at 556.

An administrative hearing is obviously not a criminal jury trial, nor is it a civil trial, but analyses using Civil Rule 2-212 and particularly Criminal Rule 4-253 is helpful. With regard applying the test cited in *Harper* and *Conyers* with regard to Rule 4-253(c), I find that all of the evidence related to the Respondent here has relevance in the case of Respondent Lockman. With regard to Prong I, although evidence involving Respondent Lockman does not necessarily relate to the Respondent in this case, I have carefully not considered any of that evidence in formulating my decision here. With regard to Prong II, I find that judicial economy compels the joinder of these proceedings. If the proceedings were severed, the State's expert would have had to testify in two separate proceedings. Individual A's mother, Individual F and Ms. Arty would also have had to appear twice. The State, therefore, would incur the expense of paying additional expert fees to its expert and Individuals A's mother, Individual F and Ms. Arty would have had to take time out of their schedules to appear in severed proceedings. Under Rule 2-212 it also made sense to join these proceedings since, for the most part, the charges arose from “the same transaction, occurrence, or series of transactions or occurrences, . . . question of law and fact common to all [respondents]. . .”

Additionally, I have taken measures to consider only those facts relevant to each Respondent by writing two separate decisions. By doing so, I am ensuring that no prejudice results to either Respondent.¹⁰

G. *Collateral Estoppel*

The Respondent also moved to dismiss this proceeding based on the doctrine of collateral estoppel. He contended that in January 2002, the SBP investigated Tanglewood and Loren Lockman and, based on the findings of that investigation, declined to issue charges. Given that Mr. Lockman conducted the same kind of water fasts at Tanglewood in 2002 as it did in 2004, the Respondent argued that the State is now estopped from bringing charges based on the activities that took place in 2004.

Collateral estoppel and the related doctrine of *res judicata*, have the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation. *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-29 (1971). Although the doctrines of collateral estoppel and *res judicata* are related, they are different. As Chief Judge Wilner, writing for the Court of Special Appeals explained:

[T]he terms used to denote these separate concepts sometimes begin to be used interchangeably, as though they meant the same thing, one being but a synonym for the other; and thus confusion comes about as the differences in the concepts themselves become blurred.

So it is with the doctrines known as *res judicata*, collateral estoppel, and collateral attack. See, for example, 46 Am.Jur.2d Judgments, § 397. All three of

¹⁰ The Respondent also contended that he was prejudiced because his attorney had to be present during the times the State presented evidence only relevant to Loren Lockman and, therefore, he incurred legal bills for time not related to his case. The payment of attorney fees is not the kind of prejudice contemplated by the above-noted rules.

these derive immediately from the larger jurisprudential demand that properly entered judgments be regarded as final, a concept which itself emanates from, and is required by, the societal need for certainty in the law. These three doctrines, though related, are different; they apply in different circumstances and they prevent different things.

Klein v. Whitehead, 40 Md. App. 1, 11-12, 389 A.2d 374, 381 (1978).

The distinction between doctrines is not merely a technical one. In *MPC, Inc. v. Kenny*, 279 Md. 29, 33, 367 A.2d 486, 489 (1977), the Court of Appeals stated:

Suffice it to say that the question whether this is a case of *res judicata* on the one hand or collateral estoppel on the other is one of critical importance. If, for example, the two causes of action are the same, and *res judicata* is therefore applicable, the first judgment would bar appellants . . . from raising any matters which could have been decided in that case. . . . If, however, we are not dealing with the same cause of action, collateral estoppel rather than *res judicata* would apply and only those determinations of fact or issues actually litigated in the first case are conclusive in this action.

After considering these principles, Judge Wilner proposed a "simple comparative checklist for determining which, if either, of the two doctrines is applicable." *Klein v. Whitehead*, 40 Md. App. at 15. He explained: "For either to apply, the second action must be between the same parties or those in privity with them. For direct estoppel to apply, it must be shown, in addition, that the two causes of action are the same. Collateral estoppel does not require that the causes of action be the same, but it applies only with respect to issues of fact actually determined in the earlier proceeding."

The Respondent's collateral estoppel argument immediately fails because there was no prior adjudication. The State's 2002 decision not to issue charges against Loren Lockman and Tanglewood does not constitute "a cause of action" that has been "litigated." Therefore, "collateral estoppel" is not at issue here, and the Respondent's motion is denied.

H. Striking the Testimony of the State's Expert

The Respondent asked that I strike the testimony of the State's expert witness, Dr. David Brown, because (a) the State did not ask him hypothetical questions, (b) he never supervised a water fast and (c) he was not present during every minute of the proceeding to hear the testimony of other witnesses. I find no valid reason to strike Dr. Brown's testimony.

After *voir dire*, I found that Dr. Brown had the requisite knowledge and experience to be admitted as an expert in Medicine and thus, could provide expert testimony. Although the Office of Administrative Hearings has not adopted any specific rules regarding expert testimony, Maryland Rule of Civil Procedure 5-702 is instructive. That Rule states the following:

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Md. Rule 5-702 (2005).

The Maryland Appellate Courts have held that under Rule 5-702, "a factual basis for expert testimony may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions." *Tarachanskaya v. Volodarsky*, 168 Md. App. 587, 612 – 13 (2006), quoting *Hricko v. State*, 134 Md. App. 218, 273 (2000). Using Rule 5-702 as a guide, therefore, I conclude that no requirement exists requiring that testimony from expert witnesses come solely from answers to hypothetical questions.

The Respondent also sought to strike Dr. Brown's testimony because he never supervised a water-only fast and, therefore, had no knowledge of the protocols involved in supervising a water-only fast. Dr. Brown conceded that he never supervised a water-only fast. Nevertheless, he explained that he did not have this experience because he viewed long-term water-only fasts as an unacceptable medical practice that could be harmful to one's well-being. (T. at 533 – 34, 673) Again, the Respondent's argument is specious. As a specialist in endocrinology, Dr. Brown has in-depth knowledge of how both non-diabetic and diabetic individuals react to the deprivation of nutrients that results when they engage in long-term water-only fasts. He obtained this knowledge by studying the human starvation response. (T. at 130 – 31, 216) Therefore, since it is Dr. Brown's opinion that water-only fasts are not good medical practice, it is unnecessary for him to have supervised them to provide expert testimony about how water-only fasts affect people.

The Respondent's third reason for striking Dr. Brown's testimony was that he was not present throughout the entire hearing. I find no requirement in the analogous Maryland Rules of Civil Procedure that experts be present for every day of a trial or hearing. Again, it need only be shown that the expert witness had a sufficient factual basis for his opinion. *See Tarachanskaya*, above.

I. Statute Void for Vagueness

The Respondent argued that section 14-101(l) of the Health Occupations Article, defining the practice of medicine is void for vagueness. That section states the following:

(l)(1) "Practice medicine" means to engage, with or without compensation, in medical:

- (i) Diagnosis;
- (ii) Healing;
- (iii) Treatment; or
- (iv) Surgery.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:

(i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:

1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or

2. By appliance, test, drug, operation, or treatment;

(ii) Ending of a human pregnancy; and

(iii) Performing acupuncture.

(3) "Practice medicine" does not include:

- (i) Selling any nonprescription drug or medicine;
- (ii) Practicing as an optician; or
- (iii) Performing a massage or other manipulation by hand, but by no other means.

Md. Code Ann., Health Occ. § 14-101(I) (2005).

The Respondent maintained that using the sub-definitions of "the practice of medicine" contained within these sections (diagnosis, healing, treatment etc.), a mother who took her own child's temperature, determined that he had a fever and administered aspirin to the child to treat his fever, would be engaging in the practice of medicine if one read section 14-101(I)(1)(i) - (iii) literally. The State responded by noting that in *Unnamed Physician v. Commission on Medical Discipline*, 285 Md. 1, 15 (1979), the Maryland Court of Appeals held that as long as the plain language of a statute could be

understood by persons of ordinary intelligence, it was not void for vagueness. *Also see Blaker v. Board of Chiropractic Examiners*, 123 Md. App. 243, 257 (1998), *cert. denied*, 351 Md. 662 (1998). Section 14-101(l) is not so abstruse that it cannot be understood by a person of ordinary intelligence. The Respondent has engaged in an intellectual game of peeling an onion. One can always delve into layers of word meanings to produce an absurd legal interpretation as the Respondent has done here. Clearly, in enacting the Medical Practice Act, the legislature did not intend to criminalize the behavior of parents treating their own sick children.

J. Unconstitutionality of Concurrent Criminal Investigation

The Respondent further argues that because there remains an open criminal investigation in this matter, he was faced with a Hobson's choice—either against defend the administrative charges or remain silent, as his right under the Fifth and Fourteenth Amendments of the United States Constitution. Consequently, he asserted that forcing him to participate in this administrative proceeding while a potential criminal matter is still pending violates his due process rights. Similarly, he objected to the “joint” investigation conducted by Corporal DeWees of the Frederick County Sheriff's Office and Compliance Officer Ruth Ann Arty.

The Respondent's argument with regard to the inter-tangling of criminal and administrative proceedings also lacks merit. Administrative Proceedings and Criminal Proceedings are distinct. For example, the Maryland Transportation Code provides motorists with an opportunity to show cause why their driver's licenses should not be

suspended with regard to alcohol test results of .08% or more and test refusals under section 16-205.1 of the Maryland Transportation Article. The law in this regard presumes that the license suspension hearing would take place before any criminal charges for driving under the influence of alcohol occurs. Under the Respondent's theory, such a scheme would be prohibited as unconstitutional. Courts that have addressed similar challenges have rejected them (e.g., *United States v. Kordel*, 397 U.S. 1, 11 (1970) (holding that simultaneous civil and related criminal proceedings do not constitute "unfairness and want of consideration of justice" requiring reversal of a criminal conviction); *Wimmer v. Lehman*, 705 F.2d 1402, 1406 – 07 (4th Cir.1983), *cert. denied*, 464 U.S. 992 (1983) (holding there was no constitutional requirement that the administrative hearing be postponed pending disposition of the criminal charges).

Secondly, I conclude that it the Respondent's assertion that Corporal DeWees and Ms. Arty's investigations were jointly held was factually inaccurate. The record indicates that the SBP's and the Sheriff Office's investigations were separate. Even if they were jointly conducted, the Respondent has not cited any persuasive authority indicating that a joint investigation would be prohibited.¹¹

K. Recusal

The Respondent at various times during the hearing moved that I recuse myself from this proceeding because I have routinely conducted a disproportionate number of hearings for the SBP or, in the alternative, for its parent agency, the Department of

¹¹ Investigations of alleged child abuse and neglect are routinely jointly conducted by law enforcement agencies and departments of social services.

Health and Mental Hygiene. Under analogous Circuit Court Rules, recusal of a judge is indicated if the judge's impartiality might be questioned, including instances where the judge had a personal bias or prejudice concerning a party or personal knowledge of the facts. I aver that none of these elements is present here. Moreover, there is a strong presumption that judges are impartial and will refrain from presiding over a matter when appropriate. *Jefferson-El v. State*, 330 Md. 99, 107 (1993). With regard to the Respondent's argument about my conducting "a disproportionate number of hearings for the SBP," this is factually incorrect. While I have conducted many hearings on behalf of the Department of Health and Mental Hygiene, I have conducted very few hearings on behalf of the SBP.

Now that I have addressed all of the Respondent's preliminary challenges,¹² I will turn to the merits of this case.

III. Merits

A. The Charges

As noted, on or about February 6, 2006, the State issued charges against the Respondent under the Maryland Medical Practice Act, found in the Health Occupations Article of the Annotated Code of Maryland, for engaging in the unauthorized practice of medicine. The State cited the following legal authority as the bases for its charges:

¹² To the extent that I have not addressed a particular motion or legal challenge to this proceeding made by the Respondent, that motion or challenge is denied.

§ 14-601.

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice medicine in this State unless licensed by the Board.

Md. Code Ann., Health Occ. § 14-601 (2005).

§ 14-602(a).

(a) Unless authorized to practice medicine under this title, a person may not represent to the public, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice medicine in this State.

Md. Code Ann., Health Occ. § 14-602(a) (2005).

§ 14-602(b).

(b) Except as otherwise provided in this article, a person may not use the words or terms "Dr.", "doctor", "physician", "D.O.", or "M.D." with the intent to represent that the person practices medicine, unless the person is:

- (1) Licensed to practice medicine under this title;
- (2) A physician licensed by and residing in another jurisdiction, while engaging in consultation with a physician licensed in this State;
- (3) A physician employed by the federal government while performing duties incident to that employment;
- (4) A physician who resides in and is licensed to practice medicine by any state adjoining this State and whose practice extends into this State; or
- (5) An individual in a postgraduate medical program that is approved by the Board.

Md. Code Ann., Health Occ. § 14-602(a) (2005).

The State maintained that the Respondent engaged in the unauthorized practice of medicine, because he engaged in the following acts:

- a. Prescribing fasting for Individual A, a person with a six-year history of insulin dependent diabetes mellitus, as a treatment for removing physical, mental, or emotional ailments or supposed ailments of Individual A.

b. Attempting to treat Individual A's insulin dependent diabetes mellitus by prescribing fasting and withholding insulin.

c. Prescribing a fasting regimen that allowed only water and required discontinuation of all previously prescribed medications, including daily administration of insulin that had been prescribed for her by a licensed physician.

d. Referring to himself as "Dr. Trader," claiming that he is "State certified" in Naturopathic Medicine, and permitting him to conduct activities that could easily have led a reasonable layperson to believe that he was a licensed medical doctor.

e. Engaging in medical examination and diagnosis of Individual A.

f. Performing a physical examination including evaluation of vital signs, lungs, pancreas, thyroid, liver, colon, kidneys, adrenals, skin, heart, stomach, throat, nose and ears and obtaining a blood sugar measurement and documenting these findings on a Fasting Intake Form (FIF) with entries dated 6/5/04. The FIF had all the appearances of a medical record.

g. Performing serial physical examinations of Individual A and obtaining serial blood glucose measurements but failing to make a timely diagnosis of diabetic ketoacidosis and allowing it to become critical.

h. Engaging in medical treatment of Individual A's confusion and lethargy with insulin injections that were inappropriate and ineffective.

i. Inappropriately administering a total of 1085 units of NovoLog insulin and 90 units of Lantus insulin to Individual A in the absence of IV fluids or electrolytes.

j. Failing to transfer Individual A to a trained physician who could have easily corrected the metabolic crisis. Individual A sustained a PEA cardiac arrest as a direct result of untreated diabetic ketoacidosis. Individual A died as a result of the cardiac arrest.

k. Prescribing a water-only fast for Individual F, as well as cancelling prior medication orders and conducting daily evaluations, examinations and blood pressure measurements.

The burden of proof in this case is by a preponderance of the evidence and rests with the State. Md. Code Ann., Health Occ. § 14-405(b)(2).

I will structure my analysis based on the Respondent's actions with regard to each individual separately.

B. Individual A

1. Intake at Tanglewood

Individual A was a 22-year-old woman who had been diagnosed with Insulin-dependant (Type I) diabetes at the age of 15. Individual A struggled with her weight because of her diabetic condition. Dr. David Brown, the State's expert in Medicine, noted that the need to balance food and insulin intake often results in weight gain among Type I diabetics. Individual A was not happy with her overweight appearance and wanted to lose weight.

Individual A wanted to become insulin-independent.¹³ She investigated this subject on the Internet, which led her to the web site of Tanglewood Wellness Center. She was encouraged by representations made on the Tanglewood web site by Tanglewood's proprietor, co-Respondent Loren Lockman. Those representations indicated that a diabetic who engaged in water-only fasting over a period of weeks could eliminate insulin dependency.

In the spring of 2004, after ascertaining more information about Tanglewood, including making friends with an employee, Individual A entered into a \$3,300.00 contract with the facility for a six-week stay beginning in early June 2004 that anticipated a 33-day fast and a two-week "re-feeding period." Circumstantial evidence indicates that she had contact with the Respondent about her prospective stay. On April 10, 2004, Individual A wrote a note to herself so she would remember to send the money that she owed to Tanglewood. That note read, "mail check, Dr. Tim." The

¹³ Individual A told Individual F that getting off insulin was the goal she intended to achieve by fasting at Tanglewood during conversations she had with Individual F during Individual F's brief stay at Tanglewood. (T. at 836)

record does not reflect any other individual working for Tanglewood who was named "Tim" or "Timothy," so I infer that Individual A was referring to the Respondent. I further infer that Individual A got the impression that the Respondent was a kind of "doctor" by her "Dr. Tim" reference. I conclude that these representations by the Respondent are sufficient to find him in violation of section 14-602(b) of the Health Occupations Article.

Returning to the chronology of event concerning Individual A, Individual A's mother drove Individual A to Tanglewood on Saturday, June 5 2004. Individual A did pack two kinds of insulin in her bags in the event that she needed it. While Individual A was waiting to check-in to the facility, the Respondent had a conversation with Individual A's mother. The Respondent assured Individual A's mother that Tanglewood would closely monitor Individual A during her stay at the facility.

As best as I can glean from the record, the Respondent's employment at Tanglewood was as a fasting coach, although Individual F identified him as his "caregiver." I further infer that as an employee of Tanglewood, the Respondent subscribed to the philosophy of its owner, Loren Lockman, specifically, that long periods of water-only fasting could treat or even cure a host of different chronic conditions or illnesses. (The extent to which the Respondent subscribed to Mr. Lockman's philosophy with regard to fasting is unknown because he did not appear at the hearing and, hence, did not testify.) The Respondent was not and is not an M.D. and, as such, the SBP never licensed him to practice medicine in Maryland. As noted previously, the Respondent at various times represented himself as a doctor of naturopathic medical doctor or N.M.D. On his current website, he represents himself as being a "retired" N.M.D.

The Respondent completed a Fasting Intake Form for Individual A upon her arrival at Tanglewood, along with conducting a physical examination. Subsequently, he took periodic measurements of Individual A's vital signs, specifically, her pulse, blood pressure and blood glucose level, and recorded those measurements. He also conducted a physical examination of Individual A, and made entries on the FIF about her lungs, pancreas, thyroid, liver, colon, heart adrenals and, stomach. He examined Individual A's ear canals and noted the presence of wax near one eardrum. The Respondent also remarked that the outside of Individual A's nose was inflamed.

The State's expert, Dr. David Brown, noted that the Respondent's conducting an examination of Individual A was curiously physician-like. Further, like a physician, the Respondent listened to the Individual A's complaint (insulin-dependent diabetes), analyzed that complaint by conducting a physical examination (taking Individual A's blood pressure, temperature and pulse, looking into her eyes and examining her tongue and getting a blood sugar reading), documenting his findings and formulating a plan of treatment (i.e., water-fasting). (T. at 177) Dr. Brown found it remarkable that the Respondent's intake form and the notes he made on that form during subsequent days, "for all the world looks like a medical record." Id. (It even states that Individual A was "admitted" to Tanglewood Wellness Center, just as she would have been "admitted" to a hospital.) Furthermore, the Respondent determined that Individual A should stop taking medication prescribed by her allopathic physician (i.e., insulin). Dr. Brown emphasized that prescribing the withholding of medications constitutes medical practice in the same

way as prescribing medications, because both acts involve treating the patient's condition.

In Dr. Brown's opinion, however, the Respondent's act of "playing doctor" here was anything but benign. By definition, a Type-I diabetic can *never* get off of insulin. Unlike in Type-II diabetes, where the body still produces insulin but, in most cases, cannot utilize it properly, in Type-I diabetes, the body produces either marginal amounts of insulin or no insulin at all. When a Type-I diabetic does not take food or insulin, there is the possibility that diabetic ketoacidosis ("DKA") will result. Dr. Brown explained that DKA is connected to the body's starvation response. In a non-diabetic individual, when the body is deprived of glucose derived from food metabolism, it can use stored body fats as "fuel" by converting them to ketones.¹⁴ Nevertheless, insulin is still necessary to regulate ketone metabolism. Dr. Brown explained the relationship between insulin and ketone production and utilization as follows:

One needs to view the issue of ketones in the context of insulin because it is insulin that controls the metabolism of ketones. When insulin is sufficient, ketones are made in modest quantities to provide fuel for the brain and that is the normal response to calorie deprivation. When insulin is not sufficient the ketones are made in an unregulated way, vastly in excess of what the brain requires and the dilemma is that these ketones are organic acids and so, in the absence of insulin, the ketones are made to such an extent that the body is essentially poisoned by these organic acids.

T. at 537 – 38

¹⁴ Specifically, "beta-hydroxybutyrate and alpha-ketobutyrate, which are metabol[ites] of fatty acids[;] [they] are made by the liver, and they are made because they can be utilized by the brain when there is not enough glucose to provide all the brain's metabolic needs." (T. at 537, testimony of Dr. Brown.)

Therefore, according to Dr. Brown, the Respondent should never has advised that Individual A participate in a water-only fast for a significant amount of time because her Type-I diabetic condition would have inevitably led to her to develop DKA—excessive ketone production resulting in the poisoning of Individual A's body—which, in fact, did occur.

Even at this initial stage of the Respondent's interaction with Individual A, I find that he was practicing medicine. As noted, to some extent he represented to Individual A that he was a "doctor." This is strongly suggested by her note in which she referred to him as "Dr. Tim." He then proceeded to act like a doctor by "admitting" Individual A to Tanglewood, taking her vital signs, diagnosing her condition and prescribing treatment, which included his advice to her to stop taking insulin. These activities constitute "diagnosis," "healing" and "treatment" of a medical nature, as defined by section 14-101 of the Health Occupations Article. The Respondent held no medical license at the time he engaged in these activities and, therefore, he violated section 14-601(a) of the Health Occupations Article. The Respondent also violated section 14-602(a) by misrepresenting to the public that the fasting program that he was administering was a type of medical healing program, when he was not licensed to practice medicine.

The Respondent, through counsel, challenged the State's contention that he made the entries on the FIF. He indicated that the State based its accusations that he made notations on that form solely on hearsay—and "double hearsay" at that. He reiterated that clients who came to fast at Tanglewood did so at their own volition and that he took no part in supervising anything as it related to Individual A.

I reject the Respondent's defenses. With respect to the Respondent's making entries in the FIF, Corporal DeWees testified that when he was investigating Individual A's death, he spoke with Loren Lockman, and Mr. Lockman gave him the FIF that contained the handwritten notations at issue. When Corporal DeWees asked Mr. Lockman "who wrote those," Mr. Lockman replied, "Mr. Trader wrote them." (T. at 851 at lines 11 – 14) Additionally, Individual A's mother testified when she drove her daughter to Tanglewood, Mr. Trader greeted her and assured her that Individual A would be "closely monitored" while at the facility. He clearly gave her the impression that he was in charge and would participate in monitoring Individual A during her stay at Tanglewood.

Unlike in court proceedings, hearsay evidence is generally accepted in administrative hearings. As the Maryland Appellate courts have stated, "hearsay admissible in an administrative proceeding. Indeed, if hearsay is found to be credible and probative, it may be the sole basis for a decision of an administrative body. *Redding v. Bd. of County Comm'rs*, 263 Md. 94, 110-11 (1971), *cert. denied*, 406 U.S. 923 (1972)." *Kade v. Charles H. Hickey, Jr. School*, 80 Md. App. 721, 725 (1989). *Also see* Md. Code Ann., State Gov't § 10-213(c) (2004) and *Travers v. Baltimore Police Department*, 115 Md. App. 395 (1997).

The hearsay evidence presented here is both credible and probative. Corporal DeWees interviewed Mr. Lockman contemporaneously with his investigation of why Individual A needed to be transported to the hospital and her subsequent death. In

such circumstances, individuals are less prone to fabricate.¹⁵ Moreover, the testimony of Individual A's mother buttresses that of Corporal DeWees in that her impression was that the Respondent was the individual in charge of supervising fasts.

Further, since the above-noted evidence constitutes a prima facie evidence of violations of the Medical Practice Act, the Respondent now has the burden to refute such evidence. Here, however, the Respondent never testified at the hearing, nor did he present any other witnesses.¹⁶ Based on the Respondent's failure to call their agent to testify, I am invoking "the missing witness rule" and drawing unfavorable inferences, to the detriment of the Respondent, about what his testimony would have been had he

¹⁵ As many legal practitioners do in administrative hearings, the Respondent's counsel accused the State of offering "double hearsay," suggesting that the value of hearsay evidence is diminished the farther removed it is from utterances of the original declarant. Although under certain circumstances an argument about the quality of hearsay evidence might be valid, no appellate case in Maryland has ever recognized varieties of hearsay evidence, such as "double hearsay" or "triple hearsay." Hearsay is hearsay and must be evaluated as such under the precepts of section 10-213(c) of the State Government Article and the *Kade* and *Travers* cases.

¹⁶ At the outset of the hearing, the Respondent's counsel explained that the Respondent now a resident of Downey, California and needed to remain there to care for his elderly parents. In early May 2006, however, he indicated that the Respondent had arranged to come to Maryland to testify on May 22, 2006. On May 16, 2006, however, I postponed the hearing on May 22, 2006 because counsel for the State had a medical emergency. The hearing did not resume until June 19, 2006. On that date, counsel for the Respondent again noted that the Respondent could not come to Maryland because no one else was available to help care for his elderly parents—his mother, in particular—and that his staying in California was "critical and essential." He indicated that he received a telephone call from the Respondent the previous night in this regard. Counsel further noted that the Respondent sent him a follow-up e-mails that explained why he could not appear, but because he [counsel] is a "technological klutz," he could not print them out. (T. at 1283) Counsel for the Respondent requested a postponement. Counsel for the State found this last minute postponement request "highly suspicious." She averred that travel arrangements for a trip from California to Maryland would customarily have to be made at least two or three weeks in advance to obtain moderately-priced airfares and, therefore, she concluded he really was not interested in appearing at the hearing. (T. at 1283 – 84) I concurred with the State and denied the postponement request. Not only did the Respondent fail to make his request within a reasonable time before the hearing date, he did not even attempt to provide alternative evidence in lieu of testifying, such as submitting an affidavit or a deposition taken under oath. The Respondent's nonchalant attitude toward this proceeding suggested to me that he in fact did not want to appear at the hearing.

testified. The Maryland Appellate Courts have commented on the missing witness rule as it applies in civil cases (and by extension, in administrative cases) as follows: "where a party fails to take the stand to testify as to facts peculiarly within his knowledge, or fails to produce evidence (e.g., testimony by certain witnesses) the fact finder may infer that the testimony not produced would have been unfavorable to that party. *Chalkley v. Chalkley*, 236 Md. 329, 333, (1964); *Dawson v. Waltemeyer*, 91 Md. 328, 46 A. 994, 996 (1900). In civil cases, the unfavorable inference applies where it would be most natural under the circumstances for a party to speak, or present evidence. *Brooks v. Daley*, 242 Md. 185, 194 (1966)." *Hayes v. State*, 57 Md. App. 489, 495 (1984). Instead of merely attacking the quality of the State's evidence, it would have been natural here for the Respondent to have matter-of-factly testified that he did not make the entries in the FIF attributed to him by Mr. Lockman, and to have denied that he did not supervise Individual A's fast, if he did not do so. In light of the State's evidence to the contrary, the Respondent's failure to testify leads me to conclude that he did engage in the activities.

2. The Respondent's Response to Individual A's DKA

The Respondent took Individual A's blood pressure, pulse and blood glucose readings over the next four days that Individual A remained at Tanglewood. Her initial blood glucose level was 170. It hovered in the 200 range over the next three days. (A normal fasting blood glucose level for non-diabetics is 70 – 110, so Individual A's readings were not in the normal range.) On the night of her second day at Tanglewood, Individual A's tongue became coated and she experienced a stomachache. She

increased her water intake, but the Respondent did nothing to follow-up on these symptoms. On her third day at Tanglewood Individual A slept most of the day. Then, on the evening of June 8, 2004, she complained of a headache and nausea in addition to having a stomachache. She was slowing down considerably, sleeping most of the time. Her blood glucose level was 246 at 4:50 p.m.

Dr. Brown reviewed Individual A's records showing her blood glucose levels and relating her somatic complaints, and found what was occurring during the June 6 – 8, 2004 period troubling. Dr. Brown stated that Individual A's complaints of a stomachache and nausea on June 6, 2004 (in combination with her elevated blood glucose levels) were "the earliest symptoms" of DKA. Then on June 7, 2004, her added complaint of have abdominal pain correlated with one would expect in a diabetic individual with rising ketones. (T. at 544) Dr. Brown concluded that the Respondent did not intervene at this point because he lacked medical training. He did not know the difference between Type I and Type II diabetes, and he also did not recognize the symptoms of DKA. Dr. Brown remarked that if the Respondent had been a licensed physician and failed to react after observing Individual A's condition as of June 7, 2004, he would have been guilty of malpractice. (T. at 551)

By June 8, 2004, Individual A was definitely showing prominent symptoms of DKA—lethargy, abdominal pain, headache and nausea. Dr. Brown commented, "imagine to yourself that you are bedridden with the absolute worst possible flu, horrible illness, fever, nausea, that you ever had, look back through your life and imagine when you were as sick as you have ever been and that is probably what she was feeling somewhere as the 8th [of June] went into the 9th." (T. at 552 – 53)

Individual A's condition worsened on June 9, 2004. Her blood glucose readings ranged between 255 and 259 that day. She began vomiting and decreased her water intake to cope with it. During this time, however, the Respondent only continued to monitor her.

On June 10, 2004, Individual A hit the DKA crisis point. Her lethargy devolved into confusion and her breathing became labored. The one blood glucose reading that the Respondent could get in the morning was 488. The next time he attempted to take it, it had risen so high that it could not be measured. Individual A then began slipping in and out of consciousness. The Respondent reacted not by immediately calling 911 to get medical help for Individual A; instead, he administered 35 units of NovoLog insulin to her in an attempt to decrease her blood glucose levels. He subsequently administered a dose of 40 units of Lantus insulin to her, then 200 units each of NovoLog insulin four separate times. Dr. Brown asserted that these doses were far in excess of what Individual A would have administered to herself and, ironically, these high doses could not have done anything to remedy her elevated blood glucose levels significantly. When a Type I diabetic goes into DKA, trained medical staff treat that condition by administering intravenous fluids and potassium, in addition to carefully measured doses of insulin, to stabilize the patient. (DKA also causes potassium depletion and dehydration.) Administering insulin alone is ineffective. (T. at 579 – 80) Dr. Brown averred that dehydration and potassium-depletion are particularly significant because with a weakened heart-muscle resulting from the lack of potassium combined with low blood volume, the heart cannot pump sufficiently, so the circulatory system collapses. (T. at 580)

The Respondent and Loren Lockman eventually called paramedics to assist Individual A, but by the time they did do, she had gone into a coma from which she never recovered. Paramedics treated her at the scene and transported her to Frederick Memorial Hospital when medical staff placed her on life-support. Frederick Memorial sent her to University of Maryland Medical Center in Baltimore. On June 12, 2004, University of Maryland medical personnel determined that she suffered anoxic brain death, so life-support was terminated, and Individual A died.

Dr. Brown stated that his primary belief that the Respondent was practicing medicine was that on one hand, he demonstrated behavior consistent with a physician and, on the other hand, demonstrated behavior inconsistent with that of a lay person. He explained that the Respondent's examination of Individual A, his diagnosing her and subsequent treating (with injections of insulin) were consistent with that of a physician. He demonstrated behavior inconsistent with that of a lay person because as he saw Individual A become progressively more sick, he either did nothing—assuming her problems would resolve themselves—or took it upon himself to act (again, with regard to the administration of insulin). (T. at 501 – 02)

As I noted in subsection II.B.1, above, I find Dr. Brown's unrefuted expert opinion credible. The Respondent, for the most part, acted as if he were a doctor by making his own assessments and then treating Individual A as if she were his patient. His lack of knowledge of Type I diabetes and DKA, however, doomed her because he did not recognize the peril she was in. Consequently, I agree with the State that the Respondent's actions violated section 14-601(a) of the Health Occupations Article when he took it upon himself to "treat" Individual A as she went into DKA.

The Respondent averred that Individual A's use of the anti-acne drug Accutane might have played a part in her death. He presented information regarding this medication as an exhibit (Respondent's Exhibit No.1). Nonetheless, this is not a wrongful death case, so as far as whether Accutane played any role in contributing to Individual A's DKA, that evidence is irrelevant with regard to whether the Respondent violated section 14-601(a) by practicing medicine without a license. (Individual A's mother also testified that to her knowledge, Individual A was not taking Accutane at the time she entered Tanglewood.) Even assuming Accutane use might have had some relevancy here, the Respondent provided no expert testimony to support his hypothesis.

C. Individual F

Individual F is a 47-year-old man with a history of cardiac problems and chronic arteriosclerosis. He has had a quadruple bypass, a double heart bypass and five stints inserted into the arteries of his heart to promote proper blood flow. His physicians have prescribed a number of medications for him to treat his cardiac and atherosclerotic conditions.

In 2004, Individual's F wife died. About two months after her death, Individual F sought to have a "mental-spiritual experience" to help him cope with his grief. A friend told him about Tanglewood and, after some investigation, Individual F believed that embarking upon a fast there would provide the kind of mental-spiritual experience that he was seeking.

Consequently, Individual F signed up for a two-week stay at Tanglewood, paying \$1,350.00 to Loren Lockman for the privilege. When he arrived at Tanglewood on June 5, 2004 (the same day as Individual A), the Respondent greeted him. Although

Individual F explained that he wanted to stay at Tanglewood primarily for emotional and spiritual reasons, the Respondent convinced him that water-only fasting could also address his physiological problems. Upon learning that Individual F had cardiac problems and chronic arteriosclerosis, he explained to Individual F that these conditions resulted from toxins accumulating in his body causing the formation of plaque—these “toxins” not only came from the foods that he ate but also from his medications. The Respondent advised Individual F not to take his medications so that the water-only fast could do its job of allowing his body to heal itself. The Respondent further explained to Individual F the effects that water fasting could have—strength loss, energy loss, nausea, vomiting, diarrhea and headaches—but these effects were to be expected. As with Individual A, the Respondent physically examined Individual F and took his vital signs, which he duly entered into Individual F’s personal FIF. The physical examination included looking into the retina of Individual F’s eyes, because according to the Respondent, the health of the retina told much about one’s well-being. He also looked at his tongue and monitored changes in its color over the three days that Individual F remained at Tanglewood.

On Monday, June 7, 2004, however, Individual F decided his experience at Tanglewood was not what he had expected, and so he left. The Respondent encouraged him to stay, but Individual F was adamant that he wanted to leave. He could not obtain a refund of his fee.

As with Individual A, Dr. Brown contended that he acted much like a physician in his interaction with Individual F. Dr. Brown observed, “that offering to heal, contemplating various medical diagnoses, prescribing a treatment plan, implementing

the treatment plan, and discontinuing medications prescribed by other physicians, combined with daily evaluations and measurements of blood pressure, are all physician-like behavior and rise to the practice of medicine.” (T. at 517)

Again, I agree with Dr. Brown’s uncontraverted evaluation of the Respondent’s conduct. The Respondent’s acts fit well with into the statutory definition of the practice of medicine, since it involved healing, diagnosis and treatment. Additionally, not only did the Respondent engage in the unlicensed practice of medicine with regard to Individual F, he engaged in the *dangerous* practice of medicine. Individual F left Tanglewood without sustaining any ill effects because of water-fasting, but he limited his stay to three days. It is unknown how his staying off of his cardiac medications for the two-week period contemplated might have affected him.

The Respondent defended against the State’s charges here by reiterating the same arguments he made with respect to Individual A. Succinctly stated, he maintained that as a practitioner of naturopathic medicine, the SBP had no authority to regulate his activities. As I stated previously, though, if naturopathic practitioners engage in the same kind of activities as allopathic physicians, they too must hold a license to practice medicine. *See Aitchison*, 204 Md. at 542 – 43, 550.

Therefore, I conclude that the Respondent violated section 14-601 of the Health Occupations Article by practicing medicine in Maryland without a valid license and section 14-602(a) by representing “to the public, by description of services, methods, or procedures, or otherwise, that he was authorized to practice medicine” in Maryland without a valid license.

IV. Issuance of a Public Cease and Desist Order

COMAR 10.32.02.06B(2) permits an administrative law judge, at the conclusion of an evidentiary hearing, to recommend that the SBP issue a public cease and desist order against an individual who is not license to practice medicine in addition to a recommending a monetary penalty.

In my view, even though in August 2004, the Board already issued a private cease and desist order to prohibit the Respondent from practicing medicine without a license in this State, I find that it is in the public interest. The Respondent's practice of "naturopathic" medicine at Tanglewood two years ago went far beyond his mere promotion of eating certain foods to achieve a healthy lifestyle. The Respondent, in fact, prescribed and promoted water-only fasting for lengthy periods for individuals whose health conditions were harmed or could have been harmed by engaging in such fasting. Individual A died because of the Respondent's failure to perceive the dangers of having a Type-I diabetic participate in a water-only fast and his failure to respond properly when she began exhibiting the clear symptoms of diabetic ketoacidosis. Individual F could have suffered harmful health effects had he continued fasting for the contemplated two-week period without taking his prescribed cardiac medications. Although the Respondent is not currently a resident of this State, there is always the possibility that he may return. If he does return, he should not be able resume the activities that led to the tragedy that is the primary focus of this case. Therefore, I recommend to SBP that it issue a public cease and desist order prohibiting him from engaging in the practice of medicine in this State since he holds no license to do so.

V. Civil Penalty

Section 14-606(a)(4) of the Health Occupations Article states, "any person who violates § 14-601 of this subtitle is subject to a civil fine of not more than \$50,000 to be levied by the Board [of Physicians]." Md Code Ann., Health Occ. § 14-606(a)(4) (2005). COMAR 10.32.02.06B(3) further provides the following:

(3) Factors in determining the amount of a penalty include, but are not limited to the following:

(a) The extent to which the respondent derived any financial benefit from the improper conduct;

(b) The willfulness of the improper conduct; and

(c) The extent of actual or potential public harm caused by the improper conduct.

(4) Classification of Penalties. Penalties are as follows:

(a) For the first violation, not less than \$1,000 and not more than \$30,000;

(b) For the second violation, not less than \$10,000 and not more than \$40,000; and

(c) For the third violation, not less than \$15,000 and not more than \$50,000.

The State has recommended that a \$50,000.00 civil fine be paid by the Respondent. This recommendation appears to go against the precepts of COMAR 10.32.02.06B(4)(a), which limits penalties for first-time violations to \$30,000.00. Nevertheless, if each incident is viewed as a separate violation, then the Respondent could be subject to a \$30,000.00 for violating section 14-601 with regard to Individual A and \$40,000.00 for violating section 14-601 with regard to Individual F for a total of \$70,000.00. Although I would concur with the State that a penalty of at least \$50,000.00 would be proper (\$25,000.00 for the first violation and \$25,000.00 for the

second violation), I find the Respondent's conduct so egregious that I am recommending the imposition of a \$70,000.00 penalty against him, the highest possible under the above-noted interpretation of COMAR 10.32.02.06B(4).

Using the criteria outlined in COMAR 10.32.02.06B(3)(a) – (c) to determine the amount of the penalt[ies] that should be imposed, I find that the record lacks any information concerning how the Respondent profited from his activities at Tanglewood. I will infer that he was an employee of the facility—or Loren Lockman—and received a salary. Alternatively, he could have been in a partnership with Mr. Lockman and benefited financially in some profit-sharing arrangement. In any event, clients of Tanglewood paid significant fees to stay at the facility, so I conclude that the Respondent's role there was something other than as an unpaid volunteer.¹⁷ With respect to the willfulness of the Respondent's violations, I find that they, in fact, were willful. The Respondent knew or should have known he needed a license to practice medicine to engage in the kind of activities that he engaged in at Tanglewood.¹⁸ Earlier in this discussion, I outlined how the Respondent's conduct resulted in harm and I will not repeat those findings here.

¹⁷ To reiterate, the Respondent did not appear at the hearing to clarify matters such as the nature of his employment, so on that basis I will again draw a negative inference.

¹⁸ Had he had the proper training and been licensed, he would have known that allowing a Type-I diabetic to participate in a water-only fast was improper. In *Fasting and Eating for Health*, Dr. Joel Fuhrman, a medical doctor licensed to practice in New Jersey who espouses naturopathic principles, suggests that dietary modifications can *reduce* a Type-I diabetic's need for insulin, but he does not claim that a Type-I diabetic can eliminate insulin altogether. Also note that he also prescribes "dietary modifications" for Type-I diabetics, and not water-only fasting. (St. #6, *Fuhrman* at 172)

What I also find disconcerting, though, is the Respondent's attempt to employ spurious means to skirt the SBP's charges. For example, the *Aitchson* case has been valid law in this State for over 50 years, yet the Respondent persisted in repeating Aitchson's argument that he is not subject to the SBP's authority because "naturopathic physicians" do not have to be licensed and, therefore, are not subject to the SBP's authority. He similarly persisted in attacking the credentials of the State's well-qualified expert, David Brown, M.D. when no basis for attacking them truly existed. He further persisted in raising many borderline frivolous legal arguments throughout the hearing. Most prominently, though, the Respondent appeared only through counsel and made less than *bona fide* excuses for not appearing in person. His failure to appear demonstrates arrogance and a definite lack of respect for the SBP's authority on the Respondent's part, which significantly undermines his case.

Although the statutory scheme does not provide for a civil fine for violations of sections other than section 14-601, I have considered the Respondent's violations of the other sections noted in recommending a penalty. Those violations have tacitly figured in my above-stated analysis.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law,

1. The Respondent violated section 14-601 of the Health Occupations Article by engaging in the practice of medicine in this state without a license.
2. The Respondent violated section 14-602(a) of the Health Occupations Article by representing to the public, by description of services, methods, or procedures,

or otherwise, that the he was authorized to practice medicine in this State when he was not so licensed.

3. Since the Respondent's misconduct of practicing medicine warrants the issuance of a Public Cease and Desist Order because of the egregiousness of his misconduct.

4. The Respondent's misconduct warrants the imposition of a monetary penalty.

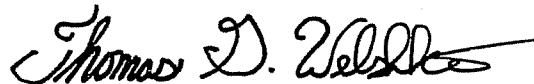
PROPOSED DISPOSITION

I **PROPOSE** that the charges filed by the State Board of Physicians against the Respondent, Timothy Scott Trader, on February 6, 2006 against the Respondent for violating sections 14-601(a), 14-602(a) and 14-602(b) of the Health Occupations Article be **UPHELD**; and I further,

PROPOSE that the State Board of Physicians issue a Public Cease and Desist Order to prevent the Respondent, Timothy Scott Trader, from practicing medicine in State; and I further,

PROPOSE that the State Board of Physicians impose a civil fine of \$70,000.00 against the Respondent, Timothy Scott Trader, for two separate violations of section 14-601(a) of the Health Occupations Article.

September 27, 2006
Date


Thomas G. Welshko
Administrative Law Judge

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions, in writing, to this Proposed Decision with the State Board of Physicians within fifteen (15) days of receipt of the decision, in accordance with Md. Code Ann., State Gov't § 10-216 (2004) and COMAR 10.32.02.03F. The Office of Administrative Hearings is not a party to any review process.

STATE BOARD OF PHYSICIANS

v.

TIMOTHY SCOTT TRADER,

AN UNLICENSED INDIVIDUAL,

RESPONDENT

* BEFORE THOMAS G. WELSHKO,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No. DHMH-SPB-79-06-11365

* SBP No. 2005-0027

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FILE EXHIBIT LIST

State's Exhibits:

<u>Exhibit No.</u>	<u>Date</u>	<u>Description</u>
1/41	March 27, 2006	<i>Curriculum Vitae</i> of David R. Brown, M.D.
2/39	August 16, 2004	Dr. Brown's letter regarding his opinion
3/40	November 8, 2004	Dr. Brown's follow-up letter
4/38	2001	Loren Lockman videotape
5/1	July 12, 2004	Cover letter and Complaint
6/2	August 4, 2004	Interview form re Individual A's mother
7/3	August 5, 2004	Interview form for Individual A's uncle
8/4	August 18, 2004	A – E. Attachments regarding Individual A's first contacts with Tanglewood
9/5	August 25, 2005	SBP's Cease and Desist Order issued to Respondent

Exhibit No.	Date	Description
10/6	2004	A – O, Sheriff's Office Investigation
11/7	June 10, 2004	Transcript of 911 Tape
12/8	June 2004	Autopsy Report and reports regarding neuropathology with respect to Individual A
13/9	August 2, 2004	Records of Frederick Memorial Hospital regarding Individual A
14/10	August 6, 2004	Records of University of Maryland Medical Center regarding Individual A
15/11	August 16, 2004	Individual A's Medical Records from her personal physician
16/12	August 16, 2004	Records from Dr. June Breiner, another one of Individual A's doctor
17/13	January 23, 2002	(Lockman only) Report of Ruth Ann Arty regarding Individual B
18/14	2002	(Lockman only) Individual B's e-mails
19/15	May 20, 2005	Interview of D.B.
20/16	April 19, 2005	Subpoena <i>Duces Tecum</i> with attachment
21/17	August 2004	Blog/e-mails regarding Lockman
22/18	May 17, 2005	Lockman's notice about his relocation of Tanglewood to Panama
23/19	May 19, 2005	Telephone Interview, attorney with niece of D.B.
24/20	May 19, 2005	"The Tanglewood Diet"
25/22	2004 -05	Copies of subpoenas regarding Trader and Lockman

Exhibit No.	Date	Description
26/21	May 25, 2005	Investigation Report of Ruth Ann Arty
27/23	May 27, 2003	(Lockman only) E-mails from the Tanglewood Group
28/24	June 2, 2005	(Lockman only) Ruth Ann Arty's interview with Individual C
29/25	Jan. 2001 – Dec. 2001	(Lockman only) Tanglewood residents' list
30/26	June 9, 2005	(Lockman only) Ruth Ann Arty's telephone interview with Individual G
31/27	March 2005	(Lockman only) Individual E documents and photographs
32/28	June 10, 2005	(Lockman only) Transcript of Interview with Individual E
33/29	2001 – 05	(Lockman only) Medical records for Individual C and other items
34/30	June 13, 2005	(Lockman only) Interview with "L.C."
35/31	June 15, 2005	(Lockman only) E-mails from Nurse N.H.
36/32	June 16, 2005	Property search
37/33	June 30, 2005	Transcript of Show Cause Hearing
38/34	February 9, 2006	(Lockman only) Driving record for Loren Lockman
39/35	April 18, 2005	Ruth Ann Arty's interview of Willie
40/36	March 28, 2006	(Lockman only) Tanglewood website materials
41/37	March 17, 2006	(Lockman only) Memorandum to file and receipts

<u>Exhibit No.</u>	<u>Date</u>	<u>Description</u>
42	May 23, 2006	Funsch information regarding Trader
43	Undated	Website of "Dr. Trader"
44	2004	Tanglewood Information
45	Undated	Recent Advertisement by the Respondent

Respondent's Exhibits:

<u>Exhibit No.</u>	<u>Date</u>	<u>Description</u>
1	Undated	Physician's Desk Reference report regarding the drug Accutane
2	Undated	Hagg information
3	Undated	Tanglewood list
4	October 16, 1995	Certificate issued to the Respondent by the American Naturopathic Medical Certification and Accreditation Board

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