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SECRETARY OF STATE

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:
JOSEPH S. HAYES, M.D.
RESPONDENT

Johnson City, Tennessee
Tennessee License 9516

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BEFORE THE BOARD OF
MEDICAL EXAMINERS
DOCKET NO. 17.18-015201A

NOTICE OF CHARGES

The Division of Health Related Boards, Department of Health, would show:

L JURISDICTION AND NOTICE OF RIGHTS

1. The Tennessee Board of Medical Examiners (hereinafter referred to as the "Board") is responsible for the regulation and supervision of the practice of Medicine in the State of Tennessee. T.C.A. § 63-6-101 et seq.
2. Joseph S. Hayes, M.D. (hereinafter referred to as "the Respondent") has been issued a license to practice medicine in the State of Tennessee.
3. Tennessee Code Annotated, Section 63-6-214 grants the Board the duty and power to suspend or revoke or otherwise discipline a licensee who has violated the provisions of Title 63, Chapter 6 of the Tennessee Code Annotated.

The Board is further empowered to assess to civil penalty not in excess of one thousand (\$1,000.00) dollars for each separate violation of the provisions of Title 63, Chapter 6 (The Tennessee Medical Practice Act). T.C.A. 63-1-134.

4. A respondent in a disciplinary action is entitled to be represented by legal counsel, to personally appear before the Board, to present witnesses, have subpoenas issued and receive thirty (30) days notice of the charges before being required to appear for a hearing. A Respondent who cannot afford legal counsel may be eligible for free or low-cost counsel. T.C.A. 63-6-216.
5. Proceedings for disciplinary action against a license holder are conducted in accordance with the Tennessee Uniform Administrative Procedures Act, Title 4, Chapter 5, Tennessee Code Annotated. T.C.A. 63-6-216.

II. ALLEGATIONS OF FACT

1. ~~On June 3, 1999, the Respondent was charged, by indictment in Criminal Court for Sullivan County, Tennessee, with five felony counts of sexual battery and one misdemeanor count of assault, on three of his female patients. On March 12, 2001, as a result of a plea agreement, he was convicted of three misdemeanor accounts of assault by offensive touching (TCA § 39-13-101) and sentenced to three concurrent terms of six months to be served in the Sullivan county jail;~~

2. The respondent's prior disciplinary record with this Board includes as least one Summary Suspension of his license on April 10, 1991 and one revocation of his license on July 23, 1991. ~~The Findings of Fact in the Board's order noted four years of improper prescribing habits, self-prescribing, and two criminal convictions of assault in 1987 and 1991.~~
3. ~~In 1991, upon the Respondent's plea of guilty, he was convicted of one felony count of illegal possession of controlled substance and placed on probation through 1993.~~

III. CAUSE OF ACTION

The facts alleged in section II of this Notice of Charges are sufficient to establish that the Respondent has violated the following statutes or rules which are part of the Medical Practice Act and/or Division Laws for which assessment of civil penalties is authorized:

1. Unprofessional, dishonorable, or unethical conduct.
T.C.A. § 63-6-214 (b) (1);
2. Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of T.C.A. 63-6-214(b)(2);
3. Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involvement of moral turpitude. T.C.A. 63-6-314(b)(10).

IV. PROPOSED TYPES AND AMOUNT OF CIVIL PENALTY

The Department, by and through counsel, proposes the assessment of three (3) Type A civil penalties in the amount of one thousand dollars (\$1000) each, for a total of three thousand dollars (\$3000) upon the finding of the following: The Respondent was guilty of a violation of the Medical Practice Act and that violation was committed in such a manner as to impact directly on the care of patients or the public. [Rules of the Tennessee Board of Medical Examiners, Chapter 0880-2-.12 (2) (b) (2)].

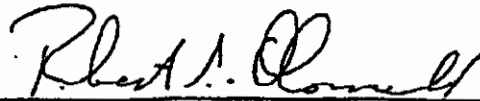
V. NOTICE AND PETITION FOR RELIEF

Premises considered, the Division by and through counsel, hereby:

1. Issues to the Respondent a copy of this Notice of Charges.
2. Gives notice that if the Respondent does not enter an appearance and defend, a default judgment may be entered.
3. Gives notice that this matter will be presented to the Board at 8:30 a.m. central time on May 22, 2001 in the Cumberland Room, ground floor, Cordell Hull Building, 426 5th Avenue North, Nashville, Tennessee.
4. That at the hearing of this cause, the Board shall determine whether the Respondent is guilty of violating the provisions of T.C.A. § 63-6-101, et seq. The Board shall further determine whether the proposed civil penalty shall be affirmed or whether a different type of civil penalty is justified, and whether the Respondent's license to

practice medicine in the State of Tennessee should be revoked, suspended, or otherwise disciplined.

Respectfully submitted this the 16th day of April 2001.

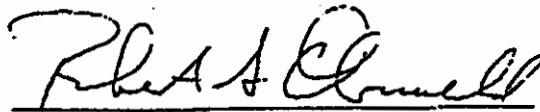


Robert A. O'Connell
Assistant General Counsel
Office of the General Counsel
Tennessee Department of Health
312 Eighth Avenue North
26th Floor, Tennessee Tower
Nashville, TN 37247
(615) 741-5575

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon: Joseph S. Hayes, M.D., 3 Primrose Court, Johnson City, Tennessee, 37601, by placing a true and accurate copy in the United States certified mail, return receipt requested, postage prepaid.

This 16th day of April 2001.



Assistant General Counsel
Tennessee Dept. of Health

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS OF SOUTH CAROLINA

In the Matter of:

Joseph S. Hayes, M. D.,

Medical License # 6726

(M-172-99)

Licensee.

AFFIDAVIT

PERSONALLY appeared before me, John D. Volmer, Administrator, who, being duly sworn, states the following facts:

In my duties as Administrator for the South Carolina Board of Medical Examiners, I received via U.S. Mail, certified true copies of documents issued by the State of Tennessee, Department of Health, Board of Medical Examiners relating to Dr. Joseph S. Hayes, Tennessee license number 9516. The documents included a "Notice of Charges" and an "Order." The "Order" of the Board of Medical Examiners was dated June 6, 2001. The "Order" revoked the medical license of Dr. Hayes effective the date of entry of the "Order" with leave to reapply pursuant to the rules of the Board of Medical Examiners. In issuing the "Order" it stated that *Reasons For Decision* were as follows: "The Board of Medical Examiners takes this action because the health, welfare, and safety of the citizens of Tennessee require it." In addition, Dr. Hayes was fined a civil penalty of \$3,000.00 regarding "three Type A Civil Penalties in the amount of \$1,000.00 for each of the three violations found in this order which the Board has determined constituted an imminent, substantial threat to the health, safety, and welfare of an individual client or the public."

Further Affiant saith naught.



JOHN D. VOLMER
Administrator — Affiant

SWORN to before me this
18th day of July, 2001.

Karen J. Newton (L.S.)
Notary Public for South Carolina

My Commission Expires: 9/18/07.



COMMONWEALTH of VIRGINIA

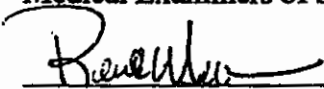
Robert A. Nebiker
Director

Department of Health Professions
6606 West Broad Street, Fourth Floor
Richmond, Virginia 23230-1717

<http://www.dhp.state.va.us/>
TEL (804) 662-9900
FAX (804) 662-9943
TDD (804) 662-7197

CERTIFICATION OF DUPLICATE RECORDS

I, Robert A. Nebiker, Director of the Department of Health Professions, hereby certify that the attached Order of Temporary Suspension, entered August 6, 2001, regarding Joseph Steven Hayes, M.D., are true copies of the records received from the State Board of Medical Examiners of South Carolina.



Date: _____



Robert A. Nebiker

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS OF SOUTH CAROLINA

In the Matter of:

JOSEPH STEVEN HAYES, M.D.,

Medical License # 6726

(M-172-99)

Respondent.

ORDER OF
TEMPORARY SUSPENSION

WHEREAS, on or about March 12, 2001, Respondent was convicted of three misdemeanor criminal charges in Tennessee and sentenced to three (3) concurrent jail terms of six (6) months. On or about June 6, 2001, Respondent's Tennessee Medical License was revoked based upon violation of provisions of the Tennessee Medical Practice Act. A copy of the Order of the Tennessee Board of Medical Examiners, and a Notice of Charges regarding the June 6, 2001 revocation is attached hereto as Exhibit 1, and is incorporated by reference as if set forth in full herein; and

WHEREAS, Respondent's conduct constitutes a serious threat to public health, safety, or welfare, and now requires the immediate temporary suspension of Respondent's license to practice medicine in this State, pending hearing into the matter and until further Order of the Board. The Affidavit of John D. Volmer, Administrator for the Board, is attached hereto as Exhibit 2, and is incorporated by reference as if set forth in full herein.

THEREFORE, IT IS ORDERED, that in accordance with S.C. Code Ann. § 1-23-370(c) (1986) Respondent's license to practice medicine in this State is hereby temporarily suspended. Said suspension shall be effective at the close of business on the date of service of this Order and shall continue in effect pending a hearing into the matter and until further Order of the Board.

AND IT IS SO ORDERED.

SOUTH CAROLINA BOARD OF MEDICAL
EXAMINERS

August 16, 2001.

BY:

LOUIS E. COSTA, II, D.M.D., M.D.
President of the Board

CERTIFIED TRUE COPY

18th DAY OF August 2002
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 2/5/07



4/10/91 6P.

STATE OF TENNESSEE
DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:)
JOSEPH S. HAYES, M.D.) BEFORE THE DIVISION OF
RESPONDENT) HEALTH RELATED BOARDS

ORDER OF SUMMARY SUSPENSION

This matter came to be heard before the Tennessee Department of Health and Environment, Division of Health Related Boards ("Division") pursuant to the authority of T.C.A. §4-5-320 and 63-1-120. After review by the Division Director of the findings of investigators, and the recommendation of the Medical Director to the Board of Medical Examiners, the Division finds as follows:

FINDINGS OF FACT

A. The Respondent is presently engaged in the practice of medicine in Pigeon Forge, Tennessee.

B. In September of 1989, Board of Medical Examiners charges were issued against the Respondent chiefly alleging the overprescribing of Schedule II controlled substances. While these charges were in the process of settlement certain actions on Respondent's part came to light which cast serious doubt upon his emotional stability as follows:

1. On July 7, 1987, a man went into Respondent's office seeking treatment and was physically assaulted by the Respondent's choking the man. The Respondent and his wife were found guilty of Assault and Battery in a general session trial on August 7, 1987.

Conviction #1

↓
Brenda Hayes, R.N.

2.

[REDACTED]
[REDACTED] in Gatlinburg, Tennessee, the Respondent began arguing about the check and was charged with slapping the waitress on the face. This charge was dismissed at the direction of the judge that the Respondent verbally apologized to the waitress in court, [REDACTED] a written apology to her and to stay away from the waitress and her place of employment.

3.

In August of 1990, the Respondent was charged with Aggravated Assault, a felony, by holding a gun to his wife's head during an altercation at his medical office. The Respondent's wife allegedly suffered bruises and a laceration to the scalp during this assault. The wife has since filed for divorce. This incident has resulted in the returning of grand jury indictments against Dr. Hayes charging him with three (3) counts of Aggravated Assault.

Conviction #2

4.

In November 1990, due to worsening marital difficulties, Dr. Hayes was found guilty of contempt of court for not complying with a court order issued in the divorce proceedings. Dr. Hays was sentenced to a minimum of ten (10) days in jail.

Conviction #3

5.

On February 11, 1991, Dr. Hayes was driving a vehicle that was stopped by a police officer for a traffic violation. Dr. Hays was found by the officer to have a fully loaded .45 caliber semi-automatic pistol under his seat. Dr. Hayes attacked and cut the police officer while the policeman was attempting to place him under arrest.

Conviction #4

Dr. Hayes was charged with assault, possession of a deadly weapon with the intent to be armed, speeding and resisting arrest.

C. [REDACTED] medical professional who is out of control. For whatever reason Dr. Hayes cannot seem to keep his combative behavior from interfering with either his personal or professional life. It is noted that two of the assaults occurred in his medical office.

D. On January 9, 1991, one of Respondent's patients, initials P. W. was transported to the Fort Sanders - Sevier Medical Center Emergency Room by the Pigeon Forge Police Department. The patient was in narcotized condition. While in the emergency room the patient had a respiratory arrest several times and required Ambu-assisted ventilation. The patient had received a prescription from the Respondent for Mepergan Fortis, a Demerol preparation, and Xanax. Apparently the patient consumed several capsules of both drugs. The patient then presented to the Respondent's office a second time and was given an injection of 100 mg of Demerol and 50 mg of Phenergan IM. The Respondent admitted to police officers that he knew that the patient had been drinking alcohol since he could smell it on the patient's breath during the second office visit. The patient collapsed in the automobile while exiting Respondent's parking lot and collided with another automobile. When police arrived, the patient was at first combative and then collapsed. The police spoke to Respondent who suggested they take the patient to jail since the patient was only sleeping. The police were concerned about the patient and arranged for emergency transport to the hospital.

E. A physician has filed a complaint with the Division concerning the Respondent's prescribing hydrocodone preparations (Vicodin and Lortab) to a patient. This patient was interviewed by a Division investigator. The patient came dependent on the drugs prescribed by Respondent and has entered into rehabilitation treatment for the dependency. The patient complained of headaches and was given the prescription after only cursory examination i.e., blood pressure, weight, temperatures. No effort was made by Respondent to reach the causes of the patient's migraines, rather, the Respondent hooked the patient on drugs while only trying to alleviate the patient's symptoms.

F. The Respondent has willfully violated Rule 0880-2-.10(2) by prescribing Phentermine, a schedule IV amphetamine-like substance for non-acceptable purposes. This rule took effect in November of 1990. Prior to November 1990, the Respondent for example issued such prescriptions for appetite control, a purpose now banned under the new rules. Since November of 1990 the Respondent has issued these same type of prescriptions to some of the patients previously receiving such for appetite control, only now the prescriptions are for "narcolepsy". This purpose of narcolepsy still does not meet the requirements of Rule 0880-2-.10(2) although Respondent has clearly changed his diagnosis noted on the prescriptions simply to allow his patients to obtain drugs they should no longer be receiving.

CONCLUSIONS OF LAW

1. The Findings of Fact in this Order are sufficient to establish violation by the Respondent, Joseph S. Hayes, M.D., of at least the following provisions of T.C.A. §63-1-120:

- a. Immoral, unprofessional, or dishonorable conduct.
T.C.A. §63-1-120(2).
- b. Distribution of intoxicating liquors or drugs for any other than lawful purposes. T.C.A. §63-1-120(7).

FINDINGS OF IMPERATIVE REQUIREMENT OF EMERGENCY ACTION

The Findings of Fact and Conclusions of Law in this Order establish that the public health, safety, and welfare imperatively require emergency action to prevent the Respondent from continuing his repeated, combative behavior and to determine if such behavior may require treatment.

REASONS FOR DECISION

The conduct engaged in by the Respondent cannot be tolerated by the Division and requires strict and swift action in order to protect the public health, safety and welfare.

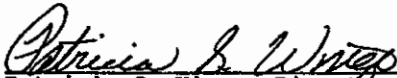
IT IS THEREFORE ORDERED AS FOLLOWS:

1. The license of the Respondent, Joseph S. Hayes, M.D., to practice medicine is, pursuant to the authority of T.C.A. §63-1-120 and §4-5-320, SUMMARILY SUSPENDED, beginning on the date of this Order and the Respondent is hereby directed to cease the practice of medicine on such date.
2. That said suspension shall remain in effect until a final hearing is held before the Tennessee Board of Medical Examiners ("Board") which will be scheduled by agreement of the Respondent and the Board or as soon as practicable.
3. That at the final hearing of this cause, the Tennessee Board of Medical Examiners will determine whether the Respondent is guilty of violating the provisions of T.C.A. §63-6-101 et. seq.

and the Board will further determine, if Respondent is found guilty, whether Respondent's license should be revoked or whether other discipline should be imposed.

4. Respondent is notified of his right to appear with counsel at a hearing in this matter and that if he fails to appear a default judgment may be entered against him.

Entered this 10th day of April, 1991



Patricia S. Wingo, Director
Division of Health Related Boards

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