

1 John P. Atkins  
DEPARTMENT OF LABOR & INDUSTRY  
2 Office of Legal Services  
301 South Park, Rm 494  
3 P.O. Box 200513  
Helena, MT 59620-0513  
4 (406) 841-2326

5 Counsel for the Department  
6

7 BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
8 STATE OF MONTANA

9 \* \* \* \* \*

10 IN THE MATTER OF THE ) CC-03-0093-MED  
PROPOSED DISCIPLINARY )  
11 TREATMENT OF THE LICENSE ) NOTICE OF PROPOSED  
OF NATHAN A. MUNN, M.D., ) BOARD ACTION AND  
12 License No. 7339. ) OPPORTUNITY FOR HEARING  
13 )

14 \* \* \* \* \*

15 To: Nathan A. Munn, M.D.  
c/o Ronald F. Waterman  
GOUGH, SHANAHAN, JOHNSON & WATERMAN  
16 P.O. Box 1715  
Helena, MT 59624-1715  
17

18 PLEASE TAKE NOTICE:

19 The Screening Panel of the Board of Medical Examiners of the State of Montana  
20 (Screening Panel) has found reasonable cause to believe that you have committed acts and/or  
21 omissions that authorize the Board of Medical Examiners to take disciplinary action against  
22 your right to practice medicine in the State of Montana pursuant to the provisions of Title  
23 37, Chapters 1 and 3, Montana Code Annotated (MCA).  
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1 "Working on self-esteem, self-acceptance and self love.  
2 Transference issue of trust arising & her feeling of  
3 comfort and vulnerability."

4 7. That Licensee continued to assess Jane Doe as suffering from "Major  
5 Depression; PTSD" until May 5, 1998, when Licensee noted that they were "in remission;"

6 8. That Licensee's Progress notes from June 30, 1998, state:  
7 "Continue with self-object issues and trusting."

8 9. That Licensee continued to see Jane Doe for psychotherapy and "med checks"  
9 through the remainder of the summer of 1998. Jane Doe presented herself to Licensee on  
10 October 16, 1998, stating that she had gone off her medications; was sick with the flu; and  
11 had become depressed.. Licensee assessed Jane Doe as having "Maj Dep, recurrent &  
12 PTSD" and put Jane Doe back on medications;

13 10. That on October 20, 1998, Licensee assessed Jane Doe as "doing better" but  
14 still "with depression;"

15 11. That Licensee continued to treat Jane Doe into 1999 seeing her from one to  
16 seven times in any one month while continuing to prescribe medications;

17 12. That Licensee's Progress Notes for Jane Doe dated March 19, 1999, state  
18 "Continue to work with transference, etc.;"

19 13. That Licensee's Progress Notes for Jane Doe dated May 4, 1999, state  
20 "Moving deeper into trust - - -;"

21 14. That Licensee's Progress Notes for Jane Doe dated May 18, 1999, state "PTSD  
22 diagnosis;"

23 15. That Licensee's Progress Notes for Jane Doe through July 2, 1999, reveal that  
24 Licensee continued to prescribe various medications for Jane Doe;

25 16. That throughout the psychotherapy sessions that Licensee had with Jane Doe  
26 during 1998 and 1999, Licensee engaged in the following types of conduct with Jane Doe:  
Licensee would sit on the couch with Jane Doe and hold her hand and sometimes wrap his

1 hands around Jane Doe's body while conducting therapy; Licensee often told Jane Doe how  
2 attractive she was; that Jane Doe could trust Licensee; and that he (Licensee) would never  
3 make a pass at Jane Doe. Licensee had convinced Jane Doe that his oral representations and  
4 physical contact were all part of her therapy. In May of 1999, Licensee began pulling Jane  
5 Doe onto his lap; rubbing Jane Doe's back; and placing his hand under Jane Doe's blouse.

6 17. That on July 9, 1999, during a regularly scheduled appointment at St. Peters'  
7 Hospital in Helena, Montana, Licensee had Jane Doe sit on his lap; then began kissing Jane  
8 Doe on the cheek; and eventually began kissing Jane Doe on the mouth. This "therapy  
9 session" culminated in Licensee engaging in sexual intercourse with Jane Doe in his  
10 professional office during a regularly scheduled therapy session. Thereafter, Licensee  
11 engaged in sexual intercourse with Jane Doe on a continuing basis as often as twice a week  
12 throughout the remainder of 1999, all of 2000, and into 2001 until approximately September  
13 24, 2001;

14 18. That after Licensee began engaging in sexual intercourse with Jane Doe,  
15 Licensee continued to prescribe medications for Jane Doe during the remainder of 1999,  
16 2000 and 2001 with the last known prescription by Licensee being filled on November 19,  
17 2001;

18 19. That Licensee's Progress Notes for Jane Doe do not contain any type of  
19 discharge or termination statement reflecting that Licensee had terminated the  
20 physician/patient relationship with Jane Doe nor that Jane Doe was no longer in need of  
21 psychotherapy;

22 20. That after Licensee began engaging in sexual intercourse with Jane Doe on  
23 July 9, 1999, Licensee did not refer Jane Doe to any other qualified practitioner for  
24 psychotherapy or pharmacotherapy;

25 21. That a direct and proximate result of Licensee's sexual predation of  
26 Jane Doe, Jane Doe suffered from severe mental illness; was hospitalized on September 25,  
2001; is currently under the care and treatment of Mary E. Bassingthwaighe, M.D., a

1 Missoula, MT, psychiatrist, and Diana Longdon, LCSW, a Helena, MT, counselor and  
2 psychotherapist; and has been diagnosed as having PTSD and panic disorder with  
3 agoraphobia; and continues to undergo psychotherapy in conjunction with the prescription of  
4 various medications;

5 22. That Jane Doe also was being treated by Shari K. Marx, M.D., during the fall  
6 of 2001 for medical purposes who prescribed a two week leave of absence from work  
7 beginning November 20, 2001, for Jane Doe due to her anxiety and depression; and

8 23. That in February and September, 2001, Licensee wrote prescriptions for  
9 Hydrocodone /APAP 7.5/500 TB and Ultram 50 mg Tablet in Jane Doe's name but merely  
10 used Jane Doe as a carrier/purchaser with Licensee or some other yet unidentified third  
11 person as the ultimate user.

## 12 CONCLUSIONS

13 From the foregoing Fact Assertions, the Board concludes as follows:

14 1. That the Board of Medical Examiners has jurisdiction over the person and  
15 subject matter herein pursuant to Sections 37-1-131 & 37-3-203, MCA;

16 2. That Licensee had a continuing physician/patient relationship with Jane Doe  
17 from December 12, 1997, through sometime in November, 2001;

18 3. That Licensee engaged in and committed unprofessional conduct with Jane  
19 Doe in violation of Section 37-1-316(18), MCA, by using his professional position to groom  
20 Jane Doe so that Jane Doe would engage in a sexual relationship of an intimate nature with  
21 Licensee beginning on July 9, 1999 and continuing for almost twenty-seven (27) months;

22 4. That Licensee engaged in and committed unprofessional conduct with Jane Doe  
23 by using his professional position to exploit Jane Doe's vulnerability for self sexual  
24 gratification purposes to the detriment of Jane Doe's mental health in violation of ARM  
25 24.156.625(15);

26 5. That Licensee abused the transference/counter transference phenomenon that  
took place during his psychotherapy treatment of Jane Doe and that abuse constitutes a

1 breach of the acceptable standard of care expected and required of Licensee in his  
2 professional capacity in violation of Section 37-1-316(18), MCA;

3 6. That Licensee's unprofessional conduct in exploiting Jane Doe's vulnerability  
4 while under Licensee's care and treatment for self sexual gratification purposes in violation  
5 of ARM 24.156.625(15), subjects Licensee to the sanctions provided for in Section 37-1-  
6 312, MCA.

7 7. That Licensee's unprofessional conduct in engaging in sexual relations with  
8 Jane Doe prior to terminating the physician/patient relationship in violation of Section 37-1-  
9 316(18), MCA, subjects Licensee to the sanctions provided for in Section 37-1-312, MCA;  
10 and

11 8. That Licensee's use of Jane Doe as a conduit through which to prescribe  
12 medications for himself, or for some other yet unidentified person, constitutes  
13 unprofessional conduct in violation of Section 37-1-316(18), MCA, and subjects Licensee to  
14 the sanctions provided in Section 37-1-312, MCA.

15 **CONFIDENTIAL DISCLOSURE OF IDENTITY OF JANE DOE**

16 Licensee has been provided with a separate document in this matter revealing the true  
17 identity of Jane Doe.

18  
19 **UNIFORM PROFESSIONAL LICENSING AND REGULATION PROCEDURES**

20 You are advised that the law provides:

21 **37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is  
22 made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be  
23 prepared by department legal staff and served on the alleged violator. The notice may be  
24 served by certified mail to the current address on file with the board or by other means  
25 authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation  
26 of a particular statute, rule, or standard unless the board or the board's screening panel, if  
one has been established, has made a written determination that there are reasonable grounds  
to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current  
address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or the license applicant may request a hearing to  
contest the charge or charges. A request for a hearing must be in writing and received in the  
offices of the department within 20 days after the licensee's receipt of the notice. Failure to  
request a hearing constitutes a default on the charge or charges, and the board may enter a

1 decision on the basis of the facts available to it.

2  
3 **37-1-312. Sanctions – stay – costs - stipulations.** (1) Upon the decision that a  
4 licensee or a license applicant has violated this part or is unable to practice with reasonable  
5 skill and safety due to a physical or mental condition or upon stipulation of the parties as  
6 provided in subsection (3), the board may issue an order providing for one or any  
7 combination of the following sanctions:

- 8 (a) revocation of the license;
- 9 (b) suspension of the license for a fixed or indefinite term;
- 10 (c) restriction or limitation of the practice;
- 11 (d) satisfactory completion of a specific program or remedial education or  
12 treatment;
- 13 (e) monitoring of the practice by a supervisor approved by the disciplining  
14 authority;
- 15 (f) censure or reprimand, either public or private;
- 16 (g) compliance with conditions of probation for a designated period of time;
- 17 (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be  
18 deposited in the state general fund;
- 19 (i) denial of a license application;
- 20 (j) refund of costs and fees billed to and collected from a consumer.

21 (2) A sanction may be totally or partially stayed by the board. To determine which  
22 sanctions are appropriate, the board shall first consider the sanctions that are necessary to  
23 protect and compensate the public. Only after the determination has been made may the  
24 board consider and include in the order any requirements designed to rehabilitate the  
25 licensee or license applicant;

26 (3) The licensee or license applicant may enter into a stipulated agreement  
resolving potential or pending charges that include one or more of the sanctions in this  
section. The stipulation is an informal disposition for purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within  
24 hours after receiving notification of the suspension or revocation by mailing it or  
delivering it personally to the board.

## STATEMENT OF RIGHTS

You are entitled to a hearing as provided for by the Montana Administrative  
Procedure Act (Section 2-4-601, et seq., MCA, including Section 2-4-631, MCA) and by  
Section 37-1-121(1), MCA. You have the right to be represented by an attorney at such  
hearing and during related proceedings.

If you want to have a hearing and to resist the proposed action under the jurisdiction  
of the Board of Medical Examiners, you must so advise Lisa Addington, Bureau Chief,  
Health Care Licensing Bureau, Department of Labor & Industry, 301 South Park, P.O. Box  
200513, Helena, Montana 59620-0513, **in writing**. Your request must be received in the  
offices of the Department within twenty (20) days after your receipt of this Notice.

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**POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your request for a hearing within the time specified will result in the entry of a default order imposing any sanction or sanctions authorized by law without additional prior notice to you.

DATED this 10<sup>th</sup> day of December, 2002.



John P. Atkins  
Legal Counsel  
Department of Labor & Industry

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of December, 2002, I served a true and correct copy of the foregoing Notice of Proposed Board Action and Opportunity for

Hearing, by certified United States mail, certified number 7001 2510 0001  
1222 8365, postage prepaid, upon Licensee, addressed as

follows:

Nathan A. Munn, M.D.  
c/o Ronald F. Waterman  
GOUGH, SHANAHAN, JOHNSON & WATERMAN  
P.O. Box 1715  
Helena, MT 59624-1715





BEFORE THE BOARD OF MEDICAL EXAMINERS  
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED DISCIPLINARY TREATMENT OF THE LICENSE OF NATHAN A. MUNN, M.D., License No. 7339.	)	Docket No. CC-03-0093-MED Hearings Bureau Case No. 1109-2003  FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER
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**I. INTRODUCTION**

In this matter, the Department of Labor and Industry (Department) alleges that the Dr. Nathan Munn has violated Mont. Code Ann. § 37-1-316(18) and Admin. R. Mont. 24.156.625(15). The Mont. Code Ann. § 37-1-316(18) allegation stems from Munn's sexual intercourse with a patient while treating that patient as well as an allegation that Munn used the patient as a conduit for obtaining medication for himself or other persons. The Admin. R. Mont. 24.156.625(15) allegation stems from the claim that Munn engaged in repeated sexual intercourse with the patient and that he "groomed" the patient for having sex with him through inappropriate touching and kissing which culminated in the patient and Munn having sex during a treatment session in July 1999. Munn concedes that he violated Mont. Code Ann. § 37-1-316(18) by having sex with the patient while he was still treating the patient in July 1999. Munn denies that he was still treating the patient in July 1999, when he had additional sexual encounters with her. Munn also denies that he used the patient as a conduit to obtain drugs for himself or others.

Based on the evidence adduced at the hearing and the post-hearing briefing of the parties, the hearing examiner finds that Munn violated Mont. Code Ann. § 37-1-316(18) and Admin. R. Mont. 24.156.625(15) by having sex with the patient in July 1999 and for having recurring sex with the patient while continuing to prescribe medication for her until September 2001. This conduct merits strong sanctions both to protect the public and rehabilitate Munn. Under the facts of this case, a 90-day suspension, monitoring as directed by the Board of Medical Examiners for a period of three years, appropriate continuing treatment, and a five-year period of probation should be imposed. The rationale that supports this determination and the imposition of the recommended sanctions follows.

## II. FINDINGS OF FACT

1. Since 1993, Munn has been licensed by the Board of Medical Examiners as a psychiatrist and has been actively practicing that profession.

2. In December 1997, Jane Doe's physician referred Jane Doe to Munn for treatment for depression and post traumatic stress disorder (PTSD).

3. During the period of Munn's treatment of Doe, Munn's family and Doe's family socialized together. Munn's wife was suffering from cancer. Munn's wife and Doe became friends, sharing some activities together. Munn's family attended some holiday gatherings at Doe's home. In addition, Munn and Doe (both of whom worked in the same building) occasionally ate lunch together in the company of other employees.

4. During the time that Munn treated Doe, his relationship with his own spouse deteriorated. Munn and his wife eventually divorced.

5. Munn treated Jane Doe two times each week between Doe's initial visit to Munn in December 1997 and July 9, 1999. At some point, Munn began sitting next to Doe during therapy sessions and holding her hand. On occasion, he rubbed her back and hugged her. This type of holding or touching therapy was not an appropriate form of therapy for an adult patient.

6. During Doe's July 9, 1999 therapy session, Doe and Munn engaged in sexual intercourse.

7. After the July 9, 1999 session, Munn and Doe continued their affair by meeting regularly over a two-year period to have sex. They met in Munn's office, in Doe's office, and sometimes at hotels. From July 9, 1999 until August 2001, Munn continued to prescribe medication for Jane Doe.

8. On July 9, 1999, Jane Doe was vulnerable to sexual advances by Munn, though perhaps not as vulnerable as she might have been at the time the therapy sessions started in 1997. Doe had been the victim of sexual abuse by her father at a young age and had been a rape victim during a robbery of her parent's home. These traumatic events created her PTSD condition. Munn had worked to gain Doe's trust during their therapy sessions by reassuring Doe that she was safe with Munn. In

addition, during one of the therapy sessions, Munn assured Doe that he would “never make a pass at her.”

9. During the summer of 2001, Munn decided that he should end his relationship with Doe. Munn eventually told Doe that he had developed an intimate relationship with another woman.

10. On September 25, 2001, Doe, who apparently had become distraught with Munn’s desire to end their relationship, appeared during the middle of the night at Munn’s home. Doe entered Munn’s house and began hitting Munn. Doe lied to Munn and told him that Doe’s husband had left her and taken the children. Eventually, Munn calmed Doe and Doe left.

11. Doe returned to Munn’s home a few hours later and informed Munn that she had overdosed on tranquilizers. She had not, in fact, overdosed but instead sought to get back at Munn for breaking off their relationship. After talking with Doe, Munn became convinced that she had not overdosed. Munn then left Doe.

12. A short time later, Doe called Munn and told him that she was suicidal. Munn contacted an ambulance to have Doe taken to the hospital. An ambulance crew contacted Doe at her residence, but left after Doe convinced them that she was not suicidal.

13. Doe then contacted Munn and told him that she had fooled the ambulance crew and that she was in fact suicidal. Fearing that Doe was suicidal, Munn contacted another psychiatrist, Dr. John Tupper, to initiate protective custody for Doe. Munn, realizing that his affair with Doe would be exposed to Tupper, and that Tupper would be required to report Munn’s conduct to the Board of Medical Examiners, informed Tupper of the relationship. It appears that but for the September 25, 2001 incident, Munn would not have disclosed his sexual relationship with Doe.

14. Soon after the September 25, 2001 incident, Munn enrolled in therapy with Dr. John Peters, M.D., also a psychiatrist. This therapy continued until January 2002. Dr. Peters treated Munn for depression and reported that Munn treated successfully. Dr. Peters also indicated that “there was no evidence of dishonesty and no history suggestive of any sort of predatory sexual activity.” Exhibit A, page 1.

15. At the urging of the Board of Medical Examiners, Munn received a thorough evaluation from Dr. Robert Page, Ed.D. As Dr. Page noted in his report, it

“is helpful in cases of this nature to illustrate any personality traits, history of known previous behaviors, and information provided by collateral sources, which may be either consistent or inconsistent with that of known perpetrators. This information then speaks to level of risk of potential future acts of deviance or similar inappropriate acts.” Dr. Page accomplished this goal by administering an extensive battery of tests and interviewing several persons involved with this case, including Jane Doe, regarding the circumstances of this matter.

16. Dr. Page concluded, among other things, that it did not appear that Munn would “purposely use his professional position to maneuver patients into sexual or physical contacts with premeditated or strategic purpose.” Dr. Page further concluded that, “Overall, Dr. Munn does not appear to pose a significant threat to future patients in terms of risk of predatory or sexually assaultive behaviors to the degree to which it would be necessary to remove his license to practice. However, he does present with some concerns surrounding the emotional underpinnings which led him toward his ethical violations with a patient, which need further therapeutic investigation and intervention.”

17. Munn has no history of engaging in inappropriate touching or sexual acts with any other patients nor does he have any history of deviant sexual behavior.

### III. CONCLUSIONS OF LAW

#### A. *Munn Committed Unprofessional Conduct*

1. Mont. Code Ann. § 37-1-316 provides in pertinent part:  
The following is unprofessional conduct for a licensee . . .  
governed by this chapter:

...

(18) conduct that does not meet the generally accepted standards of practice.

2. Admin. R. Mont. 24.156.626(15) provides that a licensee commits unprofessional conduct by “[c]ommission of an act of sexual abuse, misconduct, or exploitation related to the licensee’s practice of medicine.”

3. The Department bears the burden of proof in this matter to show by a preponderance of the evidence that Munn committed an act of unprofessional

conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT \_\_\_\_\_, 289 Mont. 407, 961 P.2d 126.

4. Sexual contact occurring while the physician-patient relationship is ongoing falls below generally accepted standards of practice and constitutes unprofessional conduct. Sexual contact that occurs during the physician-patient relationship constitutes sexual misconduct as such conduct “detract[s] from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician’s objective judgement concerning the patient’s health care, and ultimately may be detrimental to the patient’s well being.” American Medical Association Ethical rule E-8.14.

5. Munn concedes that his sexual encounter with Jane Doe on July 9, 1999 constituted unprofessional conduct (in that it occurred during the physician-patient relationship), but denies that he had any physician-patient relationship after that date. Munn’s physician-patient relationship with Jane Doe did not, however, end on July 9, 1999. To the contrary, Munn continued to prescribe medication for Jane Doe after July 9, 1999. The fact that Munn continued to prescribe medication for Jane Doe during their two-year relationship further demonstrates that Munn violated Mont. Code Ann. § 37-1-316(18).

6. The department has shown by a preponderance of the evidence that Munn violated Admin. R. Mont. 24.156.626(15) by exploitation of Jane Doe related to Munn’s practice. The facts themselves—first gaining Jane Doe’s trust, Munn’s cognizance of Jane Doe’s vulnerable position as a patient, escalating romantic behavior that included holding Doe’s hand and rubbing her back during therapy, and progressing to sexual intercourse on July 9, 1999—demonstrate that Munn exploited Doe through his physician-patient relationship with Doe.

7. The Department has failed to meet its burden of proof with respect to the allegation that Munn used Jane Doe to obtain medications for his own use or the use of a third party.

*B. The Appropriate Sanction.*

Upon a finding that a licensee has committed unprofessional conduct, the regulatory board may impose any or all of a wide variety of sanctions including suspension for a fixed or indefinite period, placing a licensee on probation for a designated period of time, satisfactory completion of remedial education or treatment, and monitoring of the practice by a supervisor approved by the

disciplining authority. Mont. Code Ann. § 37-1-312 (1). To determine which sanctions are appropriate, a regulatory board must first consider sanctions that are necessary to protect the public. Only after determining what sanctions are necessary to protect the public, can the board consider remedies designed to rehabilitate Munn. Mont. Code Ann. § 37-1-312(2).

The Department argued strenuously for revocation, positing that Munn groomed Jane Doe for sex and knowingly exploited her vulnerability. The Department's position relies heavily on the testimony of Doe regarding her perception of Munn's conduct during some of the therapy sessions, including Doe's contention that Munn held her on his lap and kissed her during a June 1999 therapy session. Munn has denied ever kissing Doe prior to their first sexual encounter or having her sit on his lap during a therapy session.

Doe's demeanor at the hearing casts doubt on the credibility of her statements regarding these particulars. Doe appeared highly agitated at the hearing, and at one point directed an unsolicited outburst at Munn, calling him a pig (which resulted in an admonition from the hearing examiner regarding appropriate demeanor during the hearing). The presumption that a witness is presumed to speak the truth may be overcome by, among other things, the demeanor or manner of the witness testifying or the bias of the witness for or against any party involved in the case. Mont. Code Ann. § 26-1-302 (1) and (3). Here, Doe's demeanor at the hearing and her understandable but nonetheless obvious bias against Munn casts doubt on her credibility with respect to these particulars.

Even if the particulars about the lap incident and kissing were to be believed, the short time frame of the events (kissing and lap incident in June 1999 and sexual encounter in July 1999) cuts against the notion that Munn was grooming Doe for sex. Rather, it points in favor of Munn's interpretation that their sexual contact was the culmination Munn's and Doe's evolving friendship and their professional relationship. The evidence shows that Doe and Munn had an evolving friendship throughout the course of their physician-patient relationship. Their immediate families spent time together during their physician-patient relationship. These factors undoubtedly created an environment conducive to strong feelings between Doe and Munn. Although the 1999 sexual encounter was not spontaneous, it certainly was fostered by a growing closeness between Munn and Doe. It was not the result of some deviant behavioral flaw that will expose other female patients to certain risk if Munn is permitted to continue his practice.

These factors, taken in conjunction with the reports of the experts, militate against outright revocation. As Dr. Page clearly stated, Munn does not appear to pose a significant threat to future patients "in terms of predatory or sexually assaultive behaviors." If there were a substantial probability that Munn posed a continuing risk (such as might be shown through a history of inappropriate conduct with other patients or indicia manifested in the testing and therapy conducted after the reporting of the relationship), the hearing examiner would unhesitatingly recommend revocation of this license. It appears, however, that the public can be adequately protected through safeguards short of revocation.

Dr. Page sets forth a detailed proposal for intervention which addresses in large measure both the protection of the public and the rehabilitation of Munn. Dr. Page suggests that Munn be required to participate in individual therapy, remain subject to supervision by a qualified supervisor selected by the Board for a prescribed length of time, and that he and his supervisor be required to report periodically to the Board regarding his compliance and progress. Dr. Page further suggests that a therapeutic polygraph examination be utilized as part of the initial approach to therapy in order to help set the framework for appropriate therapy. In light of the circumstances surrounding this case, these recommendations are appropriate.

Of additional concern to the hearing examiner is the fact that Munn would not have reported his inappropriate conduct unless compelled to do so by the events of September 25, 2001. Such conduct is antithetical to Montana's overriding concern with the protection of the public. Munn's conduct merits a strong sanction. Simply placing Munn on probation and ordering compliance with suggested treatment would not impress upon Munn the seriousness of his transgression. His conduct in this matter, though not meriting revocation under the circumstances of this case, cannot be tolerated. Given the facts, a period of suspension is appropriate.

#### **IV. PROPOSED ORDER**

Based on the foregoing, the hearing examiner recommends that the board enter its order placing Munn on probation for a period of five years with the terms that:

(1) At his own expense, Munn shall enroll in and successfully complete 60 hours of remedial education within six months of the entry of the final order issued in this matter, the type of education to be determined by the Board of Medical Examiners;

(2) Munn shall enter into a contract with the Montana Professional Assistance Program (MPAP) which addresses boundary issues and ensures MPAP monitoring, or other monitoring as directed by the Board, of Munn's practice for a period of three years;

(3) Munn shall enroll in and successfully complete a plan of treatment or therapy as directed by the Board;

(4) within 30 days of the entry of the final order issued in this matter, Munn shall complete a polygraph examination with Dr. Robert N. Page which addresses the allegations made by Doe;


(5) Munn shall not engage in any acts of unprofessional conduct;

(6) Munn's license shall be suspended for a period of 90 consecutive days beginning upon the entry of the final order in this matter.

DATED this 15th day of August, 2003.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By:

  
GREGORY L. HANCHETT  
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to Munn, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.



\*\*\*\*\*

CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Wendy Holton  
Attorney At Law  
211 5th Ave  
Helena, MT 59601

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day, served upon the following parties or such parties' attorneys of record by means of the State of Montana's Interdepartmental mail service.

John P. Atkins, Legal Counsel  
Office of Legal Services  
Department of Labor and Industry  
P.O. Box 200513  
Helena, MT 59620-0513

DATED this 15th day of August, 2003.



Natacha Bird



1 Licensee shall surrender the revoked license to the Board within 24 hours after receiving  
2 notification of revocation by mailing it or delivering it personally to the Board

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5 **NOTICE**

6 **YOU ARE HEREBY NOTIFIED** that you have the right to request judicial review  
7 of this Final Order by filing a petition for judicial review within thirty (30) days of service of  
8 this Final Order in the First Judicial District Court, County of Lewis and Clark, State of  
9 Montana, as provided in Section 2-4-702, Montana Code Annotated.

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11 **DATED** this 25th day of November, 2003.

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13 **BOARD OF MEDICAL EXAMINERS**

14   
15 **By:**  
16 **ARTHUR K. FINK, D.O.**  
**Presiding Officer**

17 **ATTEST:**

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20 **Jeannie Warsech**  
**Board Administrator**

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23 **CERTIFICATE OF SERVICE**

24 I hereby certify that on the 1st day of December, 2003, I served a true and accurate  
25 copy of the foregoing Final Order, by hand delivered ~~United States mail, postage prepaid~~, upon Licensee,  
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1 Licensee's counsel of record, and the Department of Labor and Industry, addressed as follows:

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Wendy Holton  
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