

BEFORE THE SOUTH CAROLINA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

Thomas A. Upshaw, M.D.,

Medical License #18101,

(M-135-01) Respondent.

FINAL ORDER

This matter came before the Board of Medical Examiners (the Board) for hearing on July 31, 2002, as a result of the Notice and Complaint served upon the Respondent and filed on October 8, 2001. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§40-47-200 and 211 (2001) to determine whether sanctions should be imposed based upon the Certified Report of the Disciplinary Panel, which panel had heard the charges on January 23, 2002, and filed a certified report of the proceedings together with a transcript of the testimony taken and exhibits entered into evidence. Geoffrey R. Bonham, Esquire, represented the State. The Respondent was represented by Wilbur E. Johnson, Esquire.

The Respondent was charged with violation of S.C. Code Ann. §§40-47-200(F)(7), and (8), and Regulation No. 81-60(A) of the Rules and Regulations of the Board of Medical Examiners.

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a physician duly licensed to practice medicine in South Carolina. He currently practices in North Charleston, South Carolina.
2. A patient was admitted to the hospital in March 2001 due to bipolar disorder and depression, and the Respondent was assigned as her treating physician. After the patient was discharged from the hospital, she began seeing the Respondent for follow-up visits at his office.
3. The patient made an office visit to the Respondent on or about May 1, 2001. During the visit, the Respondent dimmed the lights in the office, moved his chair close to the patient, made inappropriate comments of a sexual nature ("you drive me crazy, the way that you dress, the way you

look"), and engaged in inappropriate physical contact with the patient by placing his hand up her dress on her thigh.

4. The patient returned for another appointment with the Respondent on or about May 8, 2001 with a recording device. During the visit, the Respondent admitted to the patient that he had made inappropriate comments and contact with the patient at the previous visit, and apologized for his conduct.

5. The Respondent began receiving counseling regarding sexual boundaries in January 2002.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §40-47-200, supra, has the authority to order the revocation or suspension of a license to practice medicine or osteopathy, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the medical or osteopathic practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a civil penalty of up to ten thousand dollars to the Board and the costs of the disciplinary action.

2. The Respondent has violated S.C. Code Ann. §§40-47-200(F)(7), and (8), and Regulation No. 81-60(A) of the Rules and Regulations of the Board of Medical Examiners, in the following particulars:

A. The Respondent has violated S.C. Code Ann. §40-47-200(F)(7), in that he has violated the following Principle of Medical Ethics adopted by the Board:

(1) Regulation 81-60(A), in that he did not provide medical service with compassion and respect for human dignity, as evidenced by his inappropriate comments to and inappropriate touching of his patient.

B. The Respondent has violated S.C. Code Ann. §40-47-200(F)(8), in that he engaged in unprofessional conduct that is likely to deceive, or harm the public, as evidenced by his inappropriate comments to and inappropriate touching of his patient.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified medical doctors against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the physician, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The Respondent's license to practice medicine in this State is hereby indefinitely suspended, and the suspension immediately stayed.

2. The Respondent shall pay within three months of the date of this order a fine of Five Thousand and No/100 Dollars (\$5,000.00). This fine shall not be deemed paid until received by the Board. Failure to pay the fine in the time prescribed shall result in the immediate temporary suspension of the Respondent's license until such time as the fine is paid.

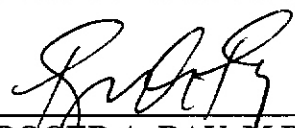
3. The Respondent shall pay within three months of the date of this order administrative costs of One Hundred Sixty-Eight and 23/100 Dollars (\$168.23). These costs shall not be deemed paid until received by the Board. Failure to pay the costs in the time prescribed shall result in the immediate temporary suspension of the Respondent's license until such time as the costs are paid.

4. Within three months of the date of this order, The Respondent shall complete and provide to the Board a comprehensive professional sexual misconduct evaluation approved by the Board. After receipt of the evaluation, the Board may, in its discretion, take further disciplinary action in this matter by supplemental order.

5. This final order shall take effect upon service of this order on the Respondent or his counsel.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: 

ROGER A. RAY, M.D.
President of the Board

8/4, 2002.

BEFORE THE SOUTH CAROLINA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

Thomas A. Upshaw, M.D.,

Medical License #18101,

(M-135-01) Respondent.

SUPPLEMENTAL FINAL ORDER

This matter came before the Board of Medical Examiners (the Board) for hearing on February 4, 2003, as a result of the Notice and Complaint served upon the Respondent and filed on October 8, 2001 and the Board's prior final order dated August 4, 2002 which provided that the Respondent complete and provide to the Board a comprehensive professional sexual misconduct evaluation approved by the Board, after receipt of which the Board could, in its discretion, take further disciplinary action in this matter by supplemental order. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§40-47-200 and 211 (Supp. 2001) to determine whether further disciplinary action should be taken by the Board. Wendy Cartledge, Esquire, represented the State. The Respondent was represented by Wilbur E. Johnson, Esquire.

The Respondent was charged with violation of S.C. Code Ann. §§40-47-200(F)(7), and (8), and Regulation No. 81-60(A) of the Rules and Regulations of the Board of Medical Examiners.

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a physician duly licensed to practice medicine in South Carolina. He currently practices in North Charleston, South Carolina.
2. A patient was admitted to the hospital in March 2001 due to bipolar disorder and depression, and the Respondent was assigned as her treating physician. After the patient was discharged from the hospital, she began seeing the Respondent for follow-up visits at his office.
3. The patient made an office visit to the Respondent on or about May 1, 2001. During the visit, the Respondent dimmed the lights in the office, moved his chair close to the patient, made inappropriate comments of a sexual nature ("you drive me crazy, the way that you dress, the way you

look”), and engaged in inappropriate physical contact with the patient by placing his hand up her dress on her thigh.

4. The patient returned for another appointment with the Respondent on or about May 8, 2001 with a recording device. During the visit, the Respondent admitted to the patient that he had made inappropriate comments and contact with the patient at the previous visit, and apologized for his conduct.

5. The Respondent began receiving counseling regarding sexual boundaries in January 2002.

6. The prior order of the Board in this matter imposed an indefinite suspension, immediately stayed, a fine of \$5,000, costs, and further required that the Respondent complete and provide to the Board a comprehensive professional sexual misconduct evaluation approved by the Board, after receipt of which the Board could, in its discretion, take further disciplinary action in this matter by supplemental order.

7. The Board received a sexual misconduct evaluation dated January 10, 2003. The psychiatric assessment component of the evaluation found that the Respondent suffered from major depression, in partial remission, and dysthymic disorder. The assessment noted improvement in depressive symptoms with Zoloft, but that he continued to exhibit some signs of impulsivity and distractibility. The assessment further noted that he had begun treatment for alcohol use prevention, but that he is in early treatment for all of the above, and remains at significant risk for relapse of acting out behavior. The treatment recommendations were: 1) to continue in treatment for professional sexual misconduct, 2) to continue in treatment for substance abuse issues to include unannounced alcohol and drug screening testing, 3) to remain on Zoloft for the foreseeable future, 4) to complete an assertiveness training treatment module, and 5) to continue to submit to unannounced polygraph testing at least once every six months.

8. A psychosexual evaluation report was received by the Board as part of the overall evaluation. This report showed no chronic sexual interest in deviant sexual stimuli. The recommendation was that the Respondent complete the program in which he is enrolled. Specifically recommended were: 1) an unobtrusive video-recording device be installed at the worksite, 2) polygraph examinations be taken every six months, and 3) that the Respondent be directly supervised by a board certified psychiatrist at his place of employment.

9. A substance abuse evaluation was provided to the Board. The evaluation mentions a history of cannabis use and alcohol use. The evaluation indicated that the Respondent had a high probability of having a substance abuse dependence disorder. The treatment recommendations were: 1) individual therapy sessions twice per month, 2) supervisory contact once per month, 3) Alcoholics Anonymous four times per month, and 4) monitoring by a physician for medication management as

required.

10. Also included in the evaluation given to the Board was the result of polygraph testing which concluded that the Respondent had not re-offended with a patient or been lying about not re-offending.

11. At the February 4, 2003 hearing before the Board, a letter dated February 3, 2003 from Dr. Burke was presented to the Board. The letter noted a recent lapse (identified by the Respondent as drinking beer at a Super Bowl party) by the Respondent involving alcohol, and recommended that the Respondent enter an intensive outpatient alcohol and substance abuse treatment program.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §40-47-200, supra, has the authority to order the revocation or suspension of a license to practice medicine or osteopathy, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the medical or osteopathic practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a civil penalty of up to ten thousand dollars to the Board and the costs of the disciplinary action.

2. The Respondent has violated S.C. Code Ann. §§40-47-200(F)(7), and (8), and Regulation No. 81-60(A) of the Rules and Regulations of the Board of Medical Examiners, in the following particulars:

A. The Respondent has violated S.C. Code Ann. §40-47-200(F)(7), in that he has violated the following Principle of Medical Ethics adopted by the Board:

(1) Regulation 81-60(A), in that he did not provide medical service with compassion and respect for human dignity, as evidenced by his inappropriate comments to and inappropriate touching of his patient.

B. The Respondent has violated S.C. Code Ann. §40-47-200(F)(8), in that he engaged in unprofessional conduct that is likely to deceive, or harm the public, as evidenced by his inappropriate comments to and inappropriate touching of his patient.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified medical doctors against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the physician, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The sanctions previously imposed by the Board shall remain in effect as previously ordered, and as amended below.

2. The Respondent's license to practice medicine in this State continues indefinitely suspended with the suspension stayed.

3. The Respondent's license shall be subject for an indefinite period to the following terms and conditions of probation, which shall remain in effect until further direction of the Board:

A. The Respondent shall completely abstain from the consumption of mood-altering substances, including alcohol, except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose. All use of such substances is to be reported by the Respondent to the Board or its designee within 48 hours of initiation. All such medical treatment and prescribing shall be reported directly to the Board in writing by the treating practitioner within ten (10) days after the date of treatment. The Respondent must inform the treating practitioner of this responsibility, provide a copy of this order to the treating practitioner, and ensure timely compliance. Failure to inform the treating practitioner of this responsibility shall be considered a violation of this order.

B. The Respondent shall be subject to periodic, unannounced blood and urine alcohol and/or drug analysis as desired by the Board, the purpose being to ensure that the Respondent remains drug and/or alcohol-free. The cost of such blood and urine alcohol and/or drug analyses and reports will be borne by the Respondent, which costs shall be paid within thirty (30) days after the date of the invoice therefor. Failure to make timely payment of such costs, to provide a specimen upon request, or to remain alcohol and/or drug-free shall be considered a violation of this order.

C. The Respondent must have a written contract with and be an active participant in the activities of the Recovering Professionals Program (the Program), as approved in advance in writing by the Board, until a period of not less than five years of documented sobriety and compliance with this order has been satisfactorily established by the Respondent and until further order of the Board. Such contract shall include provisions for any assessment, treatment, monitoring,

and aftercare activities, and other activities as the Program shall deem appropriate, including, but not limited to:

- (1) Assessment and treatment requirements of the Program;
- (2) Monitoring and aftercare activities of the Program;
- (3) Participation in Alcoholics Anonymous (AA) or Narcotics Anonymous (NA);
- (4) Participation in professional support groups or organizations or equivalents, as approved by the Program;
- (5) Such additional therapeutic activities as deemed appropriate and necessary by the Program.

The Program shall submit regular written reports documenting the Respondent's full compliance with the terms of the contract with the Program and this order.

D. Within thirty (30) days of the date of this order, the Respondent must provide to the Board a letter signed by an appropriate representative of the Program mentioned above verifying that the Respondent has signed a written contract with and become an active participant in the activities of the Program, as required above. Compliance with this paragraph shall not be deemed satisfied until written verification is received by the Board. Failure to comply with this requirement within the prescribed time shall automatically result in the immediate temporary suspension of the Respondent's license to practice until such time as full compliance has been made by the Respondent.

3. The Respondent shall continue his treatment in the program of William Burke, Ph.D. and follow all recommendations of that program, including a recent recommendation of more intensive alcohol and substance abuse treatment, but excepting the requirement of the use of a camera in his currently proposed practice setting. The Respondent is required to arrange, at his own expense for Dr. Burke to submit quarterly reports regarding the Respondent's progress in these programs.

4. The Respondent shall secure the pre-approval of the Board prior to any change in his practice setting

5. The Respondent shall appear and report to the Board as requested by the Board.

6. The Respondent shall comply with the terms of this final order and all state and

federal statutes and regulations concerning the practice of medicine.

7. The Respondent shall promptly advise this Board in writing of any changes in address, practice, hospital privileges, professional status, or compliance with this final order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

South Carolina Department of Labor,
Licensing, and Regulation
Board of Medical Examiners
P.O. Box 11289
Columbia, SC 29211

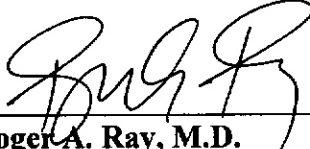
8. Failure by the Respondent to abide by any of the aforementioned terms or conditions shall warrant the immediate suspension of his license to practice medicine in this State pending hearing into the matter and until further order of the Board.

9. This final order shall take effect upon service of this order upon the Respondent or his counsel.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: _____


Roger A. Ray, M.D.
President of the Board

2/12, 2003.

3BEFORE THE STATE BOARD OF MEDICAL EXAMINERS OF SOUTH CAROLINA

In the Matter of:

THOMAS A. UPSHAW, M.D.,
Medical License # 18101

(2004-111, M-135-01) Respondent.

ORDER OF
TEMPORARY SUSPENSION

WHEREAS, the above-named Respondent is a physician duly licensed by the State Board of Medical Examiners of South Carolina (the Board) to practice medicine in South Carolina; and

WHEREAS, on February 12, 2003 by Final Order of the Board, Respondent was ordered, among other requirements, to refrain from the consumption of alcohol and other mood altering substances and

WHEREAS, pursuant to the aforementioned Order, Respondent was tested by the Recovering Professional Program to determine his compliance with said Order and laboratory results indicated that Respondent had consumed alcohol and was not in compliance with the Boards Order; and

WHEREAS, the results of the aforementioned test were positive for alcohol consumption and pursuant to the aforementioned Order Respondent's license to practice medicine is subject to immediate suspension pending hearing and until further Order of the Board.

THEREFORE, IT IS ORDERED THAT, in accordance with the Board's prior Order and South Carolina Code of Laws § 40-47-200, (2003), as amended, Respondent's license to practice medicine in this State is hereby temporarily suspended, effective immediately, pending hearing and until further Order of the Board.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL
EXAMINERS OF SOUTH CAROLINA

May 5/27, 2005

By: Satish M Prahbu
SATISH M. PRAHBHU, M. D.
President of Board

BEFORE THE SOUTH CAROLINA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

THOMAS A. UPSHAW, M.D.,

Medical License #18101

(M-2004-111, 19-05)

Respondent.

**FINAL ORDER
(Public)**

This matter came before the State Board of Medical Examiners (the Board) on August 7, 2006 for hearing pursuant to the Notice and Complaint which was served upon the Respondent and filed with the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§40-47-200 and 211 (1976), as amended, to determine whether sanctions should be imposed based upon the Memorandum of Agreement and Stipulations agreed upon by the Respondent and the State. The State was represented by Marvin G. Frierson, Esquire, Assistant General Counsel, SC Department of Labor, Licensing and Regulation. The Respondent appeared and was represented by Wilbur E. Johnson, Esquire.

The Respondent was charged with violation of S.C. Code Ann. §§40-47-200(F)(3) and (8) (1976), as amended.

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a physician duly licensed to practice medicine in South Carolina, and was so licensed at all times relevant to the matters alleged in the Complaint. Respondent's license is currently suspended pursuant to a temporary suspension order issued by the Board.

2. The Board issued a Final Order with regard to the Respondent on August 7, 2002, and on February 12, 2003, the Board issued a Supplemental Final Order relative to Respondent. In the August 7, 2002 Final Order, the Board sanctioned the Respondent and required Respondent to provide the Board with a comprehensive evaluation. Following the Board's receipt of the evaluation, the Board issued the February 12, 2003 Supplemental Final Order which placed terms and conditions on Respondent's license for an indefinite period. One of the conditions placed upon Respondent's license was that Respondent completely abstain from the consumption of mood-altering substances, including alcohol, except as

prescribed by a duly licensed practitioner for a documented legitimate medical purpose, and that Respondent be monitored by the South Carolina Recovering Professionals Program (RPP) to ensure compliance.

3. On or about March 3, 2005, RPP notified the Board that the Respondent was tested on February 21, 2005 and the results was positive for alcohol, and the Respondent was being referred for inpatient treatment. Based upon the notification from RPP, it was determined that Respondent was not in compliance with the terms and conditions set forth in the February 12, 2003 Supplemental Final Order, and on May 27, 2005, the Respondent's license was temporarily suspended.

4. In the Memorandum of Agreement and Stipulation, and through testimony, the Respondent admitted the facts recited above and that these acts present grounds that constitute misconduct, as alleged.

5. Since the positive test, the Respondent has undergone inpatient treatment as well as continuing monitoring with RPP, and by memorandum dated June 9, 2006, RPP states that the Respondent is compliant with his monitoring agreement, however RPP states no recommendation as to Respondent's fitness to return to active practice. In addition to the RPP monitoring, Respondent is in continuing treatment in the program of William Burke, Ph.D., as shown by the most recent quarterly review dated June 3, 2006. The review also shows that Dr. Burke is aware of the fact that Respondent's license is suspended and that Respondent was appearing before the Board to request that the suspension be stayed, however, Dr. Burke has offered no opinion as to Respondent's fitness to return to active practice.

6. The Respondent states that he has had seventeen months of negative drug screens, and is requesting that the suspension be stayed and that his license be reinstated. However, the Board is reluctant to reinstate the Respondent's license without the benefit of an opinion or recommendation from Dr. Burke and RPP confirming that the Respondent's recovery is such that he is safe to practice.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §40-47-200, *supra*, has the authority to order the revocation or suspension of a license to practice medicine or osteopathy, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the medical or osteopathic practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a civil penalty of up to ten thousand dollars to the Board and the costs of the disciplinary action.

2. The Respondent has violated S.C. Code Ann. §40-47-200(F)(3) (1976), as amended, in that the Respondent is addicted to alcohol or drugs to such a degree as to render the Respondent unfit to practice medicine or osteopathy, as evidenced by Respondent's admission to the facts set forth above.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified physicians against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondent, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The indefinite suspension of Respondent's license to practice medicine in this State shall remain in effect. Upon obtaining a recommendation from his treating physician and the South Carolina Recovering Professionals Program (RPP) that Respondent is safe to resume active practice, the Respondent may at any time thereafter petition the Board for a stay of the suspension.

2. The requirements previously imposed by the Board in the August 9, 2002 Final Order and the February 12, 2003 Supplemental Final Order shall remain in effect as previously ordered.

3. The Respondent shall, within six (6) months of the date of this final order, pay costs in the amount of Four Hundred Thirty-Five and 70/100 (\$435.70) Dollars. These costs shall not be deemed paid until received by the Board.

4. This final order shall take effect upon service of this order upon the Respondent or Respondent's counsel.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY:



SATISH M. PRABHU, M.D.

President of the Board

September 22, 2006.

BEFORE THE SOUTH CAROLINA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

THOMAS A. UPSHAW, M.D.,

Medical License #18101

(M-2004-111, 19-05) Respondent.

**SUPPLEMENTAL ORDER
(Public)**

This matter came before the State Board of Medical Examiners (the Board) for a hearing on February 6, 2007. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§40-47-117 (1976), as amended, and provisions of the S.C. Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.*, (1976), as amended, for the Board's consideration of the Respondent's request that his license be reinstated. The State was represented by Marvin G. Frierson, Esquire, Assistant General Counsel, SC Department of Labor, Licensing and Regulation. The Respondent appeared and was not represented by counsel.

The Respondent's license was temporarily suspended on May 27, 2005 after the Board received a report from the South Carolina Recovering Professional Program (RPP) that Respondent tested positive for alcohol, which violated an Order issued by the Board on February 12, 2003. On September 22, 2006, the Board issued an Order that maintained the suspension indefinitely, and that allowed the Respondent to petition for the suspension to be stayed once he obtained recommendations from his treating physician and from RPP that addressed Respondent's ability to safely resume active practice. The September 22, 2006 Final Order also required Respondent to continue to comply with the monitoring and treatment requirements imposed by the Board in orders issued on August 9, 2002 and February 12, 2003.

After receiving testimony from the Respondent, Dr. William Burke of Southeastern Assessments, Inc., representatives of RPP, and reviewing a communication from Dr. Sam Rosen, the Board finds that the Respondent's license should be reinstated with restrictions.

NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The indefinite suspension imposed upon Respondent's license shall be, and hereby is, immediately stayed, and Respondent's license shall be reinstated subject to the following terms and conditions of probation, which shall remain in effect until further direction from the Board:

- A. Respondent's practice setting must be approved in advance by the Board or its designee, and any subsequent change of practice setting must also be pre-approved by the Board.
- B. Respondent shall be prohibited from treating female patients who are under the age of 65 and shall only treat male patients who are over the age of 18.
- C. Respondent shall continue his treatment in the program of Dr. William Burke, and shall follow all recommendations of that program. Additionally, Respondent is required to arrange, at his own expense, for Dr. Burke to continue to submit quarterly reports regarding Respondent's progress.
- D. The Respondent shall completely abstain from the consumption of mood-altering substances, including alcohol, except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose. All use of such substances is to be reported by the Respondent to the Board or its designee within 48 hours of initiation. All such medical treatment and prescribing shall be reported directly to the Board in writing by the treating practitioner within ten (10) days after the date of treatment. The Respondent must inform the treating practitioner of this responsibility, provide a copy of this order to the treating practitioner, and ensure timely compliance. Failure to inform the treating practitioner of this responsibility may be considered a violation of this order.
- E. The Respondent shall be subject to periodic, unannounced blood and urine alcohol and/or drug analysis as desired by the Board, the purpose being to ensure that the Respondent remains drug and/or alcohol free. The cost of such blood and urine alcohol and/or drug analyses and reports will be borne by the Respondent, which costs shall be paid within thirty (30) days after the date of the invoice therefor. Failure to make timely payment of such costs, to provide a specimen upon request, or to remain alcohol and/or drug free may be considered a violation of this order.
- F. The Respondent shall continue his enrollment with and active participation in the activities of the Recovering Professional Program (RPP) for an indefinite period of time and until further order of the Board. Such contract shall include provisions for any assessment, treatment, monitoring and aftercare activities and other activities as RPP shall deem appropriate, including, but not limited to:
 - (1) Assessment and treatment requirements of RPP;
 - (2) Monitoring and aftercare activities of RPP;

- (3) Participation in Alcoholics Anonymous (AA) or Narcotics Anonymous (NA);
- (4) Participation in professional support groups or organizations or equivalents, as approved by RPP;
- (5) Such additional therapeutic activities as deemed appropriate and necessary by RPP.

RPP shall submit quarterly written reports documenting the Respondent's full compliance with the terms of the contract with RPP and this order.

- G. The Respondent shall comply with the terms of this final order and all state and federal statutes and regulations concerning the practice of medicine.
- H. The Respondent shall promptly advise the Board in writing of any changes in address, practice, hospital privileges, professional status, or compliance with this final order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

South Carolina Department of Labor,
Licensing and Regulation
Board of Medical Examiners
Post Office Box 11289
Columbia, South Carolina 29211

2. Failure by the Respondent to abide by any of the aforementioned terms and conditions placed upon his license and practice, or if it should be indicated from reliable reports submitted to the Board that the Respondent is otherwise unable to practice with reasonable skill and safety to patients, may warrant the immediate temporary suspension of his license to practice medicine in this State pending hearing into the matter and until further order of the Board.

3. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. The Respondent may be required to furnish the Board with additional information as may be deemed necessary by the Board or its representatives. In addition to such requests, the Board, in its discretion, may require the Respondent to submit further documentation regarding the Respondent's practice, and it is the Respondent's responsibility to fully comply with all such requests in a timely fashion. Failure to satisfactorily comply with such requests may be deemed a violation of this final order.

4. This order shall take effect immediately upon service of the order upon the Respondent or Respondent's counsel.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: 

LOUIS E. COSTA, II, M.D.

President of the Board

May 15, 2007.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING, AND REGULATION
BEFORE THE STATE BOARD OF MEDICAL EXAMINERS**

In the Matter of:

Thomas A. Upshaw, MD,
Medical License No. 18101,
Respondent.

M-2004-111, 19-05

**ORDER ON THE RESPONDENT'S MOTION
TO BE RELEASED FROM TERMS AND
CONDITIONS
(Public)**

This matter came before the Board of Medical Examiners (the Board) for hearing on July 27, 2009, as a result of the Respondent's Motion to be Released from Terms and Conditions. A quorum of Board members was present. The hearing was held pursuant to appropriate provisions of the S.C. Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.*, (1976), as amended. Pat Hanks, Assistant General Counsel, represented the State. The Respondent appeared without counsel.

The Respondent's license was suspended temporarily on May 27, 2005, for violating the terms of a February 12, 2003, Board Order. A September 22, 2006, Order maintained the suspension indefinitely, but provided allowance for the Respondent to petition for the suspension to be stayed as well as the continuation of certain requirements issued in Orders from August 9, 2002, and February 12, 2003.

In a Supplemental Order (Public) of March 15, 2007, the Board reinstated the Respondent's license with various restrictions.

On or about April 17, 2009, the Respondent asked for the removal of the March 17, 2007, terms and conditions because of his having met the terms and conditions, desire to obtain provider status from insurance carriers, and desire to accept a position(s) that require an unrestricted license, among other reasons. The State offered no remarks favoring or opposing the Respondent's motion. The Board granted the Respondent's request.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that: the Respondent's motion to reconsider is granted.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: Louis E. Costa II, MD
Louis E. Costa II, MD
President of the Board

August 10, 2009

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party (ies) or their attorney (s), to the following address: PO Box 993 Charleston, SC 29401

This 10 day of August, 2009
By: Sherif B. B. [Signature]

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party (ies) or their attorney (s), to the following address: 254 Broad Street (Link) Charleston, SC 29402

This 10 day of August, 2009
By: Sherif B. B. [Signature]