

1 Halpert on January 22, 2007, at about 12:14 PM, Licensee wrote: "This is to inform you that I am
2 withdrawing my request for a contested case hearing (OAH Case No. 130987)." ALJ Halpert
3 subsequently cancelled the contested case hearing that had been set for January 23, 2007 at 9:00 AM.

4 As a result, Licensee stands in default, *see* OAR 137-003-0670(1)(b). The Board elects in this
5 case to designate the record of proceeding, which consists of Licensee's file with the Board, as the
6 record for purposes of proving a prima facie case.

7 NOW THEREFORE, after considering the Board's file relating to this matter, the Board
8 enters the following Order.

9 4.

10 FINDINGS OF FACT

11 The Board makes the following findings of fact from the Board's file pertaining to this
12 case:

13 4.1 On March 6, 2003, Licensee and the Board entered into a Stipulated Order that
14 required Licensee to affiliate with, participate in, and maintain compliance with the Oregon
15 Health Professionals Program (HPP, the Board's Diversion Program) and to completely abstain
16 from ethanol and any mood altering or potentially addictive substances, including controlled
17 substances.

18 4.2 On March 11, 2004, Licensee was asked to provide a urine sample as part of his
19 ongoing compliance monitoring through HPP. Licensee's sample showed a low level of
20 creatinine, which was evidence that Licensee had diluted his urine by ingesting large quantities
21 of fluid before he provided the sample. Licensee provided another dilute urine sample on March
22 24, 2004. As a result, this sample was tested for the alcohol metabolite, ethyl glucuronide (EtG).
23 This sample was tested twice at two different laboratories. All the tests proved positive.

24 4.3 On June 3, 2004, the Board ordered Licensee to undergo a multi-disciplinary
25 evaluation to determine whether he has the physical and mental capability to safely practice
26 medicine or is an impaired physician, and whether he has a diagnosis that requires treatment and
27 monitoring. This evaluation was to be conducted at a facility approved by the Board's Medical

1 Director. Licensee failed to comply with the terms of this Order.

2 4.4 Due to Licensee's failure to comply with the ordered evaluation, the Board
3 initiated disciplinary proceedings. Licensee requested a contested case hearing. Following the
4 hearing, the Board issued a final order on February 3, 2005 that imposed certain sanctions, to
5 include: a \$2,000 fine, assessed Licensee to pay the costs of the hearing, to be paid in full within
6 90 days from the date the Bill of Costs was signed by the Board's Executive Director, and
7 suspended the license of Licensee to practice medicine for 30 days. The suspension, however,
8 was stayed for 30 days. During the 30 day stay period, the Order directed Licensee to "enroll in
9 and complete a multi-disciplinary evaluation at a facility approved in advance by the Board's
10 Medical Director." In the event that Licensee failed to satisfy this condition, the 30 day
11 suspension of license would go into effect at 5:00 p.m. on March 7, 2005 and continue
12 indefinitely until the following terms were satisfied:

- 13 a) "The Board receives and considers the complete evaluation report from the
14 approved multi-disciplinary center that was approved in advance by the Board's Medical
15 Director;
- 16 b) The evaluation report concludes that Licensee is safe to practice medicine;
- 17 c) Licensee demonstrates to the satisfaction of the Board that he is in full
18 compliance with any treatment and monitoring recommendations contained in the evaluation
19 report."

20 4.5 Shortly after the Board's Final Order issued, Licensee enrolled in the RUSH
21 Behavioral Center (RUSH), a multi-disciplinary evaluation center that was approved by the
22 Board's Medical Director, and began to undergo an assessment. However, on March 24, 2005,
23 the Board was informed that Licensee had refused to provide a hair sample requested by RUSH
24 in order to allow for laboratory analysis to determine whether Licensee was complying with the
25 requirement of his March 2003 Stipulated Order. This Order required him to remain abstinent
26 from ethanol or any mood altering or potentially addictive substances, including controlled
27

1 substances. Licensee subsequently disenrolled from RUSH. Licensee has subsequently failed
2 to complete the ordered evaluation at this or any other multi-disciplinary evaluation center.

3 4.6 The Board's Executive Director signed the Bill of Costs, totaling \$27,227.63, on
4 February 10, 2005. This amount was due to be paid in full by May 11, 2005. Licensee failed to
5 pay this amount. The Board subsequently sought assistance from the Oregon Department of
6 Revenue to collect past monies due. Licensee entered into a payment plan with the Department
7 of Revenue, and in February 2006, he began to make monthly payments. As of April 9, 2007,
8 Licensee has paid \$14,689.00 of the total assessed costs.

9 5.

10 CONCLUSIONS OF LAW

11 5.1 Licensee violated ORS 677.190(18) by willfully violating a Board order, by
12 failing to comply with the Board's Order for Evaluation of June 3, 2004, and by willfully failing
13 to comply with the Board's Final Order of February 3, 2005, that required him to enroll in and
14 complete a multi-disciplinary evaluation.

15 5.2 Licensee's refusal to obey the Board order to undergo a multi-disciplinary
16 evaluation, articulated in the Board order of June 3, 2004, and the Board's Final Order of
17 February 3, 2005, standing alone, is a sufficient basis to revoke the license of Licensee to
18 practice medicine.

19 5.3 The Board also notes that Licensee has failed to pay the fine and assessed costs
20 within the time specified by the Board's Final Order. This also violates ORS 677.190(18).

21 5.4 The Board has the authority to direct and order a mental, physical or medical
22 competency examination of a licensee at any time, ORS 677.420(1). Any Licensee is deemed to
23 have given consent to submit to such examination when so directed by the Board, ORS
24 677.420(3). By failing to comply with the Board-ordered evaluation, Licensee breached well
25 recognized standards of ethics of the medical profession, in violation of ORS 677.190(1)(a)
26 unprofessional or dishonorable conduct, as defined by 677.188(4)(a).

27

1 The Board is charged with the duty to regulate the practice of medicine and to protect the
2 public from the practice of medicine by unqualified persons and from unprofessional conduct,
3 ORS 677.015. Faced with evidence that Licensee may be an impaired physician due to the
4 voluntary ingestion of intoxicants, the Board ordered an evaluation. Licensee's refusal to
5 undergo the ordered evaluation has deprived the Board of valuable information, and represents
6 an intransigent defiance on the part of Licensee in regard to the Board's authority to regulate the
7 practice of medicine and to protect the public. Without the benefit of a contemporary
8 multidisciplinary evaluation, the Board is unable to determine whether Licensee carries a
9 diagnosis for substance dependence and whether the best available medical opinion would
10 recommend treatment and monitoring. Licensee's conduct was done willfully with full
11 knowledge of the Board's orders and applicable ethical standards.

12 5.5 The Board finds that upon examination of the record in this case, that each alleged
13 violation of the Medical Practice Act is supported by reliable, probative and substantial evidence.

14 6.

15 ORDER

16 IT IS HEREBY ORDERED THAT the license of Patrick John Bergin, MD to practice
17 medicine in the state of Oregon is revoked.

18 DATED this 12 day of April, 2007.

19 BOARD OF MEDICAL EXAMINERS
20 State of Oregon

21 
22 DAVID G. WATT, MD
23 BOARD CHAIR

24 **Right to Judicial Review**

25 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by
26 filing a petition for review with the Oregon Court of Appeals within 60 days after the final order
27 is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of
service is the day it was mailed, not the day you received it. If you do not file a petition for
judicial review within the 60 days time period, you will lose your right to appeal.