

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,  
PETITIONER,

V.

ERNEST R. BREITINGER, M.D.,  
RESPONDENT.

NOTICE

This Notice is entered pursuant to the final Order of the Petitioner entered in this case on January 25, 1996, which final Order has not been appealed by the Respondent pursuant to the provisions of West Virginia Code §29A-5-4.

The Respondent has not submitted to a complete physical and mental examination which was scheduled by Petitioner Board to take place in Charleston, West Virginia, on March 4, 1996, pursuant to the provisions of the final Order of January 25, 1996, and the Respondent had ample notice of the time and date and place of such complete examination, all as set out in the attached exhibits 1, 2, and 3.

ACCORDINGLY, the stay of suspension of Respondent's medical license heretofore ordered in the January 25, 1996, final Order has automatically dissolved and terminated, and effective May 2, 1996, at 12:01 a.m. the license to practice medicine and surgery in the State of West Virginia of Ernest R. Breitinger, M.D.,

License No. 17313, stands SUSPENDED, all pursuant to the provisions of the January 25, 1996 final Order of the Petitioner, a copy of which final Order is attached hereto as exhibit 4.

Dated this 2nd day of May, 1996.



A. Paul Brooks, Jr., M.D.  
President



William T. Wallace, Jr., M.D., M.P.H.  
Secretary

P.O. Box 4626  
Charleston, W.V.  
25364

3/4/96

W Board of Medicine  
P1 Dee Drive  
Charleston, WV 25311

Gentlemen:

This is to verify that on this date (3/4/96) I arrived at Corporate Health Services at 1418-C MacCorkle Ave. SW. Charleston WV 25304 at 8:45 AM. in order to conduct a physical exam upon Ernest R. Breiting, M.D. as previously arranged by the board. I waited until 10:00 AM. by which time Dr. Breiting had not arrived nor called to explain any delay.

After having notified Mr. Walton of these circumstances, I then left the premises.

Sincerely yours,  
Marshall J. Carper, M.D.



University of Pittsburgh  
Medical Center

*Western Psychiatric Institute and Clinic*

3811 O'Hara Street  
Pittsburgh, PA 15213-2593  
412-624-0540  
Fax: 412-624-9120

Robert M. Wettstein, M.D.  
Department of Psychiatry  
and Psychiatry Program

March 11, 1996

Marshall J. Carper, M.D.  
P.O. Box 4626  
Charleston, WV 25364

REF: Ernest Breitingner, M.D.

Dear Dr. Carper:

As you know, I was asked to consult with you in performing a psychiatric examination of Ernest Breitingner, M.D. I appeared at the appointed time and place in Charleston, West Virginia, at 1:00 p.m., on March 4, 1996. After waiting 45 minutes, I left the designated offices because Dr. Breitingner did not appear for the interview.

Should Dr. Breitingner decide to agree to appear for an interview, please feel free to contact me and I will be happy to conduct this.

Sincerely,

Robert M. Wettstein, M.D.

RMW:ljg

cc: Ronald Walton ✓



**R. Curtis Arnold, D.P.M.**  
South Charleston

**Bruce L. Berry, M.D.**  
Charleston

**Eileen Catterson, M.D.**  
Pineville

**H. Darrel Darby, D.P.M.**  
Huntington

**Ahmed D. Faheem, M.D.**  
Beckley

**Mr. Stephen P. Goodwin**  
Charleston

**Michael Grome, P.A.-C.**  
Hamlin

**Mr. George G. Guthrie**  
Charleston

**Mrs. Mary Boyd Kearse**  
Martinsburg

**Phillip B. Mathias, M.D.**  
Glen Dale

**Joseph Smith, M.D.**  
Dunbar

**Lee Elliott Smith, M.D.**  
Princeton

# State of West Virginia

## WEST VIRGINIA BOARD OF MEDICINE

101 Dee Drive  
Charleston, West Virginia 25311  
Telephone (304) 558-2921  
Fax (304) 558-2084

February 13, 1996

Ernest R. Breitinger, M.D.  
606 Professional Circle  
Ravenswood, West Virginia 26064

CERTIFIED MAIL

Re: West Virginia Board of Medicine  
v. Ernest R. Breitinger, M.D.

Dear Dr. Breitinger,

Pursuant to provisions of the January 25, 1996, Order of the Board in the above matter previously sent to and received by you, you are hereby notified that a complete physical and mental examination has been scheduled by the Board for you on Monday, March 4, 1996. For your convenience, the examination has been scheduled in Charleston, West Virginia. The expense of the examination shall be paid by the Board.

You must report to Corporate Physicals, 1418 C MacCorkle Avenue, Charleston, at 9:00 a.m. on March 4, 1996, for the physical examination, which shall be conducted by Marshall J. Carper, M.D. You must report to Suite 208, 415 Morris Street, General Medical Pavilion, Charleston, at 1:00 p.m. on March 4, 1996, for the mental examination, which shall be conducted by Robert M. Wettstein, M.D. Dr. Wettstein will be responsible for coordinating the various aspects of the mental examination, which may require subsequent appointments in Charleston, which you will be expected to keep, as part of the examination. Dr. Carper and Dr. Wettstein have been approved by the Board to conduct this examination.

You may designate another physician to be present at the examination, at your expense, who may make an independent report to the Board pursuant to West Virginia Code §30-3-14(f).

exhibit 3

**PRESIDENT**

**A. Paul Brooks, Jr., M.D.**  
Parkersburg

**VICE PRESIDENT**

**Sarjit Singh, M.D.**  
Weirton

**SECRETARY**

**William T. Wallace, Jr., M.D., M.P.H.**  
Charleston

**COUNSEL**

**Deborah Lewis Rodecker**  
Charleston

**EXECUTIVE DIRECTOR**

**Ronald D. Walton**  
Charleston

Ernest R. Breitinger, M.D.  
Page 2  
February 13, 1996

The January 25, 1996, Order of the Board states that if on or before May 1, 1996, you have not submitted to the complete physical and mental examination scheduled by the Board, the suspension of your medical license, currently stayed, shall take effect on May 2, 1996.

For the West Virginia Board of Medicine,

A handwritten signature in cursive script, appearing to read "Ronald D. Walton".

Ronald D. Walton

pc: Marshall J. Carper, M.D.  
Robert M. Wettstein, M.D.

## SENDER:

- Complete items 1 and 2 for additional services.
- Complete items 3 and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

3. Article Addressed to:

**Ernest R. Breitinger, M.D.**  
**606 Professional Circle**  
**Ravenswood, WV 26064**

5. Signature — (Addressee)

6. Signature — (Agent)

PS Form 3811, December 1991

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

4a. Article Number

P 917 194 208

4b. Service Type

☒ CERTIFIED

7. Date of Delivery

2-14-96

8. Addressee's Address

(ONLY if requested and fee paid.)

DOMESTIC RETURN RECEIPT

|   |   |  |                  |
|---|---|--|------------------|
| RETURN<br>RECEIPT<br>SERVICE  | POSTAGE   |  | POSTMARK OR DATE |
|   | SHOW TO WHOM DATE AND ADDRESS OF DELIVERY / RESTRICTED DELIVERY | /  |                  |
|   | CERTIFIED FEE - RETURN RECEIPT                                  |  |                  |
|   | TOTAL POSTAGE AND FEES  |  |                  |
| SENT TO:  |   | NO INSURANCE COVERAGE PROVIDED - NOT FOR INTERNATIONAL MAIL (SEE OTHER SIDE) |                  |
| <p><b>Ernest R. Breitinger, M.D.</b><br/> <b>606 Professional Circle</b><br/> <b>Ravenswood, WV 26064</b></p> |   |  |                  |

P 917 194 208

PS FORM 3800



RECEIPT FOR CERTIFIED MAIL

IMPORTANT! PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS.

United States Postal Service

ARKSBURG R&DF 263 02/14/96 DCR:2

RECEIVED

96 FEB 15 PM 11:05

WV BD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE  
101 DEE DRIVE  
CHARLESTON WV 25311-1620



PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).

1. If you want this receipt as a mailing receipt, stick the gummed stub to the right of the return address of the article, **leaving the receipt attached**, and present the article at a post office service window or hand it to your rural carrier for extra service.
2. If you do not want this receipt as a mailing receipt, stick the gummed stub to the right of the return address of the article, date, detach and retain this receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on back of article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check box on back of article, item 1 of Form 3811.
6. Save this receipt and present it to the carrier upon delivery.

**BEFORE THE WEST VIRGINIA BOARD OF MEDICINE**

**WEST VIRGINIA BOARD OF MEDICINE,**

Petitioner,

**v.**

**ERNEST R. BREITINGER, M.D.,**

Respondent.

**ORDER**

This proceeding arises under the West Virginia Medical Practice Act, West Virginia Code §30-3-1, et seq. It is a disciplinary proceeding involving the status of the license to practice medicine and surgery in the State of West Virginia of Ernest R. Breitingner, M.D. (hereinafter "Dr. Breitingner"). The West Virginia Board of Medicine (hereinafter "Board") is the duly authorized State agency to oversee and conduct physician disciplinary hearings pursuant to the provisions of West Virginia Code §30-3-14.

**Procedural History**

This matter was initiated by a Complaint and Notice of Hearing issued by the Board on September 11, 1995, setting a hearing for October 26, 1995. Respondent, pro se, filed a document headed "Statement for Record, Subject: Criminal Complaint of Injury and Wrong" dated September 24, 1995, with an annotated copy of the Board's Complaint,

and also with an attachment of the same date headed "Memorandum for Record, Subject: Fraudulent Official 'Complaint' Concocted and Disseminated by West Virginia Board of Medicine" .

This matter was heard on October 26, 1995, before Jack C. McClung, Hearing Examiner, in Board offices at 101 Dee Drive, Charleston, West Virginia 25311. The Petitioner called seven (7) witnesses: Dr. Breitingner, Jimmy Lee McCrady, Leslie Anne Higginbotham, Ronald D. Walton, Dana Eddy, Paul Ragland, and Dr. Harry Weeks. The Board submitted twenty-six (26) exhibits which were made a part of the record. Respondent called two witnesses, William S. Chapman and Dr. Cindy Reese, in addition to testifying on his own behalf, and submitted three (3) exhibits into the record. A stenographic record of the hearing was prepared pursuant to §11 CSR 3 11. The Petitioner filed its Proposed Findings of Fact and Conclusions of Law on December 1, 1995, and with a cover letter dated November 29, 1995, the Respondent filed several additional documents dated October 3 and October 23, 1995, and a November 26, 1995, dated document headed "Legal Memorandum for Record." On January 3, 1996, the Hearing Examiner filed his Recommended Findings of Fact and Conclusions of Law.

This matter was then heard on Monday, January 22, 1996, in a regularly scheduled meeting of the Board, in Board offices at 101 Dee Drive, Charleston, West Virginia, 25311, upon pleadings and proceedings of record set forth in the "Recommended Findings of Fact and Conclusions of Law of Hearing Examiner" attached hereto and incorporated herein. Prior to the January 22, 1996, Board meeting, and pursuant to §11 CSR 3 12, the stenographic record of the hearing and all exhibits and pleadings were provided to Board members for their individual review and consideration in December, 1995. The "Recommended Findings of Fact and Conclusions of Law of Hearing Examiner" was also provided to Board members prior to the regular meeting. At the January 22, 1996, regular meeting, where a quorum of the Board was present and voting, the Board thoroughly considered all of this information, and the information provided by the visitors to the meeting speaking on behalf of Dr. Breitingner. By a unanimous vote and in accordance with §11 CSR 3 7, the Board reached its decision. Drs. Joseph Smith and Darby and Mr. Goodwin and Mr. Guthrie were not present for the meeting and Drs.

Brooks and Faheem did not participate in or vote on this matter by virtue of their positions as Board members of the Complaint Committee. Dr. Singh presided.

### **Findings of Fact**

Pursuant to §11 CSR 3 13.2, specifying that the Board may adopt, modify or reject the Findings of Fact recommended by the Hearing Examiner, the Board adopts the Recommended Findings of Fact beginning on page 3 of the Hearing Examiner's Recommended Findings submitted, with the following modifications. These modifications are adopted solely for clarity.

On page 10, the Board deletes numbered paragraph 21, and inserts in lieu thereof:

21. The June 8, 1995, letter noted that Respondent should not hesitate to discuss the letter's contents with an attorney. (Bd. Ex. 13)

On page 12, the Board deletes numbered paragraph 30, and inserts in lieu thereof:

30. Jimmy McCrady testified at the hearing that he is a patient of Respondent, and that he received the letters dated August, 1995, mailed to him by Respondent concerning Mr. Walton's "racist hate campaign" against the Respondent, and that he mailed the letter prepared for him by the Respondent to the Governor. (Tr. pp.40-45, Bd. Ex. 3)

Also on page 12, in numbered paragraph 31, line 2, the Board deletes the word "Board's."

On page 13, in numbered paragraph 33, line 1, the Board deletes the word "Board's."

On page 15, the Board deletes numbered paragraph 43 and inserts in lieu thereof:

43. Dr. Weeks testified that Respondent's failure to submit to the physical and mental examination directed by the Board constitutes a violation of §11 CSR 1A 12.1(o), failing to perform a statutory or legal obligation placed upon a licensed physician, and Dr. Weeks testified that, with regard to a medical license, a physician must agree to the Board's dictates and that if the Board says a physician is to submit to a physical and mental exam, then that physician must do so. (Tr., pp. 194-95, 210)

On page 16, the Board deletes numbered paragraph 45 and inserts in lieu thereof:

45. Dr. Weeks testified that the correspondence sent by Respondent to his patients in August, 1995, concerning a racist hate campaign against him, constituted a misuse of the patient/physician relationship and that misuse of the patient/physician relationship is unprofessional, unethical and dishonorable conduct. (Tr., pp. 196-200)

On page 17, in numbered paragraph 50, line 4 and line 6, the Board deletes the word "he" and inserts in lieu thereof the words "the Respondent."

### Conclusions of Law

Pursuant to §11 CSR 3 13.2, specifying that the Board may adopt, modify or reject the Conclusions of Law recommended by the Hearing Examiner, the Board adopts without modification the Conclusions of Law starting on page 18 in the Recommended Findings of Fact and Conclusions of Law of Hearing Examiner submitted.

### Decision

The Recommended Findings of Fact and Conclusions of Law of Hearing Examiner is attached hereto and with the modifications set forth is wholly adopted and incorporated by reference herein through Conclusions of Law number 6 on page 19.

To the extent that any proposed findings of fact, conclusions of law, and supporting arguments advanced and submitted by the parties are in accordance with the findings, and conclusions as stated herein, the same are adopted by the West Virginia Board of Medicine, and to the extent that they are inconsistent therewith, the same are rejected. Certain proposed findings and conclusions may have been omitted as not relevant or not necessary to a proper determination of the material issue as presented. To the extent that the testimony of any witness is not in accord with findings as stated herein, it is not credited.

Based upon the foregoing Findings of Fact and Conclusions of Law, giving proper weight to the proposed order of the Hearing Examiner as found in his Recommended Findings, and in accordance with the provisions of West Virginia Code §30-3-14(i) and §11 CSR 1A 12.3, the Board hereby ORDERS as follows:

Effective February 1, 1996, at 12:01 a.m., the license to practice medicine and surgery in the state of West Virginia of Ernest R. Breitingner, M.D., License No. 17313, is **SUSPENDED**. This suspension shall be immediately **STAYED** and the license to practice medicine and surgery in the State of West Virginia heretofore issued to Dr. Breitingner shall be placed in a probationary status, effective February 1, 1996, at 12:01 a.m., subject to the satisfactory completion of all terms and conditions set forth within this Order.

On or before May 1, 1996, Dr. Breitingner shall submit to a complete physical and mental examination which shall be scheduled by the Board as soon as possible. For Dr. Breitingner's convenience, this complete physical and mental examination shall be scheduled with a physician approved by the Board with the examination location in Charleston, Huntington, or Parkersburg, West Virginia. Dr. Breitingner may designate another physician to be present at this examination who may make an independent report to the Board, pursuant to West Virginia Code §30-3-14(f). If Dr. Breitingner has not submitted to the complete physical and mental examination on or before May 1, 1996, the stay of suspension of Dr. Breitingner's license shall be automatically dissolved and terminated and the suspension shall take effect at 12:01 a.m. May 2, 1996.

On or before the regularly scheduled Board meeting on May 6, 1996, the Board shall review any and all reports of said complete physical and mental examination of Dr. Breitingner. If Dr. Breitingner has submitted to said examination, and the Board has reviewed any and all reports of said examination and has found it appropriate and in the public interest, health, welfare and safety to restore Dr. Breitingner's medical license in whole or in part, the Board shall enter an order with respect to its determination. If Dr. Breitingner has submitted to said examination, and the Board has reviewed any and all reports of said examination and not found it appropriate and in the public interest, health, welfare and safety to restore Dr. Breitingner's medical license in whole or in part, the stay of suspension shall be automatically dissolved and terminated and the suspension shall take effect at 12:01 a.m. May 7, 1996.

If on or before May 7, 2000, Dr. Breitingner has not submitted to a complete physical and mental examination, pursuant to West Virginia Code §30-3-14(f), and/or Dr. Breitingner has submitted to such examination and the Board has reviewed any and all reports of such examination and not found it appropriate and in the public interest, health, welfare and safety to restore Dr. Breitingner's medical license in whole or in part, and has not ordered the restoration of Dr. Breitingner's medical license in whole or in part, Dr. Breitingner's License No. 17313 shall be automatically REVOKED on May 8, 2000.

ENTERED this 25<sup>th</sup> day of January, 1996.

WEST VIRGINIA BOARD OF MEDICINE



A. PAUL BROOKS, JR., M.D.

President



WILLIAM T. WALLACE, JR., M.D., M.P.H.

Secretary

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

PETITIONER,

v.

ERNEST R. BREITINGER, M.D.,

RESPONDENT.

RECOMMENDED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF HEARING EXAMINER

This proceeding arises under the West Virginia Medical Practice Act, W. Va. Code § 30-3-1, et seq. It is a disciplinary proceeding involving the status of the license to practice medicine in the State of West Virginia of Ernest R. Breitingner, M.D. ("Dr. Breitingner"). The West Virginia Board of Medicine ("Board") is the duly authorized State agency to oversee and conduct physician disciplinary hearings pursuant to the provisions of W. Va. Code § 30-3-14.

This proceeding was initiated by a Complaint and Notice of Hearing mailed by the Board on September 11, 1995, to the Respondent alleging that he had violated provisions of the West Virginia Medical Practice Act and regulations promulgated thereunder, which allegations specifically stated that Dr. Breitingner failed or refused to appear for a complete physical and mental examination as required by the Board pursuant to W. Va. Code § 30-3-14(f). The Board further alleged in the Complaint that as a result of the Board's Executive Director carrying out his

responsibilities on behalf of the Board, that the Respondent prepared, signed and disseminated letters to Governor Caperton and members of the Ravenswood community accusing the Executive Director of "documented corruption," engaging in "fraudulent" activities, being anti-Semitic and conducting a "racist hate-campaign" against the Respondent, and soiling the Respondent's file with "filthy racist fingerprints." On October 10, 1995, the Respondent mailed to the Board a document he styled "Counterclaim and Cross Complaint In Answer to Complaint and Notice of Hearing Dated September 11, 1995." (Respondent's Exhibit 2.)

The Complaint and Notice of Hearing set the hearing for October 26, 1995. The hearing was convened on October 26, 1995, at 9:00 a.m., before the undersigned Hearing Examiner in the hearing room of the West Virginia Board of Medicine at 101 Dee Drive, Charleston, West Virginia.

The Petitioner was present by its Executive Director, Ronald D. Walton, and its counsel, Deborah Lewis Rodecker. The Respondent was present in person and was not represented by counsel. Petitioner Board called as witnesses Ernest R. Breitinger, M.D.; Jimmy Lee McCrady; Leslie Anne Higginbotham; Ronald D. Walton; Dana Eddy; Paul Ragland; and Harry Weeks, M.D. Respondent testified in his own behalf and called as witnesses William S. Chapman and Cindy Reese, M.D.

Generally expressed, the following issue is addressed herein:

Has the Respondent violated certain provisions of the West Virginia Medical Practice Act and applicable regulations

promulgated thereunder, thereby justifying the imposition of disciplinary sanctions against the Respondent's license to practice medicine in the State of West Virginia.

After a careful and thorough review of the hearing file, including the record and any exhibits admitted into evidence, and weighing the evidence, the Hearing Examiner makes the following Findings of Fact and Conclusions of Law. To the extent that these Findings of Fact and Conclusions of Law are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Hearing Examiner, and conversely, to the extent that the same are inconsistent with any findings and conclusions, they are rejected.

#### FINDINGS OF FACT

1. The Respondent, Ernest R. Breitinger, M.D., is licensed to practice medicine and surgery in West Virginia and his license is identified as License No. 17313. (Bd.Ex.5)

2. The Respondent has been licensed to practice medicine and surgery in West Virginia since July 12, 1993, and his address of record is in Ravenswood, West Virginia. (Bd.Ex.5)

3. In the summer of 1994, information was received at the West Virginia Board of Medicine ("Board") offices indicating that Respondent's application for medical licensure in New Jersey had been withdrawn in May 1994, prior to the New Jersey State Board of Medical Examiners resolving "possible adverse issues". (Bd.Ex.6)

4. The Board's Executive Director, Ronald D. Walton, in August 1994, wrote to the Executive Director of the New Jersey State Board of Medical Examiners to obtain "all pertinent information" with respect to the licensure matter regarding Respondent, and Mr. Walton received a certified true copy of the Order In the Matter of the Application of Ernest Breitingner, M.D., For a License to Practice Medicine and Surgery in the State of New Jersey, dated May 13, 1994. (Bd.Ex.7)

5. The May 13, 1994, Order stated, among other things, that during an interview in the office of the New Jersey State Board of Medical Examiners, Respondent had been asked to explain a gap in his curriculum vitae and when asked to submit written corroboration pertaining to a period of time spent in Canada, Respondent submitted voluminous enclosures intended to "amend" his previous statement, and explained that he had been pursuing "legal proceedings against military and civil officers of the United States...in response to documented incidents of medical negligence, public endangerment, corruption, conspiracy and cover-up, the submission of lies to Congress, and contempt and subversion of the Constitution of the United States to include Treason against the United States by innumerable military and 'civil' officers of the United States, and which include the Governor of the State of New Jersey, James Florio..." (Bd.Ex.7)

6. The May 13, 1994, Order stated that the New Jersey State Board of Medical Examiners had requested that Respondent undergo evaluation by a psychiatrist and a psychologist selected by said

Board and that Respondent suggested that one or more Army officers had played a part in influencing said Board's decision. (Bd.Ex.7)

7. The May 13, 1994, Order stated that Respondent indicated on May 7, 1993, he had met with a psychiatrist who had suggested that Respondent's numerous documented incidents of corruption, conspiracy, cover-up and contempt of Congress might be distortions on Respondent's part and that Respondent's statements could be construed as pathological and that Respondent was "particularly upset" by these suggestions and "accused" the New Jersey State Board of Medical Examiners of violating the Constitution, of being corrupt, fraudulent and treasonous, and he "indicated that he was therefor obliged to withdraw his application." (Bd.Ex.7)

8. The May 13, 1994, Order stated that Respondent wrote that he looked forward to "the public renunciation of the treasonous and totalitarian policies and practices of the New Jersey Board of Medical Examiners, the immediate and public resignation of the Members of the Board, and the surrender of all those involved to the Lawful Authority of the People of the United States pending the assembly of a People's Tribunal of the United States...", and at the foot of the first sheet of his memorandum, Dr. Breitingner wrote in bold letter inside a large box, "SPECIAL NOTE FOR ALL AMERICANS: The criminal activities perpetrated by the elected and appointed Officers of the Government of the United States and cited in this document constitute TREASON against the Constitution of the United States and the American People. Please share this document with your local newspaper, television and radio news agencies, as well

as City Council Members, Mayor and local Police." The May 13, 1994, Order states that at the foot of each page is printed "DUPLICATION AND DISTRIBUTION ENCOURAGED." (Bd.Ex.7)

9. The May 13, 1994, Order stated that at the foot of the last page of his memorandum submitted, Respondent indicated that copies of his memorandum were being furnished to Lawrence Walsh, Special Prosecutor; Janet Reno, Attorney General of the United States; Webster Hubbell, Associate Attorney General; Senator Bill Bradley; Senator Frank Lautenberg; The Congressional Representatives of the State of New Jersey; Emma Byrne, Director, N.J. Department of Law and Public Safety; Charles Janousek, Executive Director of the New Jersey State Board of Medical Examiners; Elizabeth Farlekas, Credentials Analyst; Eugene Resnick, President of the University of Medicine and Dentistry in Newark; the American Medical Association; the American Psychiatric Association; the Medical Society of New Jersey; Amnesty International of the USA; and the Free Press and People of the United States of America, with a file copy furnished to the Federal Bureau of Investigation. Furthermore, Dr. Breitingger indicated in large bold letters that all documents pertaining to the case were available from William S. Sessions, director of the FBI, suggesting that readers call collect at 0(202) 324-3000, "OPERATORS ARE STANDING BY." (Bd.Ex.7)

10. The May 13, 1994, Order stated that Respondent refused to submit the report of his psychiatric evaluation to the New Jersey State Board of Medical Examiners, and that given the content and

tenor of Respondent's correspondence, said Board "harbors concern about his capacity to practice medicine and surgery" and based on these concerns and on his refusal to release the results of his psychiatric evaluation "so that his application might be considered against the background of a complete and comprehensive record," the New Jersey State Board of Medical Examiners allowed Respondent to withdraw his licensure application. (Bd.Ex.7)

11. Upon review of the May 13, 1994, Order, Mr. Walton wrote a letter to Respondent dated September 24, 1994, wherein he offered Respondent the opportunity to surrender his West Virginia medical license based upon answers of Respondent to questions asked of him by the West Virginia Board of Medicine relating to whether he had ever been called before or appeared before any board for questioning, on various applications and interview forms of the West Virginia Board of Medicine, which answers appeared false based upon the contents of the May 13, 1994, Order. (Bd.Ex.8, Tr.,pp.82-83, 140-144)

12. Respondent filed a letter dated October 1, 1994, addressed to Mr. Walton, wherein he stated that Mr. Walton's assertions were unfounded, false, bordering on libel, and that Mr. Walton's inability to comprehend the text of the New Jersey State Board of Medical Examiners May 13, 1994, Order was "apparently due to the extremely imprecise and faulty language" of said Order. (Bd.Ex.9, Tr.,p.84)

13. Respondent submitted various attachments with his October 1, 1994, letter to Mr. Walton, and on November 14, 1994, the West

Virginia Board of Medicine's Complaint Committee initiated a complaint against Respondent based on the same information set forth in Finding of Fact, paragraph 11. (Bd.Ex.10, Tr.,pp.85-86)

14. Respondent filed a response to the complaint stating that the complaint was erroneous and false and Respondent was invited to appear and did appear before the Complaint Committee of the West Virginia Board of Medicine in January 1995. (Bd.Exs. 11 and 12, Tr.,pp.87-93)

15. After Respondent's January 1995 Complaint Committee appearance, Leslie Higginbotham, paralegal and investigator for the West Virginia Board of Medicine, conducted an investigation at the request of the Board's Complaint Committee and prepared a report for the Complaint Committee. (Tr.,pp.47-52, and see Bd.Ex.4)

16. The report included information that Ms. Higginbotham had reviewed portions of a file maintained by the United States Secret Service relating to Respondent, and that Respondent was investigated by the United States Secret Service because of threatening posters and letters sent by Respondent to the President, Vice President and Attorney General of the United States, as well as other government officials. The report indicated that the Secret Service had concluded that Respondent was not a danger, but was a habitual letter writer, and highly critical and intolerant of officers who did not share his perspective. (Bd.Ex.4, Tr.,pp.47-72)

17. Paul Ragland, Special Agent with the United States Secret Service, testified at the hearing and corrected portions of Ms.

Higginbotham's report. He confirmed that the posters sent by Respondent to various officials, as set forth in finding of fact, paragraph 16, contained the phrase "wanted dead or alive" and that an investigation was carried out by the Secret Service to determine if the posters were in fact threatening. Mr. Ragland attributed the statement in Ms. Higginbotham's report about Respondent being highly critical and intolerant of officers who did not share his perspective to an officer from the military. (Tr., pp.180-190)

18. In June 1995, Ronald D. Walton, writing for the Complaint Committee, wrote a letter dated June 8, 1995, to Respondent wherein it was explained that Respondent was to undergo a complete mental and physical examination pursuant to the provisions of West Virginia Code §30-3-14(f). The reasons for the complete mental and physical examination requirement were detailed in the June 8, 1995, letter to Respondent as follows:

1. The contents of the Order of the New Jersey Board of Medical Examiners detailing your accusations against the United States government and agencies thereof.
2. Your allegations relating to the same in your appearance before the Complaint Committee of the West Virginia Board of Medicine.
3. A review of information collected by the United States Secret Service and materials allegedly mailed by you to numerous government officials. (Bd.Ex.13)

19. The June 8, 1995, letter set forth the provision of West Virginia Code §30-3-14(f) that the Board of Medicine under any circumstances may require a physician to submit to a physical and mental examination and stated that any physician who accepts the

privilege of practicing medicine and surgery in West Virginia is deemed to have given his consent to submit to all such examinations when requested to do so in writing by the Board, and that Respondent's failure to appear for this examination for reasons which are not beyond his control shall be prima facie evidence of his inability to practice medicine and surgery competently and in compliance with the standards of acceptable and prevailing medical practice. (Bd. Ex. 13 and see West Virginia Code §30-3-14[f])

20. The June 8, 1995, letter set forth the appointment place, date, and time of the examination to be conducted June 26, 1995, in Pittsburgh, Pennsylvania, at 1:00 p.m., that Robert M. Wettstein, M.D., would be responsible for coordinating the various aspects of the examination, that the examination would be paid for by the Board, and that Respondent had the right to designate another physician to be present at the examination and to make an independent report to the Board at Respondent's expense, and Respondent received and read the letter. (Bd.Ex.13, Tr.,p.289)

21. The June 8, 1995, letter suggested to Respondent that he not hesitate to discuss the letter's contents with an attorney. (Bd.Ex.13)

22. Respondent testified that he understood the consequences of not going for the scheduled examination. (Tr.,p.290)

23. It is undisputed that Respondent did not go for the physical and mental examination scheduled. Instead, he filed a "Complaint of Wrong against Ronald D. Walton, Executive Director, West Virginia Board of Medicine". (Tr.,pp.38, 93-96, Bd.Ex.15)

24. The Complaint Committee of the Board subsequently initiated a second complaint against Respondent for his failure to appear for the scheduled physical and mental examination, and by letter of August 16, 1995, Respondent was invited to appear before the Complaint Committee on September 10, 1995, to discuss the second complaint. (Bd.Exs. 16 and 18)

25. Respondent received the invitation to appear at the September 10, 1995, Complaint Committee meeting but did not appear. (Bd.Ex.18, Tr.,p.106)

26. Respondent wrote a letter of August 26, 1995, addressed to "Dear Ravenswood Community member", which letter Respondent testified he mailed to his 2000 patients, along with a copy of an August 24, 1995, letter to the Governor of the State of West Virginia and an undated letter prepared by Respondent addressed to the Governor, to be mailed by Respondent's patients. (Bd.Ex.1 and Tr.,pp.32-36)

27. In the August 26, 1995, letter to "Dear Ravenswood Community member", Respondent stated there was "documented corruption on the part of Ronald D. Walton, Executive Director, West Virginia Board of Medicine", that Ronald D. Walton has "embarked on a nearly year-long personal vendetta" against Respondent, was acting "fraudulently", was engaged in "bureaucratic corruption" and that Respondent's Board file "will be permanently soiled by the filthy racist fingerprints of Mr. Walton". Respondent in said letter also accused Mr. Walton of "perpetrating a

vindictive hate-campaign against me for apparently racist reasons."  
(Bd.Ex.1)

28. Respondent's August 24, 1995, letter to Governor Caperton repeated the "racist hate-campaign" charge against Mr. Walton and stated that "Ronald D. Walton is operating under a bigoted psychology of anti-Semitic racism that is incapable of accepting truthful correction by someone whom Ronald D. Walton perceives to be of 'inferior' Jewish heritage." (Bd.Ex.1)

29. The undated letter prepared by Respondent for patients to send to the Governor repeated charges against Mr. Walton of a "hate-campaign" against Respondent, and racism and corruption on the part of Mr. Walton. (Bd.Ex.1)

30. Jimmy McCrady testified at the Board's hearing that he is a patient of Respondent, and he received the letters mailed to him by Respondent set out in Findings of Fact, paragraphs 25 through 29, and mailed the letter prepared for him by Respondent to the Governor. (Tr.,pp.40-45, Bd.Ex.3)

31. Dana Eddy, legal counsel to Governor Caperton, testified at the Board's hearing that the August 24, 1995, letter to the Governor from Respondent had been received by the Governor and directed to the attention of Mr. Eddy, along with 200 to 300 letters from Ravenswood community members which were in the form of the undated letter prepared by Respondent for submission to the Governor by patients. (Tr.,pp.112-116)

32. Mr. Eddy characterized Respondent's statements in correspondence sent to the Governor's office as "ranting and

raving" and stated that he had found in no correspondence from or prepared by the Respondent and received in the Governor's office any substance to Respondent's allegations about Mr. Walton. (Tr.,pp.123, 129-130)

33. Harry S. Weeks, Jr., M.D., testified at the Board's hearing that there was no evidence of racism on the part of Mr. Walton as perceived by Respondent. (Tr.,pp.204-206, 210-211, Resp.Ex.3, Memorandum of July 24, 1995, Subject: Implied Admission of Guilt of Ronald D. Walton...)

34. The record reflects that Ronald D. Walton's actions with regard to Respondent were appropriate, in accordance with standard procedures, courteous, and at the direction of the Board's Complaint Committee. (Tr.,pp.75-111, 132-179)

35. The entire record is devoid of any evidence indicating that Ronald D. Walton is corrupt in any way, engaged in any fraudulent or criminal activities of any kind, is or was conducting any racist hate-campaign against Respondent, is a racist or a bigot, is anti-Semitic or has filthy racist fingerprints, all as repeatedly charged by Respondent. (Bd.Exs.1, 15, 17, 19, 21-26, Resp. Exs. 1-3, Tr.,pp.212-305)

36. Respondent's failure and refusal to submit to the physical and mental examination referenced in Findings of Fact, paragraphs 17 through 21, scheduled for June 26, 1995, which he was directed to undergo, was not beyond his control. (Tr.,pp.289-292)

37. Respondent's failure and refusal to submit to the physical and mental examination is prima facie evidence of his

inability to practice medicine and surgery competently and in compliance with the standards of acceptable and prevailing medical practice, under the provisions of West Virginia Code §30-3-14(f).

38. Prima facie evidence is evidence sufficient to establish the fact in the absence of rebuttal evidence and no physician testified that Respondent is capable of practicing medicine competently and in compliance with the standards of acceptable and prevailing medical practice. (Tr.,pp.243-244)

39. The testimony of witness Cindy Reese, M.D., was limited to the following: that in her capacity as Chairman of the Medical Staff at Jackson General Hospital she has received no medical complaints, ethical complaints, or any other evidence to make her suspect that Respondent is not competent to practice medicine in accordance with acceptable standards or has any kind of psychiatric or mental disturbance or any physical abnormality that might interfere with Respondent's competent practice of medicine and that she has received no complaints on behalf of anyone regarding Respondent's practice of medicine. (Tr.,pp.310-311)

40. No evidence in the record points to the length of time that Dr. Reese has been Chairman of the Medical Staff at Jackson General Hospital so as to be able to receive complaints against Respondent in that capacity, whether she has any direct contact with Respondent, or works with him in any way.

41. William Chapman, President and CEO of Jackson General Hospital testified that Respondent's performance had been "outstanding" and that Respondent had consistently been rated

highly by his peers on the medical staff, but he produced no evidence supporting his testimony as to Respondent's high rating by his peers. He testified that it would be very hard for the hospital to replace Respondent. (Tr., pp.306-309)

42. The testimony of Dr. Reese and Mr. Chapman, limited as it was, is outweighed by Respondent's conduct with respect to the New Jersey State Board of Medical Examiners, the West Virginia Board of Medicine and members of the staff, particularly Mr. Walton, all as set forth in these Findings of Fact, as well as the fact that the military, the New Jersey State Board of Medical Examiners and the West Virginia Board of Medicine have all determined that a psychiatric examination of Respondent is necessary. (Tr., p.218, and Board Exs. 7 and 13)

43. Dr. Weeks testified that Respondent's failure to submit to physical and mental examination that he was directed to submit to, as set forth in Findings of Fact, paragraph 18, constitutes a violation of 11 CSR 1A 12.1(o), failing to perform a statutory or legal obligation placed upon a licensed physician, as charged in the Board's Complaint and Notice of Hearing, and Dr. Weeks testified that with regard to a medical license, a physician must agree to the Board's dictates, that if the Board says a physician is to submit to a physical and mental exam, that the physician must do so. (Tr., pp.194-195, 210)

44. Dr. Weeks testified as Chairman of the West Virginia State Medical Association Committee on Ethics that in the absence of evidence that Ronald D. Walton is engaging in fraudulent

activities, is anti-Semitic, is conducting a racist hate-campaign against Respondent and is soiling Respondent's file with filthy racist fingerprints, Respondent's remarks about Mr. Walton certainly fall into the category of unprofessional, unethical and dishonorable conduct within the meaning of 11 CSR 1A 12.1(e) and (j), as charged in the Board's Complaint and Notice of Hearing. (Tr.,pp.192-195)

45. Dr. Weeks testified that the correspondence sent by Respondent to his patients, as set out in Findings of Fact, paragraphs 26 through 29, constituted a misuse of the patient/physician relationship and that misuse of the patient/physician relationship is unprofessional, unethical and dishonorable conduct. (Tr.,pp.196-200)

46. Though Respondent presented no patients to testify at the hearing and no patients of Respondent did testify at the hearing, other than Jimmy McCrady called by the Board, Respondent testified at the hearing that patients had appeared on his behalf at the hearing and testified on his behalf. (Tr.,pp.237, 244)

47. There is no evidence in the record to support Respondent's repeated accusations against specific members of the Board, the Board, or members of the staff of the Board, including but not limited to accusations of criminal intent or conduct, deceit, corruption, gross negligence, fraud, "malversion"<sup>1</sup>, libel, malice, malfeasance, conspiracy, racism, Nazi-style group evil, and

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<sup>1</sup>The correct word is "malversation," which means evil conduct, fraudulent practices, misbehavior, corruption in office.

anti-Semitism. (Tr.,pp.212-305, Bd.Exs.1-3, 15, 17, 19, 21-26, Resp. Exs.2-3)

48. There is no evidence to support Respondent's accusations that proper procedures and the regulations of the Board have not been followed in this matter, and Respondent testified he was not even aware of pertinent Board regulations. (Tr.,pp.288-289, and see 11 CSR 1A, and specifically 11 CSR 1A 12.1 14.)

49. Apart from the fact that West Virginia Code §30-3-14(f) authorizes the Board "under any circumstances" to require a physician to submit to a physical and mental examination, based upon the foregoing Findings of Fact, there is more than sufficient justification in the record for the Board to require Respondent to submit to such an examination.

50. Respondent is unqualified to practice medicine in the State of West Virginia in the absence of a complete physical and mental examination and a report from a qualified individual based thereon stating that he is able to practice competently and in compliance with standards of acceptable and prevailing medical practice and that he is not unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals or any other type of material, or by reason of any physical or mental abnormality. (Bd.Ex.14, and see 11 CSR 1A 12.1[h])

## CONCLUSIONS OF LAW

1. The Respondent, Dr. Breitinger, is a physician licensed in the State of West Virginia and the West Virginia Board of Medicine is the State agency charged with the licensure and discipline of physicians under West Virginia Code § 30-3-1, et seq.

2. The West Virginia Board of Medicine has jurisdiction over the subject matter and over the Respondent.

3. It has been clearly and convincingly demonstrated that the Respondent's failure or refusal to submit to a complete physical and mental examination in Pittsburgh, Pennsylvania, to commence June 26, 1995, at 1:00 p.m., constitutes a violation of West Virginia Code §30-3-14(c)(20), relating to professional incompetence.

4. It has been clearly and convincingly demonstrated that the Respondent's failure or refusal to submit to a complete physical and mental examination in Pittsburgh, Pennsylvania, to commence June 26, 1995, at 1:00 p.m., constitutes a violation of West Virginia Code §30-3-14(c)(17) and 11 CSR 1A 12.1(o), relating to failing to perform a statutory or legal obligation placed upon a licensed physician.

5. It has been clearly and convincingly demonstrated that the Respondent's signing and dissemination of letters to Governor Gaston Caperton and to members of the Ravenswood, West Virginia community in August and September 1995, wherein Respondent stated that there is "documented corruption" on the part of the Executive Director, that the Executive Director is engaging in "fraudulent"

activities, is "anti-Semitic", conducting a "racist hate campaign" against Dr. Breitinger, and soiling Dr. Breitinger's file with "filthy racist fingerprints" constitutes a violation of West Virginia Code §30-3-14(c)(17) and 11 CSR 1A 12.1(e) and (j), relating to unprofessional, unethical, and dishonorable conduct. (See Wettach v. Iowa Board of Dental Examiners, 524 N.W. 2d 168, [Iowa 1994], citing Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council Inc., 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed. 2d 346 [1976]).

6. Disciplinary sanctions may be imposed upon Respondent under the provisions of West Virginia Code §30-3-14(i) and 11 CSR 1A 12.3, when the Board finds after hearing that a licensee is unqualified and that the licensee should be disciplined, due to violations of West Virginia Code §30-3-14(c), and these sanctions include the right of the Board to suspend or revoke a medical license.

It is the finding of the undersigned Hearing Examiner that the proposed findings submitted by the West Virginia Board of Medicine constitute an accurate representation of the facts and the applicable law governing this matter and such findings are, therefore, adopted in their entirety.

The undersigned was impressed with the very credible testimony and professional demeanor of Board witness Dr. Harry Weeks who very simply and effectively summarized the essence of this matter in response to a question by the Respondent as follows:

. . . I know that when I became a licensed physician in this State, I agreed to comply with the Board's Regulations; you did the same.

What is on the table is whether or not you complied with an Order of the West Virginia Board of Medicine, that's it. . . .

(Tr. 208-209.)

Therefore, in accordance with all of the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Examiner finds that it is proper, necessary and in the public interest, health, welfare and safety that the Board order as follows:

Effective January 15, 1996, the license to practice medicine and surgery of Ernest R. Breitingner, M.D., License No. 17313, is SUSPENDED, subject to West Virginia Code §30-3-14(i)(3), until such time as:

1. Dr. Breitingner has submitted to a complete physical and mental examination as previously required by the Board pursuant to West Virginia Code §30-3-14(f), which complete physical and mental examination shall be scheduled by the Board promptly and no later than sixty (60) days from the effective date of the suspension; and,

2. The Board has reviewed any and all report[s] of such physical and mental examination, found that it is appropriate and in the public interest, health, welfare and safety to restore Dr. Breitingner's medical license in whole or in part, and has ordered the restoration of Dr. Breitingner's medical license in whole or in part: Provided, if as of January 15, 2000, Dr. Breitingner has

not submitted to a complete physical and mental examination as previously required by the Board pursuant to West Virginia Code §30-3-14(f) and/or Dr. Breitingner has submitted to such examination and the Board has reviewed any and all report[s] of such physical and mental examination and not found it appropriate and in the public interest, health, welfare and safety to restore Dr. Breitingner's medical license in whole or in part, and has not ordered the restoration of Dr. Breitingner's medical license in whole or in part, Dr. Breitingner's License No. 17313 shall be revoked automatically.

The foregoing Recommended Findings of Fact and Conclusions of Law are respectfully submitted this 3rd day of January, 1996.

  
JACK C. McCLUNG  
HEARING EXAMINER

CERTIFICATE OF SERVICE

I, Jack C. McClung, Hearing Examiner, hereby certify that on the 3rd day of January, 1996, I served a true and exact copy of the foregoing RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF HEARING EXAMINER upon the parties of record by depositing the same in the United States mail, first-class prepaid, addressed as follows:

Deborah L. Rodecker, Esquire  
101 Dee Drive  
Charleston, West Virginia 25302

Ernest R. Breitinger, M.D.  
606 Professional Circle  
Ravenswood, West Virginia 26064

  
JACK C. McCLUNG  
HEARING EXAMINER

## CERTIFICATE OF SERVICE

I, ANNE WERUM LAMBRIGHT, post-hearing legal advisor to the West Virginia Board of Medicine in this matter, do hereby certify that service of the foregoing **ORDER** has been made upon the parties and counsel of record herein by hand delivery or by forwarding a true copy thereof in an envelope deposited in the regular course of the United States mail, certified with postage prepaid, on this the 25<sup>th</sup> day of January, 1996, addressed as follows:

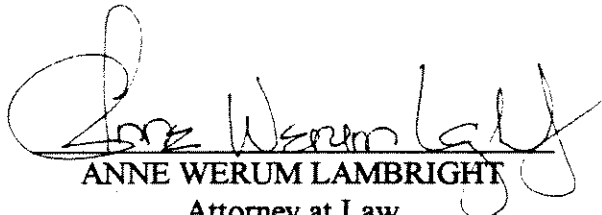
Hand Delivery to:

WV Board of Medicine  
101 Dee Drive  
Charleston WV 25311

Deborah Lewis Rodecker, Esquire  
WV Board of Medicine  
101 Dee Drive  
Charleston WV 25311

Certified Mail to

Ernest R. Breitingner, M.D.  
606 Professional Circle  
Ravenswood, West Virginia 26064

  
ANNE WERUM LAMBRIGHT  
Attorney at Law  
P.O. Box 6023  
Charleston WV 25362

CERTIFICATE OF SERVICE

I, Deborah Lewis Rodecker, Counsel for the West Virginia Board of Medicine, do hereby certify that the foregoing Notice was served upon Ernest R. Breitinger, M.D., by depositing a copy of the same in the United States Mail, certified, postage prepaid, addressed to him at his address of record as follows:

606 Professional Circle  
Ravenswood, West Virginia 26064

and by depositing a copy of the Notice in the United States Mail, postage prepaid, addressed to him at that same address of record, and by depositing a copy of the Notice in the United States Mail, certified, postage prepaid, addressed to him as follows:

P.O. Box 374  
Ravenswood, West Virginia 26164

and by depositing a copy of the Notice in the United States Mail, postage prepaid, addressed to him at that same address, all on this 2nd day of May, 1996.

  
Deborah Lewis Rodecker