IN THE MATTER OF	*	**BEFORE THE**
JAMES P. MATTHEWS, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: D59665	*	**Case Number: 2008-0742**

* * * * * * * * * * * *

CONSENT ORDER

On April 22, 2010, the Maryland State Board of Physicians (the "Board") charged James P. Matthews, M.D. (the "Respondent") (D.O.B. 02/05/1969), License Number D59665, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol.).

The pertinent provisions of the Act under H.O. § 14-404(a) provide as follows:

> **§ 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.**
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> a. *In general.* Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
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> (3) Is guilty of:
> (ii) Unprofessional conduct in the practice of medicine;
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> (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State; and
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> (40) Fails to keep adequate medical records as determined by appropriate peer review.

On August 4, 2010, a conference with regard to this matter was held before the Board's Case Resolution Conference ("CRC") Panel. As a result of

the CRC, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Procedural Background

1. On April 23, 2008, the Board charged the Respondent with the following violations of the Act: engaging in unprofessional conduct in the practice of medicine, willfully making a false report in the practice of medicine; failing to meet standards of quality care; prescribing or administering drugs for illegal or illegitimate medical purposes; and failing to keep adequate medical records as determined by appropriate peer review. This case was designated as Board Case Number: 2006-0767.[1]

2. One of the Respondent's former employees, a Physician Assistant ("PA"), was interviewed by Board staff during the investigation of Case Number 2006-0767. The PA stated that the Respondent believes that aliens are trying to eliminate humans from the planet to get access to the earth's resources, a manifestation of which is Morgellons Disease.

3. Morgellons Disease (or Syndrome), also referred to by the Centers for Disease Control ("CDC") as Unexplained Dermopathy, is characterized by a range of cutaneous symptoms including fibers embedded in or extruded from the skin, persistent skin lesions, generalized pain and subcutaneous sensations of crawling, biting or stinging.

[1] On October 28, 2009, the Respondent entered into a Consent Order which resolved the allegations set forth in Case # 2006-0767. Under the terms of the Consent Order, the Respondent was reprimanded, placed on probation for a minimum of 3 years and required to take remedial education courses in prescribing Controlled Dangerous Substances and medical ethics.

4. The PA also informed Board staff during her interview that the Respondent may have engaged in financial and business transactions with a patient whom the Respondent had treated for Morgellons Disease.

5. In furtherance of its investigation of Case # 2006-0767, the Board obtained information regarding the Respondent's diagnosis and treatment of patients with Morgellons Disease, including the patient whom the Respondent was alleged to have engaged in a financial and business relationship ("Patient F"). [2]

6. In furtherance of the Board's investigation, Board staff learned that on or about April 17, 2007 an article the Respondent had purportedly written entitled *Dr. James Matthews MD Endorses NutraSilver as an "Effective Therapy" for Some Morgellons Symptoms,* was published on the "Morgellon Hope" website. In the article, the Respondent stated that he had preliminary data "indicating that NutraSilver is an effective therapy for some of the symptoms, in some of the patients suffering with Morgellons syndrome, and after new drug applications have been filed, will endorse trials of its use for this mysterious condition."

7. With regard to NutraSilver, the Respondent wrote that it is a: "special solution of Ionized, Colloidal Silver *(sic)* in distilled water. The suspension is created through a unique proprietary process where water is negatively charged and clustered so that the silver is well suspended, and theoretically better absorbed."

[2] The names of the patients are confidential.

8. In the NutraSilver article, the Respondent stated that he himself had tried NutraSilver after he determined he had Morgellons Disease. The Respondent described that after taking NutraSilver, a "unique, deep tissue Herx[heimer Reaction][3] occurred which gave way to greater feelings of well being and physical health than I had previously experienced with any other method."

9. The Respondent concluded the article with a statement entitled "Conflicts of Interest" which stated in full:

> A small percentage from the sales of NutraSilver is paid to Advanced Medicine, L.L.C., a new nonprofit company that I direct. 100% of the monies received go directly back into the support of clinical and scientific research in Morgellons. Using this method of funding, I hope to raise more money for Morgellons research within the next year, than all of the other organizations, in all of the previous years put together.

10. On January 20, 2008, the *Washington Post* published an article entitled *Figments of the Imagination* which discusses Morgellons Disease and patients who claim to suffer from the illness. The writer of the article interviewed the Respondent who stated that he had Morgellons and, according to the writer, "off-handedly mentions aliens and conspiracy theories."

11. By correspondence dated June 13, 2008, the Board notified the Respondent that it had opened an investigation based on allegations that:

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[3] A Herxheimer Reaction, or "Herx," occurs when, as a result of antibiotic treatment, large quantities of toxins are released into the body as bacteria die causing fever, chills, headache, muscle pain and worsening of skin lesions.

-the Respondent engaged in unprofessional conduct in the practice of medicine by endorsing and receiving funds from the sales of NutraSilver;

-the Respondent engaged in inappropriate business and financial transactions with patients while providing care to them;

-the Respondent provided medical care to a patient in Florida prior to obtaining a Florida medical license; and

-the Respondent may be professionally, physically or mentally incompetent.

12. By correspondence dated June 20, 2008, the Respondent responded to the Board's letter. The Respondent, *inter alia,* denied receiving funds from the sale of NutraSilver and claimed to have been misquoted in the *Post* article. In later correspondence, the Respondent stated that his former employee's statements "more likely represent a former disgruntled employee with a history of burning bridges [in an] attempt to do me some harm than anything I've ever said in earnest."

13. With regard to the allegation that the Respondent was practicing medicine in Florida without a license, the Respondent stated: "[T]his patient and I had a bonafide relationship while I was living in Maryland. The only treatment I've given him since moving [to Florida] is authorization of refills of medications I had already prescribed for him in the past."[4]

[4] The Respondent apparently resided in Florida from approximately March 2008 until December 2008. By letter to Board staff dated October 11, 2008, the Respondent advised that he had "completed [his] sabbatical down in Florida and am currently planning on returning to Maryland" with an expected return date of December 1, 2008.

Psychiatric Evaluation

14. On July 15, 2008, the Respondent underwent the Board-ordered psychiatric evaluation. The evaluating psychiatrist ("Dr. B") concluded that the Respondent's mental examination did not reveal signs of clinically significant depression, anxiety, psychosis, thought disorder or cognitive impairment.

15. Dr. B did, however, report that the Respondent's psychological testing suggested the presence of narcissistic and histrionic traits, although not severe enough to be considered a personality disorder.

16. In addition, Dr. B expressed concern that the Respondent failed to seek medical attention for chronic fatigue that he had suffered in medical school, instead diagnosing and treating himself in the absence of an adequate workup. Dr. B noted that the Respondent's interest in chronic fatigue and Morgellons Disease stems from his personal belief that he has experienced related symptoms.

17. Dr. B reported that the Respondent had volunteered during the evaluation that it was a mistake for him to treat patients with multiple antibiotics for months at a time prior to doing any formal testing or further investigation of their condition. The Respondent told Dr. B, "I was affected and influenced by my own illness. I should have done a more thorough assessment." Dr. B suggested that the Board review whether the Respondent had conducted adequate workups on patients manifesting similar symptoms before instituting trials of antibiotics and anti-fungals.

18. With regard to the Respondent's endorsement of NutraSilver, the Respondent told Dr. B that after he (the Respondent) acknowledged on his website that he had Morgellons, he was contacted by a NutraSilver supplier and agreed to try the product. Thereafter, he agreed to endorse it; he was to have received 5% of the price of every bottle he sold from the supplier's website and 7.5% for every bottle he sold from his own website. The Respondent stated that he soon cancelled the agreement and never received any money from the endorsement.

19. With regard to the patient with whom it was alleged the Respondent was engaged in a business and financial relationship ("Patient F" below), the Respondent told Dr. B that the patient had recruited him for over a year to become the medical director of a series of "wellness clinics." He and the patient traveled together to look at different properties. As of March 2008, however, the Respondent moved to Florida and became the patient's "personal assistant" after selling his practice. At the time of the evaluation, the Respondent was residing in Florida. The Respondent stated that he no longer practices medicine but provides personal services to the patient, including: driving him, doing household chores, talking with him and taking him to meetings and doctors' appointments. The Respondent noted that he sees the patient 4 days a week and spends another 15 to 20 hours monitoring the internet for information on Morgellons. The Respondent reported that the patient pays him an annual salary of $240,000 for his services.

20. Subsequent to the evaluation, on July 23, 2008, the Respondent sent an e-mail to Dr. B in which the Respondent "warmly invite[d] [Dr. B's] assistance in the evaluation of a few of these complex and very needy patients." The Respondent continued: "I can have a few of these patients drop by your office anytime you're ready, and I'm willing to share all that I do know about the illness. What do you say, [Dr. B's first name], will you help them?"B expressed concern that the Respondent demonstrated clear boundary confusion. Dr. B reported, "[s]uch difficulties are evident in his developing business and professional relationships with patients, endorsing products without verifying their effectiveness and even attempting to engage me as a potential referral source on former patients of his with possible Morgellons." Dr. B further questioned the Respondent's role as "personal assistant" to a former patient, notwithstanding the Respondent's denial that he functioned as a physician for the patient.

21. Dr. B concluded that while his examination did not lead him to the opinion that the Respondent is professionally, physically or mentally incompetent to practice medicine, "his judgment as it pertains to his patient care and personal health as well as his relationships with former patients, is questionable at best."

Patient-Specific Findings of Fact

22. As stated above, in furtherance of its investigation of the Respondent's care of patients whom he had diagnosed with Morgellons Disease, the

Board conducted a peer review of a sample of the Respondent's patients with that diagnosis.

23. One of the peer reviewers, "Dr. G," opined generally that:

> [a]lthough evidence for recognizing Morgellons is not overwhelmingly convincing, the 36 photographs provided by [the Respondent] lend plausibility; the CDC's willingness to undertake further investigation in conjunction with Kaiser-Permanente of California supports the possibility of a scientific basis....

24. Dr. G continued, "[b]ecause Morgellons is not a defined disease and no standard diagnosis and treatment regimen exists, efforts to confront the symptoms could be considered clinical investigations." Dr. G considered in each patient case he reviewed whether the informed consent the Respondent provided the patient was adequate. In most of the cases reviewed, Dr. G found that the Respondent met the standard of quality care in his treatment of patients whom he diagnosed with Morgellons and related diseases because the Respondent had provided the patient with a contract "containing sufficient elements of informed consent...and remuneration [the Respondent] received was commensurate with the time he spent researching and treating his patient."

Patient A

25. According to the records the Respondent transmitted to the Board in response to a Board subpoena, Patient A, a female born in 1965, first saw the Respondent on April 24, 2006. It is unclear whether this was Patient

A's first visit, however, because the Respondent noted that at this office visit, "[p]atient feels 100% better since using my initial regimen."[5]

26. On the April 24, 2006 office note, the Respondent documented the following diagnoses: Morgellons Syndrome, Lyme Disease, Onchocerciasis,[6] Cellulitis, Opportunistic Mycoses[7] and Acariasis, unspecified.[8]

27. The Respondent obtained intial laboratory studies[9] but failed thereafter to order periodic metabolic panels or otherwise monitor Patient A's blood work.

28. The Respondent documented his intial diagnoses prior to receiving the results of the laboratory studies he had ordered. This was the Respondent's consistent practice for the patients discussed herein.

29. At her initial visit, the Respondent prescribed a combination of antibiotics, anti-fungals and anthelmintics (anti-parasite medications), a regimen that he considers to be the "standard of care" for Morgellons Disease patients.

30. Throughout Patient A's course of treatment, November 20, 2006, the Respondent treated her with various combinations of antibiotics, anti-fungals and/or anthelmintics.

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[5] In a letter to the Board, Patient A stated that her first visit was in March 2006.
[6] Onchocerciasis, is also known as "river blindness." Ninety-nine percent of cases of this disease occur in Africa.
[7] Opportunistic mycoses refers to serious fungal infections occurring in patients with compromised host defenses.
[8] Acariasis is an infestation with mites typically resulting in a rash, severe itching and "creepy-crawly" sensations.
[9] The Respondent ordered through LabCorps certain labs such as complete metabolic panels, complete blood count panels, thyroid levels, B12, Folate and CD-57. The Respondent ordered through Igenex laboratory, which advertises itself as providing "state-of the art clinical and testing for Lyme Disease and associated tick-borne diseases", an Initial Lyme Panel and an Initial Co-infection Panel.

31. On June 27, 2006, the Respondent prescribed Plaquenil, an anti-malarial drug which is also used to treat lupus and rheumatoid arthritis, to Patient A. The Respondent failed to order a pre-treatment ophthalmologic examination for Patient A prior to prescribing Plaquenil.

32. The Respondent failed to document that he had discussed with Patient A any of the possible adverse side effects of the medications he prescribed to her including liver toxicity,[10] retinopathy[11] and crystalluria.[12]

33. On July 24, 2006, the Respondent prescribed to Patient A cholestyramine[13] and lactulose[14] despite the absence of any indication of bowel irregularities.

Patient B

34. Patient B, a female born in 1952, initially presented to the Respondent on April 15, 2006, complaining to "pinprick bites, creepy crawly sensations, painful excoriations that heal slowly and worms coming from the skin and mouth."

35. The Respondent diagnosed Patient B on her first visit with Morgellons Syndrome, Lyme Disease, Onchocerciasis and cellulitis, notwithstanding the fact that the results of Patient B's laboratory studies did not support the diagnoses.

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[10] Possible adverse side effect of ketoconazole (an antifungal), bitricide (an anthelmintic) and/or, rifampin (an antibiotic), all of which were prescribed by the Respondent.
[11] Possible adverse side effect of Plaquenil.
[12] Possible adverse side effect of sulfadiazine.
[13] A cholesterol lowering agent also used to treat diarrhea in Crohn's Disease patients. It also binds to mold fungi and is prescribed to treat "sick building syndrome."
[14] Used to treat constipation.

36. The Respondent failed to document his rationale for his diagnoses. In his summary of his treatment of Patient B that the Respondent prepared at the request of the Board, he acknowledged that, "laboratory evidence did not conclusively support the presence of Lyme disease," but noted that the "multiple positive and indeterminate bands on Western blot,[15] resulted in just missing an official positive result, but was very suspicious, especially in light of her close association with her husband who was clearly positive." The Respondent noted that Patient B's studies were remarkable for a depressed CD-57[16] count and a positive VCS (Visual Contrast Sensitivity) test.[17]

37. From April 15, 2006 through November 10, 2007, the Respondent saw Patient B in his office on 9 occasions and frequently changed her medication regimen, which included antibiotics, anti-fungals and anthelmintics. He typically failed to document his treatment rationale.

38. The Respondent documented that he treated Patient B during most of the 10 telephone conversations he had with her. He frequently changed her medication regimen based on her subjective statements, but otherwise failed to document his treatment rationale.

39. The Respondent prescribed medications which in combination had the potential to produce adverse side effects in the absence of clinical support

[15] Western blot is a laboratory study one use of which is to identity Lyme disease antibodies.
[16] A depressed CD-57 count is thought to be an indication of chronic Lyme Disease or Lyme Disease that has been active for over 1 year.
[17] A VCS test is thought to identify the presence of neurotoxins in the body.

for the regimen and documentation of his thought processes regarding those changes.

40. On March 27, 2007, the Respondent documented that Patient B "[h]ad ramped up NutraSilver over 2 weeks, now having some mild herxes." The Respondent had not previously documented that Patient B had been taking NutraSilver, nor did he document its source.[18]

Patient C

41. Patient C, who is Patient B's husband, was born in 1953, and initially presented to the Respondent on April 15, 2006, the same date as his wife's intial visit. The Respondent's note of Patient C's visit is worded identically to Patient B's with the exception of the review of systems and the comment in the Subjective section of the note that Patient C presented "complaining of Morgellons Syndrome" and "has felt polluted." The Respondent prescribed the same medications to Patient C as he had to Patient B (dosages varied when the dosage was dependent upon the patient's weight).

42. As with Patient B, the Respondent frequently treated Patient C based on telephone conversations, changing his medication regimen based on Patient C's subjective complaints, but otherwise failing to document his treatment rationale.

[18] On April 3, 2007, the Respondent noted that Patient B "had done a high dose purge 150 TID, had severe herx, then dropped down to 50 qd, and feels great. On June 26, 2007, the Respondent noted that Patient B "had stopped the [Nutra]silver...severe herxes with headaches and lower back aches."

43. The Respondent prescribed medications which in combination had the potential to produce adverse side effects in the absence of clinical support for the regimen and documentation of his thought processes regarding those changes.

44. The Respondent failed to document that he had provided informed consent to Patient C.

Patient D

45. Patient D, a female born in 1968, initially presented to the Respondent on November 7, 2006. Patient D resided in Illinois and, prior to her appointment, electronically transmitted to the Respondent some results of prior laboratory studies. The studies, drawn in September and October 2006, revealed that Patient D had tested positive for Lyme Disease (specifically, the spirochete *Borrelia burgdorferi)*, had a low vitamin D level and a low Body Mass Index ("BMI") of 17.3 (normal range = 18.5 – 24.9)[19]

46. When Patient D presented to the Respondent on November 7, 2006, she complained of "creepy crawling sensations," painful excoriations, "brain fog" and joint aches. The Respondent noted that Patient D's symptoms were interfering with her sleep and "depression is developing... Suicidal contemplation (+), Suicidal plan (-)."[20] The Respondent diagnosed her with Morgellons Syndrome, Lyme Disease, Onchocerciasis, Opportunistic Mycosis and Ascariasis, unspecified mite infestation.

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[19] On Patient D's first visit, the Respondent documented that she was 5 feet, 5 inches and weighed 104 pounds. He further noted that Patient D had lost 20 pounds in the "last few months that has helped with sx [symptoms]."

[20] The Respondent handwrote the plus and minus signs. He indicated in other patient records that his electronic record system did not have the capability to document certain symbols.

47. In the Respondent's summary of treatment that he prepared for the Board, he stated that he initially began Patient D on the "Marshall Protocol (Benicar and Minocin),"[21] but later switched to what he described as the "developing standard of care for these patients, i.e., antibiotics, anti-fungals and antihelmintics *(sic)*."

48. After the intial in-person visit, the Respondent provided the majority of Patient D's care (through July 2007) by telephone and prescribed numerous medications based on her subjective complaints alone. The Respondent failed to document the efficacy of the medications he prescribed, nor did he typically document his treatment rationale when changing her medication regimen.

49. The Respondent failed to address Patient D's extremely low BMI or her low Vitamin D level at any time during her course of treatment.

Patient E

50. Patient E, a female born in 1952, initially presented to the Respondent on December 6, 2006 with complaints of "creepy crawling sensations," painful excoriations, "brain fog" and joint aches. The Respondent noted that Patient E's symptoms were interfering with her sleep and "depression is developing... Suicidal contemplation (+), Suicidal plan (-).[22] The Respondent diagnosed her with Morgellons Syndrome, Lyme Disease,

[21] The Marshall Protocol is based on the theory that intracellular bacteria are the cause of many chronic diseases. Under the Protocol, Benicar, an anti- hypertension medication, and antibiotics are prescribed and sources of Vitamin D, including sunlight, are avoided to reactivate the body's innate immune system and destroy the intercellular bacteria.

[22] The Respondent handwrote the plus and minus signs. He handwrote a notation in other patient records, presumably when transmitting the records to the Board, that his electronic medical record system did not have the capability to document certain symbols.

Onchocerciasis, Opportunistic Mycosis and Ascariasis, unspecified mite infestation.

51. On Patient E's initial visit, the Respondent prescribed a regimen of antibiotics, anti-fungals and anthelmintic medications.

52. On Patient E's first visit, the Respondent prescribed both Ambien, a sleep medication, and Provigil, a stimulant. With the exception of the note that Patient E's symptoms were interfering with her sleep, he failed to document his treatment rationale for prescribing these medications.

53. On March 24, 2007, the Respondent noted that Patient E was complaining of "severe herx. Was feeling better on the [Nutra]silver and took extra." In the Assessment portion of the note, the Respondent documented, "severe herx, will back off of silver." The Respondent had not previously documented in Patient E's record that she had been taking NutraSilver or its source.[23] At this visit, the Respondent prescribed Vicoprofen, a Schedule III CDS, for Patient E's pain.

54. On April 3, 2007, the Respondent noted that Patient E presented with "severe herx, will refill pain rx, advised patient that we're looking to wean off as quickly as possible." The Respondent failed to document clearly from what he was planning to wean Patient E.

Patient F

a. The Respondent's Medical Treatment of Patient F

[23] In the Respondent's summary of treatment prepared for the Board, the Respondent stated that Patient E had "ended up using some OTC colloidal silver product on her own."

55. Patient F, a male born in 1947, initially presented to the Respondent on April 15, 2006 with "creepy crawling sensations," painful excoriations, "brain fog" and joint aches. The Respondent noted that Patient F's symptoms were interfering with his sleep and "depression is developing... [s]uicidal contemplation, [s]uicidal plan." The Respondent diagnosed him with Morgellons Syndrome, Lyme Disease, Onchocerciasis, Cellulitis/abscess, unspec[ified], Tinea of the body, viral infection, unspec. and Acarisasis, unspecified mite infestation.

56. At the April 15, 2006 visit, the Respondent prescribed to Patient F his typical regimen of antibiotics, anti-fungals and anthelmintics.

57. The Respondent continued Patient F on a combination of the above medications until November 29, 2007.

58. The Respondent intermittently included Type II diabetes, COPD and hypertension on Patient F's lists of diagnoses, but failed to monitor or treat these conditions consistently or appropriately.

59. The Respondent maintained in Patient F's record a July 7, 2006 letter entitled "Non-Standard Protocol" signed by Patient F which states:

> I'm suffering from Morgellon's symptoms as described in my chart. On my own and without physician consent I'd taken much larger doses than my doctor prescribed and found relief. When I ran low on medications and was forced to take the medications as prescribed my symptoms returned.
>
> I understand that taking higher than recommended dosages is risky but I *(sic)* because I've found relief in the past I've asked my doctor to prescribe the medications them in the way that I've found relief with *(sic)*. I assume responsibility for any grave consequences that may occur but wish to take

this chance because I can't go on living with this awful disease.

60. With regard to the excessive dosages of medication that Patient F requested, the Respondent stated in his treatment summary:

> I would have never intended for the patient to take such a high dose of medications but as with many other advancements in medicine coming through unintentional developments, I looked to these results for a possible solution to this strange disease. Given that the patient's lower extremity lesions were among the most severe of the Morgellons patients I'd seen, and also had the most dramatic improvement with high doses of the very medications that seemed to be helping others as well, I remained open to the possibility that higher than usual dosages were indeed what was necessary for these patients.
>
> I then had the patient sign a form wherein he admitted that he had been taking higher than prescribed doses on his own, and that he understood that taking medications in this way could result in grave consequences. He indicated that he wished to assume responsibility for his actions, and continue with the higher doses because, "I can't go on living with this awful disease."

61. On December 24, 2007, Patient F was admitted to Shady Grove Hospital after taking regular aspirin instead of baby aspirin for several months and developing an upper gastrointestinal bleed. In the Respondent's treatment summary, he stated that he "was completely sunk by this development," and "did not want to treat the patient at all after this happened." Nonetheless, the Respondent "stayed by him and nursed him back to health by delivering food and water to his hotel room." According to the Respondent, as Patient F's health returned, Patient F "insisted that we go forward with plans we had discussed previously, and already

partially put into effect. That is I was to sell my practice, move to Florida, and continue as the patient's personal assistant/physician."

62. The Respondent moved to Florida in or around March 2008. The Respondent was not licensed to practice medicine in the State of Florida at any time before or after March 2008.

63. On April 14, 2008, the Respondent noted that Patient F complained of "persistent sensations of 'bugs' on his lower extremities." The Respondent noted in the Assessment portion of the note: DOP [Delusions of Parasitosis] is unlikely but symptoms may respond to [O]rap.[24] The Respondent prescribed Orap, 2 mg, #90 with instructions for usage. On April 26, 2008, the Respondent continued Patient F's trial of Orap and refilled his prescription of Adipex,[25] noting that it might help him tolerate the Orap.

64. On June 12, 2008, the Respondent noted that Patient F had been "acting very depressed lately with a particularly foul mood...The patient's depressive symptoms are making it too difficult to work with at this time...will transfer care to [another physician]."

b. The Respondent's Business Relationship with Patient F

65. On May 20, 2006, the Respondent and Patient F entered into an agreement to research infrared therapies. The agreement read in part: "At this time all profits will be shared 50/50."

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[24] Orap (generic name: pimozide) is an antipsychotic drug that has potentially severe side effects.
[25] Adipex (generic name: phentermine), a Schedule IV CDS, is an anorectic indicated for the short-term management of exogenous obesity. On November 27, 2007, the Respondent noted that Patient F had requested it to lose weight. Patient F had used Adipex for the previous 30 years and "begs to continue." The Respondent acceded to Patient F's request and prescribed it.

66. In January 2008, the Respondent and Patient F entered into an agreement to purchase a ranch in Nevada where they were planning on creating a "Wellness Center" principally for Morgellons patients. According to the Respondent, the seller would not cooperate with certain repair requests and the Respondent and Patient F cancelled their offer. 7

67. On March 10, 2008, while the Respondent was in Florida, he and Patient F entered into a Contract the stated purpose of which was to "spell out the agreement between both parties regarding the duties of care by Dr. Matthews for [Patient F], and the compensation of Dr. Matthews by [Patient F]." In correspondence to the Board, the Respondent noted that although the Respondent had written the Contract, "the amount of compensation stated therein was written completely at the direction of [Patient F]."

68. The Contract states in pertinent part:

...

4. Dr. Matthew will do his level best, by his honor, and by his oath, to help [Patient F] with his: Type II Diabetes, Hypertension, Hypercholesterolemia, Anemia, Renal Insufficiency, History of GI bleed with massive duodenal ulcer, COPD, chronic lower extremity skin inflammation, and other skin disorders.

5. Dr. Matthews will meet with [Patient F] every week morning for 1 -2 hours, i.e., 11 AM, for the purposes of coordinating care, and at that time he will use his electronic medical records to record developments in accordance with the highest standards of medical practice.[26]

6. [Patient F] may also ask Dr. Matthews routine questions anytime from 9 AM and 5 PM Monday – Friday, but is encouraged to save

[26] Patient F's record, as transmitted to the Board by the Respondent, contains only 3 notes during the time that the Respondent treated him in Florida: April 14, 26 and June 12, 2008.

questions for official weekly meetings when Dr. Matthews has his electronic record.

7. In the event of an urgent problem, [Patient F] may call on Dr. Matthews anytime, 24 hours a day, 7 days a week... If hospitalization is required, Dr. Matthews will accompany [Patient F] to the hospital and advocate for him there.

8. Dr. Matthews will also help [Patient F] with nonmedical projects he has such as rennovating *(sic)* his house, but given that this isn't his usual line of work, will limit this activity to 8 – 12 hours per week.

9. Dr. Matthews will also assist with coordinating personal services for [Patient F], such as housecleaning, laundry, personal care such as bathing as needed, meals, meals on wheels, wound care, as well as home, yard, and car maintenance.

10. [Patient F] agreed to either do his best to follow the advice of Dr. Matthews, or negotiate some acceptable position, i.e., but will avoid dismissing any advice out of hand and without good reason, without informing Dr. Matthews.

11. In the event [Patient F] isn't following some important advice of Dr. Matthews, he may be asked to sign an "against medical advice" form indicating he accepts any adverse consequences that may result of *(sic)* his actions.

...

13. In recognition of the efforts and services of Dr. Matthews as in #4, 5 and 6, [Patient F] will pay Dr. Matthews $20,000 on, or about, the first of each month.

14. In recognition of the efforts and services of Dr. Matthews as in #7, 8, 9 and 10, [Patient F] will name Dr. Matthews as the recipient of no less than $1,000,000.00 in his will, and will provide Dr. Matthews with a copy of this document within two months.

15. In the event that Dr. Matthew does cure [Patient F] of one particular symptom he suffers with, i.e., skin irritations, with cure defined as symptoms <1% of their maximum for 3 consecutive months in a row, then [Patient F] will award Dr. Matthews $500,000.

16. In the event of any mental incapacitation of [Patient F], Dr. Matthews will become his legal guardian, conservator, and advocate. Legal documents in support of this fact will be created within two months of executing this contract.

17. Since Dr. Matthew had to sell his practice and move across the country to provide the above services to [Patient F], once this agreement is entered into, there is no going back. There are only two (2) legal/ethical ways out of this agreement: (1) Dr. Matthews finds a replacement physician, and global caregiver for [Patient F], and coordinates transfer of care over a reasonable period of time, or (2) [Patient F] can find at least two unbiased, equally credentialed physicians who will state in writing and before a court of law that the care of [Patient F] by Dr. Matthews, didn't meet the standards of good medical care...

69. As noted in ¶67, on June 12, 2008, the Respondent documented that Patient F's "depressive symptoms are making him too difficult to work with at this time, and he's not been keeping up with our agreement." The Respondent further noted that he was going to transfer Patient F's care to another physician.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent engaged in unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(3)(ii), failed to meet the standard of quality care, in violation of H.O. § 14-404(a)(22), and failed to maintain adequate medical records, in violation of H.O. § 14-404(a)(40).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 22nd day of September, 2010, by a majority of the quorum of the Board considering this case:

ORDERED that the Respondent shall be placed on **PROBATION** for five (5) years, and it is further

ORDERED that as a condition of Probation, the Respondent shall successfully complete a Board-approved intensive ethics tutorial focusing on boundary issues within six (6) months of the date the Consent Order is approved. The medical ethics course which the Respondent has completed as a requirement of his previous probation may not be counted in fulfilling this requirement; and it is further

ORDERED that the ethics course will be in addition to those Continuing Medical Education credits required for licensure; and it is further

ORDERED that for minimum of three (3) years of probation, the Respondent shall limit his practice to patients who do not present with Morgellons Disease; and it is further

ORDERED that for a minimum of three (3) years of probation, a Board-approved monitor will review the Respondent's patient records on a monthly basis to ensure that the Respondent is not treating Morgellons Disease patients and that his medical treatment otherwise meets the standard of quality care. The Respondent shall ensure that the monitor provides to the Board a report of his review on a monthly basis; and it is further

ORDERED that after the Respondent's practice is monitored for a minimum of three (3) years and the Respondent's practice is satisfactory in the opinion of the Board, the Respondent may resume treating patients who present with Morgellons Disease; and it is further

ORDERED that prior to treating Morgellons Disease patients, the Respondent must submit for Board approval a complete and detailed Informed Consent form; and it is further

ORDERED that the Respondent may not sell to any patient any drug, device, or method of treatment or self-treatment, whether through himself, his office, or any entity in which he has any interest or from which he derives any commission or any type of remuneration whatsoever. This prohibition applies throughout the probationary period irrespective of whether the Respondent possesses a drug dispensing or other permit; and it is further

ORDERED that during the Respondent's probationary period, the Respondent shall be subject to at least one (1) chart or peer review of his practice, at the Board's discretion. A chart and/or peer review that is unsatisfactory in the opinion of the Board will be considered a violation of probation; and it is further

ORDERED that this period of probation begins on the date that the Consent Order is approved and will run concurrently with the probation previously imposed in Case Number 2006-0767 for the period of time that the probation in Case Number 2006-0767 remains in effect. Nothing in the Consent Order in this case relieves the Respondent of any obligations he may have pursuant to the Consent Order in Case Number 2006-0767; and it is further

ORDERED that the Respondent shall comply with the Maryland Medical Practice Act and all laws, statutes and regulations pertaining to the practice of medicine; and it is further

ORDERED that the Respondent's failure to comply with any of the conditions of this Consent Order, shall be considered a violation of probation and a violation of this Consent Order; and it further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, after notice and an opportunity for an evidentiary hearing before an Administrative Law Judge at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board, may impose any other disciplinary sanction for with the Board may have imposed, including a reprimand, probation, suspension, revocation and/or monetary fine, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that after five (5) years from the date of this Consent Order, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated, through an order of the Board, or a designated Board committee. The Board, or designated Board committee, will grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

ORDERED that the Respondent shall be responsible for all costs under this Consent Order; and it is further

ORDERED that this Consent Order shall be a public document pursuant to Md. State Gov't Code Ann. § 10-611 (2009 Repl. Vol.).

9/22/10
Date

John T. Papavasiliou
Deputy Director
Maryland Board of Physicians

CONSENT

I, James P. Matthews, M.D., acknowledge that I was represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

8/26/2010
Date

James Matthews, M.D.
James P. Matthews, M.D.
Respondent

STATE OF MARYLAND
CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 26th day of August 2010, before me, a Notary Public of the foregoing State and City/County personally appeared James P. Matthews, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public

NOTARY PUBLIC SEAL STATE OF MARYLAND
FREDDY A. HERNANDEZ
Notary Public
Montgomery Co., MD
My Comm. Exps. Jan. 20, 2013