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ORIGINAL
IDAHO STATE BOARD
OF MEDICINE

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Attorney for the Board

BEFORE THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:)	
)	Case No. 2012-BOM-582
ANN DE JONG, M.D.,)	
License No. M-11037,)	FINAL ORDER
)	
Respondent.)	
_____)	

This professional disciplinary contested case proceeding was brought under and pursuant to the provisions of Title 54, Chapter 18, Idaho Code, commonly referred to as the Medical Practice Act and the Idaho State Board of Medicine's ("Board") Rules adopted according to the administrative procedure act, chapter 52, title 67, Idaho Code, to implement and enforce the Act.

Ann De Jong, M.D., ("Respondent") is the holder of an Idaho license to practice medicine and surgery, License No. M-11037, ("License") issued by the Board on June 23, 2010. Said license is subject to the provisions of Title 54, Chapter 18, Idaho Code, commonly known as the Medical Practice Act and IDAPA 22.01.01. The Medical Practice Act and Board Rules provide grounds for professional discipline. Respondent's License was active and current at all times pertinent to this contested case proceeding.

BACKGROUND

On February 1, 2013, the Board filed a Complaint against Respondent's License subsequent to information received alleging Respondent's practice of telemedicine and her affiliation with an entity called "Consult A Doctor, Inc.," ("CADR"), a private company offering physician-provided health care via telephone/e-mail medical consultations. Respondent's arrangement with CADR required her to be available for certain blocks of time for telephonic patient consultations. CADR's business model included advertising health care services on the internet with the expectation that potential patients would contact CADR via their internet website, agree to compensate CADR for their services, submit completed patient questionnaires and would be subsequently scheduled for telephonic consultations with affiliated physicians. In particular, Respondent's practice of telemedicine involved a telephonic patient encounter with a Boise valley patient L.H. for a complaint of respiratory infection on February 9, 2012. (*Recommended Findings*, p. 2 pp. 2, p. 3 pp. 3)

This contested case came on for hearing on July 30, 2013, wherein Respondent was represented by Joseph D McCollum, Jr., J.D., and the Board was represented by Jean R. Uranga, J.D., Boise, Idaho. At

the hearing, testimony and documentary evidence was admitted. The Hearing Officer's *Recommended Findings of Fact and Conclusions of Law* ("*Recommended Findings*") was issued on November 13, 2013, a copy of which is attached as Exhibit A and incorporated in full herein.

This contested case proceeding came before the Board at its quarterly meeting on December 6, 2013. Prior to the meeting, members of the Board and Committee on Professional Discipline ("COPD") signed Certificates of Approval averring their findings would be based exclusively on the evidence in the record and on matters officially noticed in the hearing; to their knowledge and belief, were able to fairly and impartially review the contents of the established record and were without conflict of interest.

After consideration and upon COPD recommendation, the Board, acted to adopt the *Recommended Findings* in toto after determining the principal issues in this contested case hearing were appropriately adjudicated.

RESPONDENT VIOLATED IDAHO CODE § 54-1814(7) AND IDAPA 22.01.01.101.03.h.

The Board particularly concurred with the *Recommended Findings* in that Respondent's provision of health care to patient L.H. failed to meet the standard of health care provided by other qualified physicians in the Boise valley community. The Board agreed with Dr. Angeline Devitt's testimony at hearing that the standard of care in the Boise valley community is to treat respiratory infections with supportive therapy for patient's subjective complaints, including Tylenol, nasal saline and decongestants. Such treatment should be subsequent to an appropriate physical exam and evaluation prior to prescribing drugs for a patient complaining of a respiratory tract infection. An appropriate physical exam for patient L.H. would include an objective examination of her ears, nasal mucosa, throat, lymph nodes, listening to her heart and lungs as well as taking her temperature, respiratory rate, pulse and blood pressure due to the patient's reported history of hypertension. (Hr. Tr. p. 18)

In addition, Respondent, apparently without any medical basis, strangely suggested she write a prescription for an antibiotic to be used, at the patient's discretion, "in case something changes." (Respondent Exhibit B, p. 2) Respondent also failed to provide the standard of care in that she violated Idaho Code § 54-1733. Validity of prescription drug orders, which provides, in part:

(1) A prescription drug order for a legend drug is not valid unless it is issued for a legitimate medical purpose arising from a prescriber-patient relationship which includes a documented patient evaluation adequate to establish diagnoses and identify underlying conditions and/or contraindications to the treatment. Treatment, including issuing a prescription drug order, based solely on an online questionnaire or consultation outside of an ongoing clinical relationship does not constitute a legitimate medical purpose. . . . (Emphasis added.)

The Board determined Respondent violated IDAPA 22.01.01.101.03.h as she failed to maintain adequate patient records. Pursuant to IDAPA 22.01.01.101.03.h, patient records are required to "contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care." Respondent's patient record of L.H., consisting only of a patient questionnaire submitted to CADR, the telephonic consultation and the CADR recording of the telephonic consultation, was deemed a wretched substitute for a valid patient record. (Exhibit 8)

The events in the provision of health care via telephonic patient consultation to patient L.H., as recognized in Respondent's Closing Brief, are largely not in dispute. (Respondent's Closing Brief, p.2) The Board found no competent evidence in the record rebutting or even undermining the standard of care testimony provided by Dr. Devitt. The Board deemed Respondent's testimony was, at best, unpersuasive and, at worst, questionable.

Accordingly, the Board concluded that Respondent failed to provide the community standard of care in violation of Idaho Code §54-1814(7) and IDAPA 22.01.01.101.03.h.

RESPONDENT VIOLATED IDAHO CODE § 54-1814(4) AND IDAPA 22.01.01.02.a.

Also concurring, the Board found that Respondent's affiliation with CADR, a private unlicensed entity, allowed it to advertise for and solicit Idaho patients. As Respondent held an Idaho medical license, she was an integral part of CADR advertising in Idaho. Essentially Respondent facilitated Idahoans to become patients of CADR. Such advertising and solicitation of Idaho patients by an unlicensed entity is unethical or unprofessional under the Medical Practice Act and Board Rule.

Accordingly, the Board concluded that Respondent facilitated the advertising the practice of medicine in an unethical or unprofessional manner in violation of Idaho Code § 54-1814(4) and IDAPA 22.01.01.02.a.

RESPONDENT VIOLATED IDAHO CODE § 54-1814(5)

The Board specially concurred with the *Recommended Findings* in that Respondent "[k]nowingly aid[ed] or abet[ed CADR] to practice medicine." Respondent allowed CADR, an unlicensed entity, to deliver medical services via telephonic patient consultation to Idahoans, thereby aided or abetted unauthorized and unlawful medical practice in Idaho. Respondent essentially admitted a violation of Idaho Code § 54-1814 (5) when she testified at hearing that she had nothing whatever to do with a second prescription sent by CADR to Walgreen's pharmacy with her name on it and that she did not authorize the second prescription to be faxed to another pharmacy.

Accordingly, the Board concluded that Respondent aided and abetted the unlicensed practice of medicine in violation of Idaho Code §54-1814(5).

THE RECORD UNDERMINED RESPONDENT'S TRUSTWORTHINESS

The Board found that Respondent suffered from a serious lack of credibility as her testimony and briefing was often at odds with the record. Of concern were whether Respondent's statements were worthy of belief or confidence. For example, she testified that patient L.H. advised that she was "unable to get in" to see her primary physician, however, the patient questionnaire documented that patient L.H. was seen by her regular health care provider two (2) days earlier, on February 7, 2012. The purported telephone number and fax number listed on Respondent's prescription for L.H. were not local phone or fax numbers. Although Respondent averred she had a business address in Eagle, Idaho, the address shown on the prescription was a "pak mail" location, not a medical office or clinic. (Exhibit 4) Although Respondent averred she began her employment with CADR ten (10) days before her telephonic consultation with patient L.H. on February 9, 2012, the admitted evidence documents Respondent began her employment with CADR on July 1, 2011. (Board's Reply Brief, p. 1 pp. 2) Although the admitted

evidence documents Walgreen's pharmacy filled a second prescription after Fred Meyer's pharmacy refused to fill the first, Respondent, in her Closing Brief, questioned whether this actually occurred. (Board's Reply Brief, p. 2 pp. 5)

Pursuant to Idaho Code § 54-1802, the Board is charged to assure Idaho's public health, safety and welfare through the licensure and regulation of physicians. Accordingly, the Board deemed sanctions were necessary upon Respondent's License to fulfill its statutory duty.

The Board, after careful review and consideration of the record of this matter as well as the COPD's recommendation, hereby makes the following *Final Order*.

FINAL ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the following sanctions to Respondent's license to practice medicine in Idaho shall occur:

1. Respondent shall not provide any type of medical/health care via telephone/e-mail medical consultations (telemedicine) to Idaho citizens.
2. Within ninety (90) days of the date of the last signature of this *Final Order*, Respondent shall reimburse the Board in toto for its costs and attorney's fees incurred in this contested case proceeding, unless the Board approves of a prior payment schedule submitted by Respondent. An accounting of the Board's costs and attorney's fees is attached hereto as Exhibit B and incorporated herein.
3. Within nine (9) months of the date of the last signature of this *Final Order*, Respondent shall submit written documentation of the completion of a Board approved Ethics Course. All cost and fees incurred for the Ethics Course shall be borne by Respondent.
4. That this *Final Order* shall be considered a public record as that term is used in the Idaho Code.
5. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Idaho.

DATED This 2 day of ^{Jan, 2014} ~~December~~, 2013.

IDAHO STATE BOARD OF MEDICINE



BARRY FRANKLIN BENNETT, M.D.
Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day 6th of January 2014, served the foregoing **Final Order** upon all parties of record in this proceeding, by facsimile and mailing a true and correct copy thereof, properly addressed with postage prepaid, to:

Joseph D. McCollum, Jr., J.D.
HAWLEY TROXELL
877 West Main Street, Suite 1000
Boise, Idaho 83701
FAX: 208 954 5235

Idaho State Board of Medicine
P.O. Box 83720
Boise, ID 83720-0058

Jean R. Uranga, J.D.
URANGA & URANGA
714 North 5th Street
P.O. Box 1678
Boise, ID 83701
FAX: 208 384 5686

- by regular U.S. mail
- by hand delivery
- by facsimile
- by overnight mail



Cathleen M. Morgan, J.D.

NOV 14 2013

**IDAHO STATE BOARD
OF MEDICINE**

BEFORE THE IDAHO STATE BOARD OF MEDICINE

<p>In the Matter of:</p> <p>ANN DE JONG, M.D., License No. M-11037,</p> <p style="text-align: center;">Respondent.</p>	<p>Case No. BOM-2012-582</p> <p>RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW</p>
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INTRODUCTION

This matter is before the Idaho State Board of Medicine ("Board") on Complaint filed February 1, 2013. The Board staff is represented by Jean R. Uranga, Boise, Idaho. Dr. De Jong is represented by Joseph D McCollum, Jr., Boise, Idaho. The matter came on for hearing on July 30, 2013. At the hearing, testimony and documentary evidence was admitted as follows:

1. Exhibits 1-11 from Board staff were admitted during the course of the hearing.
2. For Respondent Dr. De Jong, Exhibits A-E were admitted.
3. Witnesses testified at the hearing in this matter for Petitioner: Angeline Devitt, Dennis Kirk Perry, Mary Leonard and Cynthia Michalik.
4. Witnesses testified at the hearing in this matter for Respondent: Dr. De Jong participated in the hearing and testified by telephone.

Following the hearing, the parties submitted closing arguments and briefs, and the matter is now fully submitted and ready for the entry by the Hearing Officer of Recommended Findings of Fact and Conclusions of Law.



Based upon the record in this case, the exhibits submitted during the hearing, the testimony of the witnesses, and having reviewed the post-hearing briefs of counsel and reviewed applicable legal authorities, the Hearing Officer respectfully submits to the Board the following Recommended Findings of Fact and Conclusions of Law.

FINDINGS OF FACT/CONCLUSIONS OF LAW

1. This is a physician discipline case brought under and pursuant to the provisions of Title 54, Chapter 18, Idaho Code, commonly referred to as the Medical Practice Act and Board Rules adopted to implement and enforce the Act. Respondent Ann De Jong, M.D. is the holder of an Idaho License to Practice Medicine and Surgery, License No. M-11037 issued by the Idaho State Board of Medicine on June 23, 2010. Dr. De Jong's current C.V. was admitted as Respondent Exhibit A. Her C.V. indicates that she is licensed in a number of states including North Dakota, South Dakota, Arizona, Minnesota, Montana, Idaho, Wisconsin and California. At the time of hearing, Dr. De Jong was working as a locum physician throughout the rural communities in North Dakota and into Minnesota. Her locum practice was as an emergency room physician. She has a Board eligibility status with the American Board for emergency medicine and is Board Certified in family medicine.

2. This case arises out of Dr. De Jong's affiliation with an entity called "Consult A Doctor, Inc." ("CADR") and a telephonic patient encounter with patient L.H. that occurred February 9, 2012. Respondent's Exhibit A indicates that Dr. De Jong was affiliated with GADR beginning July 1, 2011 and continuing until March 1, 2012. The exhibit indicates that this corporation maintains an office in Miami Beach, Florida. At hearing Dr. De Jong testified that she learned of CADR through a patient, and that she then contacted CADR and requested that she be considered to provide on call telephonic physician consultations to individuals who might contact CADR for medical services. Respondent's arrangement with CADR required her to be

available for certain blocks of time and to be available for patient consultations. The business model of CADR was that individuals would contact the entity via the internet, fill out a patient questionnaire, and the patient would then be scheduled for a telephonic consultation with the affiliated physician. Although the business mechanism for adding Idaho as a CADR state is not in the record, it appears that Idaho became a part of the CADR system in February of 2012. Dr. De Jong testified that she "guesstimated" that she had acted in this on call telephonic physician role for 75 patients through CADR, but she was unable to recall how many consultations she had provided to Idaho residents. Her recollection at hearing was that she received a \$20 fee from CADR for each patient consultation.

3. The telephonic patient consultation involved in this case occurred February 9, 2012 with patient L.H. On that date, patient L.H. contacted CADR and was required to complete a medical questionnaire. The completed patient questionnaire was admitted as Exhibit 8. The patient questionnaire was available to Dr. De Jong and was followed by a brief telephonic communication between patient L.H. and Dr. De Jong. The telephone conversation between Dr. De Jong and patient L.H. was tape recorded by CADR and a transcript of that telephone consultation was admitted as Exhibit B. That transcript reveals that patient L.H. advised Dr. De Jong that she had a bad cold in her nose with watery eyes, itchy ears, mild sore throat, drainage, and aches and pains. She reported a slight fever of 99.6°. During the call, Dr. De Jong initially stated that the patient complaints described symptoms of a traditional cold and that symptomatic therapy was normally what was required. However, and without the patient even requesting a prescription for an antibiotic, Dr. De Jong voluntarily suggested to write an order for an antibiotic to be used, at the patient's discretion, "in case something changes." (See Respondent Exhibit B, p.2) The antibiotic ordered by Dr. De Jong was Azithromycin and was to be called in to the Fred Meyer pharmacy on Chinden Boulevard in Garden City. At that point patient L.H. asked Dr. De

Jong if she could pick up the antibiotic at the pharmacy and Dr. De Jong confirmed that it would be at the pharmacy and available to her "if you feel like you need it." In concluding the brief telephonic consultation, Dr. De Jong did encourage patient L.H. to follow up with her primary care physician if her symptoms were not improving.

4. In her hearing testimony, Dr. De Jong stated that patient L.H. advised her that she was "unable to get in" to see her primary physician. No such information is included within the taped telephonic consultation as reflected in the conversation transcript. The patient questionnaire submitted to CADR prior to the consultation with Dr. De Jong indicated that patient L.H. was seen by her regular provider 2 days earlier, on February 7, 2012.

5. The prescription issued by Dr. De Jong was faxed to the Fred Meyer pharmacy on Chinden Boulevard in Garden City. The prescription form was submitted into evidence as Exhibit 4. The prescription purported to show an office address for Dr. De Jong for a physical location in Eagle, Idaho. The prescription indicated that it was from "RxNT" and that it was digitally created through the Rx-NT.com system. The receiving pharmacist at Fred Meyer, Dennis Perry, testified at the hearing. Mr. Perry is an Idaho licensed pharmacist and had been so for 8 years as of the date of hearing. Mr. Perry testified that the prescription presented a "red flag" in that the purported telephone number and fax number for Dr. De Jong's purported Eagle, Idaho address were not local phone or fax numbers. Exhibit 4 likewise indicated that Mr. Perry regarded the prescription as "fishy" and that nobody could give him a phone number to the purported Dr. De Jong Eagle address. After placing a call to apparently the RxNT number shown on the prescription, Mr. Perry did obtain Dr. De Jong's phone number. He placed a call to her. She confirmed that she had issued the prescription that had been sent in her name. Mr. Perry testified that he asked Dr. De Jong if she had a business address in Eagle, Idaho and that she

responded: "Yes." In fact, the address shown on the Exhibit 4 prescription is a "pak mail" location and is not a medical office or medical clinic.

6. In the meantime, Mr. Perry telephoned the Idaho State Board of Pharmacy to determine the validity of the prescription. Ultimately a physician from CADR by the name of Dr. Douglas Smith called Mr. Perry and was extremely unprofessional and dismissive of Mr. Perry's legitimate questions regarding the validity of the prescription. Dr. Smith identified himself as a colleague of Dr. De Jong and proceeded to argue about the validity of the prescription. After that, Mr. Fred Collings from the Idaho State Board of Pharmacy advised Mr. Perry that he should not fill the prescription and consequently the pharmacy would not fill the order.

7. In its follow up investigation, Board staff interviewed Mr. Collings from the Board of Pharmacy. That conversation is summarized by way of written memorandum to the file and was admitted as Exhibit 5. The record reflects that Mr. Collings spoke with Dr. De Jong and the CADR "Chief Medical Officer" Dr. Doug Smith regarding applicable Idaho law and in particular Idaho Code §54-1733.

8. After the Fred Meyer pharmacy refused to issue the prescription and after both Dr. De Jong and "Chief Medical Officer" Dr. Smith with CADR had been informed that the prescription was invalid in Idaho, CADR nevertheless faxed a similar prescription (Exhibit 11) to a Walgreen's drug store where it was filled and the antibiotic dispensed. Dr. De Jong testified at hearing that she had nothing whatever to do with that second prescription being sent to Walgreen's by CADR with her name on it and that she did not authorize the second prescription to be faxed to another pharmacy.

9. The foregoing events, as recognized by Respondent in her closing brief "are largely not in dispute." (Respondent's Closing Brief, p.2) From these events, the Board staff in its' Complaint alleges that Dr. De Jong's participation in the CADR system, and her prescription

to this patient for the antibiotic, warrant disciplined under several theories, including affiliation with an unlicensed entity, allowing an unlicensed entity to practice medicine through her medical license, providing healthcare below the community standard, and unlawful fee sharing in exchange for a referral. These four separate theories of discipline against Dr. De Jong break down into categories. 1) her affiliation with an online unlicensed entity purporting to provide physician services and 2) patient encounter with L.H. and the prescription for Azithromycin which is alleged to be in violation of the applicable community standard of care.

a) Violation of Community Standard of Care.

Idaho Code §54-1814(7) provides that a physician is subject to discipline by the Board for providing healthcare which fails to meet the standard of healthcare provided by other qualified physicians in the same community or similar communities, taking into account her training, experience and the degree of expertise to which she holds herself out to the public.

The Board has promulgated regulations under this statute, including rules found at IDAPA 22.01.01.101.03.e and h. These two rules are adopted within the “Standard of Care” portion of the Board rule and provide that violation of any state or federal law relating to controlled substances is a per se violation of the Community Standard of Care (subpart e) and that failure to maintain adequate records as defined in the rule is also a per se violation of the Idaho Community Standard of Care (subpart h).

Both the statute and the above-cited Board rules are applicable to the conduct of Dr. De Jong in this case.

The standard of care provided by physicians in the Boise-Meridian area was provided by Angeline Devitt, M.D., a family practice physician from Boise. She has practiced in the area since 1994. Dr. Devitt is Board Certified in family medicine. In preparation for her testimony at the hearing, Dr. Devitt reviewed records provided to her by the Board staff related to the

encounter between L.H. and Dr. De Jong. Dr. Devitt testified that the standard of care in the local community is to treat respiratory infections with supportive therapy for patient's subjective complaints, including Tylenol, nasal saline and decongestants. She further testified that it is the local community standard of care to conduct a physical exam and evaluation of a patient prior to prescribing drugs for a patient complaining of a respiratory tract infection. Prior to prescribing any medications beyond those available over the counter, Dr. Devitt testified that a physical examination should be performed. Dr. Devitt testified that Dr. De Jong violated the community standard of care in this case by prescribing the antibiotic Z-pak for the patient's symptoms and without benefit of a medical exam and assessment. Specifically, Dr. Devitt testified that an appropriate examination for this patient would have included a blood pressure test due to the patient's reported history of hypertension, taking her temperature, taking her respiratory rate and pulse rate; it would also have included a physician examination of her ears, nasal mucosa, throat, checking for lymph nodes, listening to her heart, and listening to her lungs. (Hr.Tr. p.18)

There is no competent evidence in the record rebutting or even undermining the standard of care testimony provided by Dr. Devitt. Dr. De Jong testified that prior to becoming affiliated with CADR, she did not speak with any local physicians regarding the community standard of care. Although she did in correspondence to Board staff and otherwise has suggested that the writing of the prescription in this case for patient L.H. was appropriate, her testimony carries little weight.

Based on the testimony and evidence in this case, Dr. De Jong violated the community standard of care established under Idaho Code §54-1814(7). In failing to perform an evaluation and prepare a report of objective findings and assessment, Dr. De Jong likewise violated IDAPA 22.01.01.101.03.h.

The Complaint in this case alleges that Dr. De Jong violated the community standard of care by virtue of an alleged violation of any state or federal law relating to controlled substances. The prescription for the Z-pak in this case was certainly a prescription for a legend drug, but the medication itself is not a controlled substance. The drug prescribed in this case by Dr. De Jong is a legend drug, but it is not defined as a controlled substance. (Hr.Tr. p.77-78) It must be concluded that the rule at IDAPA 22.01.01.101.03.e pertains only to violation of a state or federal law governing controlled substances and is not an additional basis for discipline in this case.

b) Advertising the Practice of Medicine in Unethical or Unprofessional Manner.

The Board Complaint alleges that Dr. De Jong has violated Idaho Code §54-1814(4) and IDAPA 22.01.01.101.02 as a separate basis for discipline. §54-1814(4) provides that a physician in Idaho is subject to discipline for: “Advertising the practice of medicine in any unethical or unprofessional manner.” The Board rule provides that a physician is subject to discipline by the Board for:

- a. Using advertising or representations likely to deceive, defraud or harm the public.
- b. Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his or her direction in the treatment of any disease or other condition of the body or mind.”

As a physician participant in the CADR business model, Dr. De Jong (perhaps with other undisclosed in this record Idaho physicians) facilitated that solicitation of Idaho individuals to become patients of the CADR business model. Although Dr. De Jong did not personally spend any of her own resources toward the advertisement of the business model of CADR, the affiliation with her as a physician was a part of the CADR advertising in that the business entity required state licensed physicians to participate (see Respondent Exhibit D). The business model

of CADR required that the participating physician comply with all medical regulations from the licensing state authority.

Because CADR is not licensed to practice medicine in the state of Idaho, Dr. De Jong's affiliation with that entity allowed it to advertise for and solicit patients in the state of Idaho. Such advertising and solicitation of patients by an unlicensed entity is unethical or unprofessional under the statute and also violates the above-cited Board rules. Accordingly, it is concluded that Dr. De Jong violated the provisions of Idaho Code §54-1814(4) and its implementing Board regulations.

c) Aiding or Abetting the Unlicensed Practice of Medicine.

The administrative staff Complaint alleges that by participating in the CADR program, Dr. De Jong has allowed that entity to deliver medical services in Idaho and that she has thereby aided or abetted unauthorized and unlawful medical practice in the state of Idaho. The staff Complaint alleges that by doing so Dr. De Jong has violated Idaho Code §54-1814(5).

Idaho Code §54-1814(5) provides that a physician in the state of Idaho is subject to discipline for: "(5) Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine as provided in this chapter." As noted, CADR is not licensed to practice medicine in the state of Idaho. The business model requires that the affiliated state licensed physician will treat and prescribe for individuals based solely upon the completion of an internet medical form and a telephonic conference. The business model does not permit or allow an inpatient encounter with an accompanying medical examination, complete assessment, diagnosis and treatment plan. By participating in the CADR program, Dr. De Jong has aided and abetted the unlicensed practice of medicine in Idaho. She certainly participated in the program knowingly and signed a contract (not in the record) to provide medical care based upon the online patient questionnaire and either an online or telephonic encounter. Although she may not have

known the full legal consequences of her participation in the CADR program, she was a knowing and willing participant. Accordingly, it must be concluded that Dr. De Jong has violated the provisions of §54-1814(5) and is subject to discipline by the Board for such violation.

d) Division of Fees for Professional Services.

The Board staff Complaint alleges that Dr. De Jong has divided fees or arranged to split fees for professional services in exchange for a referral and that in doing so she has violated Idaho Code §54-1814(8). That statute provides that a physician in Idaho is subject to discipline by the Board for: “(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for a referral.”

In this case, Dr. De Jong received a “consultation” payment of \$20.00 (approximately) from CADR for each patient encounter. The overall charge from CADR, either to the patient or to some insurance company, was not in the record. The operative language of §54-1814(8) is predicated upon the physician having “received” fees for professional services and then redirecting a portion of that fee or in the form of a gift to a third party for the referral. The evidence does not warrant a finding that the fees received by Dr. De Jong were then somehow split or shared with CADR or another third party. Certainly the business model of CADR is predicated upon the entity receiving fees or other compensation, and then making a payment to a participating physician of some portion of that fee or payment. In doing so, and in receiving compensation from CADR, Dr. De Jong indirectly assisted in advertising for medical services and facilitated the unauthorized practice by an unlicensed entity. However, it cannot be said that she distributed monies or gifts out of fees she received in exchange for the referral.

CONCLUSION

Based upon the foregoing it is concluded that Dr. De Jong:

- (1) Violated the Community Standard of Care established by Idaho Code §54-1814(7) and IDAPA 22.01.01.101.03.h;
- (2) Advertised the practice of medicine in an unethical or unprofessional manner in violation of Idaho Code §54-1814(4) and IDAPA 22.01.01.101.02;
- (3) Aided and abetted the unlicensed practice of medicine in violation of Idaho Code §54-1814(5).

No recommendation is made regarding any sanctions in this case. All such issues are reserved unto the Board.

DATED this 13th day of November, 2013.


Kenneth L. Mallea, Hearing Officer

SCHEDULE FOR REVIEW

1. These are the Recommended Findings of Fact and Conclusions of Law of the Hearing Officer.
2. Any party may file a petition for reconsideration of the Recommended Findings of Fact and Conclusions of Law with the Hearing Officer within fourteen (14) days of the service date of the Recommended Findings of Fact and Conclusions of Law. The Hearing Officer issuing the Recommended Findings of Fact and Conclusions of Law will dispose of any petition for reconsideration within twenty-one (21) days of its receipt or the petition will be considered denied by operation of law.
3. Within fourteen (14) days after the latter of (a) the service date of the Recommended Findings of Fact and Conclusions of Law, (b) the service date of any modification of the Recommended Findings of Fact and Conclusions of Law by the Hearing Officer on his own motion, (c) the service date of a denial of a petition for reconsideration from this Recommended Findings of Fact and Conclusions of Law, or (d) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this Recommended Findings of Fact and Conclusions of Law, any party may in writing support or take exception to any part of this Recommended Findings of Fact and Conclusions of Law and file briefs in support of the party's position on any issue in the proceeding.
4. Written briefs in support of or taking exception to the Recommended Findings of Fact and Conclusions of Law shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board will issue a final Order within fifty-six (56) days of receipt of the written briefs. The Board may remand the matter for further evidentiary hearing if further factual development of the record is necessary before issuing a final Order.

5. No additional oral argument on this Recommended Findings of Fact and Conclusions of Law will be conducted by the Board.

6. The Board shall make its decision as to this Recommended Findings of Fact and Conclusions of Law entered in accordance with the time frames set forth above.

Dated this 13th day of November, 2013.


Kenneth L. Mallea

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of November, 2013, a true and correct copy of the within and foregoing document was served upon:

Joseph D. McCollum, Jr.
877 W. Main Street, Suite 1000
Boise, ID 83701

Idaho State Board of Medicine
P.O. Box 83720
Boise, ID 83720-0058

Jean R. Uranga
Uranga & Uranga
714 North 5th Street
P.O. Box 1678
Boise, ID 83701

by U.S. mail
 by hand delivery
 by facsimile
 by overnight mail



Formal Proceedings No BOM-2012-582

Formal Proceedings Cost Summary

Respondent: Ann De Jong MD

	Case or Formal Proceedings No	Amount
Investigation	BOM-2012-6990	\$8,101.69
Formal Proceedings	2012-BOM-582	\$1,356.50
	Total	\$9,458.19



Formal Proceedings Costs

Respondent: Ann De Jong MD

Date	Vendor / Investigator	Description	Amount
7/29/2013	CYNTHIA MICHALIK	Hearing preparation/file maintenance	\$166.34
6/14/2012	CYNTHIA J. MICHALIK	Review S&O	\$11.64
6/26/2012	NANCY KERR	Review and scan JU letter and corrected S&O	\$7.50
7/18/2012	NANCY KERR	Scan JU letter to Atty	\$2.03
8/3/2012	NANCY KERR	review and scan JU letter	\$2.03
9/17/2012	NANCY KERR	Scan notice to appear	\$0.41
7/17/2013	CYNTHIA MICHALIK	Prep for hearing	\$58.18
7/18/2013	CYNTHIA MICHALIK	Prep for hearing	\$230.31
6/4/2012	CYNTHIA MICHALIK	phone calls with RE and JU	\$11.64
7/23/2013	CYNTHIA MICHALIK	pick up medical records	
1/5/2014	CATHLEEN WAGNILD MORGAN	Final Order, letters, mailing	\$32.98
7/30/2013	CYNTHIA MICHALIK	Hearing	\$204.72
7/30/2013	MARY LEONARD	Hearing	\$210.00
9/16/2013	NANCY KERR	Review Board brief	\$12.18
12/6/2013	CATHLEEN WAGNILD MORGAN	Record review	\$49.47
12/10/2013	CATHLEEN WAGNILD MORGAN	Record review	\$82.45
12/24/2013	CATHLEEN WAGNILD MORGAN	Record review	\$49.47
12/26/2013	CATHLEEN WAGNILD MORGAN	Drafting Final Order	\$65.96
12/27/2013	CATHLEEN WAGNILD MORGAN	Drafting Final Order& letter to Chairman	\$82.45
7/23/2013	CYNTHIA MICHALIK	copy investigative file for consultant/ deliver	\$76.77
Total			\$1,356.50

RECEIVED

JAN 06 2014

IDAHO STATE BOARD OF MEDICINE

Cathleen M. Morgan, J.D. ISB No. 5218
IDAHO STATE BOARD OF MEDICINE
1755 Westgate Drive, Ste. 140
P.O. Box 83720
Boise, Idaho 83720-0058
Telephone: (208) 327-7000
Facsimile: (208) 327-7005

Attorney for the Board

BEFORE THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:)
)
ANN DE JONG, M.D.,)
License No. M-11037,)
)
Respondent.)
_____)

Case No. 2012-BOM-582
AFFIDAVIT OF CATHLEEN M. MORGAN, J.D.

STATE OF IDAHO)
) ss
County of Ada)

I, Cathleen M. Morgan, J.D., being first duly sworn, depose and say:

1. I am an attorney for the Idaho State Board of Medicine (the "Board") in the above-entitled matter.

2. I have provided legal services for the Board in this proceeding. The Board has incurred legal fees in investigating this action which are awardable pursuant to Idaho Code § 54-1806 (11). Based upon my examination of the file and the legal services performed, on a reasonable hourly rate of \$32.98 per hour and on my knowledge of fees generally, it is my opinion that the reasonable attorney fees to be awarded to the Board in this action are \$428.74.

3. Jean R. Uranga, J.D., and Kenneth Mallea, J.D., have provided legal services for the Board in this proceeding. Based upon the examination of the file and the legal services performed, on a reasonable hourly rate of \$125.00 per hour and on my knowledge of fees generally, it is my opinion that the reasonable attorney fees for attorneys Uranga and Mallea to be awarded to the Board in this action are \$4,262.50 and \$1,156.25 respectively. An itemization of attorneys' fees, including the date that the services were rendered, the type of service, the time expended, and the total dollar charged, are attached to this affidavit.

4. An itemization of attorney fees, including the date that the services were rendered, the type of service, the time expended, and the total dollar charged, is attached to this affidavit.

5. To the best of my knowledge and belief, the items listed on the attached statement are correct and claimed in compliance with Idaho Code §§ 54-1806 (11) and 54-1806A(9)(e).

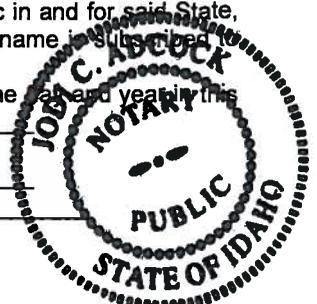
DATED This 6th day of January, 2014.

Cathleen M. Morgan
CATHLEEN M. MORGAN, J.D., Attorney for the Board

On this 6th day of January, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Cathleen M. Morgan known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jodi C. Adcock
NOTARY PUBLIC FOR IDAHO
Residing at: *Ada County*
My Commission Expires: *11/9/19*



Data Entry #	Received From/Paid To Explanation	Chq# Rec#	General		Fees	Bld		Trust Activity		Balance
			Repts	Diabs		Inv#	Acc	Repts	Diabs	
242060	PMT - For Services Rendered	18071	87.50							
Mar/ 5/2013	Lawyer: JRU 0.10 Hrs X 125.00									
242184	Talk to Ken Mallea.				12.50	34232				
Mar/12/2013	Lawyer: JRU 0.40 Hrs X 125.00									
242344	Review contract; letter to Nancy.				50.00	34232				
Mar/13/2013	Lawyer: JRU 0.30 Hrs X 125.00									
242372	Letter to DeJong.				37.50	34232				
Mar/20/2013	Lawyer: JRU C.30 Hrs X 125.00									
242482	Letter to Joe.				37.50	34232				
Mar/25/2013	Billing on Invoice 34232									
242623	FEES 275.00			0.00		34232				
Apr/ 2/2013	BOM									
242788	PMT - For Services Rendered	18139	275.00							
Apr/ 9/2013	Lawyer: JRU 0.10 Hrs X 125.00									
243082	Call Joe McCollum.				12.50	34370				
Apr/19/2013	Lawyer: JRU 0.10 Hrs X 125.00									
243240	Call Joe McCollum.				12.50	34370				
Apr/23/2013	Billing on Invoice 34370									
243457	FEES 25.00			0.00		34370				
Apr/29/2013	Lawyer: JRU 0.30 Hrs X 125.00									
243705	Call attorney; letter to attorney.				37.50	34449				
Apr/29/2013	Lawyer: JRU 0.20 Hrs X 125.00									
243739	Talk to Joe McCollum.				25.00	34449				
May/ 1/2013	BOM									
243552	PMT - For Services Rendered	18237	25.00							
May/ 5/2013	Lawyer: JRU 0.30 Hrs X 125.00									
243781	Prepare Notice of Status Conference.				37.50	34449				
May/13/2013	Lawyer: JRU 0.40 Hrs X 125.00									
243953	Participate in telephone conference; prepare Notice of Hearing.				50.00	34449				
May/16/2013	Lawyer: JRU 0.40 Hrs X 125.00									
243970	Review Joe's email; revise Notice of Hearing; letter to Court Reporter.				50.00	34449				
May/24/2013	Billing on Invoice 34449									
244244	FEES 200.00			0.00		34449				
Jun/ 7/2013	BOM									
244596	PMT - For Services Rendered	18370	200.00							
Jul/17/2013	Lawyer: JRU 0.80 Hrs X 125.00									
245524	Hearing preparation.				100.00	34665				
Jul/18/2013	Lawyer: JRU 0.10 Hrs X 125.00									
245529	Briefly review email from Cynthia.				12.50	34665				
Jul/22/2013	Lawyer: JRU 0.10 Hrs X 125.00									
245600	Talk to Cynthia.				12.50	34665				
Jul/22/2013	Lawyer: JRU 0.20 Hrs X 125.00									
245622	Talk to pharmacist and Cynthia.				25.00	34665				
Jul/24/2013	Lawyer: JRU 0.10 Hrs X 125.00									
245657	Call Cynthia.				12.50	34665				
Jul/25/2013	Billing on Invoice 34665									
245814	FEES 162.50			0.00		34665				
Jul/25/2013	Lawyer: JRU 1.30 Hrs X 125.00									
245904	Prepare exhibits and disclosure of witnesses.				162.50	34786				
Jul/26/2013	Lawyer: JRU 0.50 Hrs X 125.00									
245919	Review Joe's email; respond; review additional email; review file; respond; talk to Cynthia.				62.50	34786				
Jul/28/2013	Lawyer: JRU 1.20 Hrs X 125.00									
245939	Review all exhibits.				150.00	34786				
Jul/29/2013	Lawyer: JRU 2.80 Hrs X 125.00									
245943	Review Motion to Continue; participate in telephone conference call; talk to Cynthia and various witnesses; work on questions.				350.00	34786				
Jul/30/2013	Lawyer: JRU 7.50 Hrs X 125.00									
246115	Attend hearing.				937.50	34786				
Jul/31/2013	Lawyer: JRU 0.10 Hrs X 125.00									
246137	Review and forward email on tape.				12.50	34786				
Aug/ 1/2013	BOM									
245971	PMT - For Services Rendered	18528	162.50							
Aug/20/2013	Lawyer: JRU 0.10 Hrs X 125.00									
246541	Check on transcript.				12.50	34786				
Aug/21/2013	Expense Recovery									
246558	Photocopy Expense	X0082		19.30		34786				
Aug/23/2013	Billing on Invoice 34786									
246730	FEES 1687.50 DISBS 19.30			0.00		34786				
Sep/ 1/2013	Lawyer: JRU 0.80 Hrs X 125.00									
247064	Dictate first draft of Brief.				100.00	34956				
Sep/ 3/2013	BOM									
246983	PMT - For Services Rendered	18674	19.30							
Sep/ 3/2013	BOM									
246984	PMT - For Services Rendered	18674	1687.50							

Date	Received From/Paid To	Chq#	General		Fees	Bld	Trust Activity			Balance
Entry #	Explanation	Rec#	Rcpts	Disbs		Inv#	Acc	Rcpts	Disbs	
Sep/ 9/2013	Lawyer: JRU 2.00 Hrs X 125.00									
247177	Work on next draft of closing argument.				250.00	34956				
Sep/10/2013	Lawyer: JRU 2.50 Hrs X 125.00									
247260	Work on next draft; research; finalize brief.				312.50	34956				
Sep/23/2013	Billing on Invoice 34956									
247624	FEES 662.50			0.00		34956				
Oct/ 2/2013	BOM									
247671	PMT - For Services Rendered	18749	662.50							
Oct/23/2013	Lawyer: JRU 0.60 Hrs X 125.00									
248247	Review DeJong Brief; dictate first draft of Reply.				75.00	35034				
Oct/24/2013	Lawyer: JRU 2.00 Hrs X 125.00									
248264	Work on next draft of Reply Brief.				250.00	35034				
Oct/24/2013	Billing on Invoice 35034									
248404	FEES 325.00			0.00		35034				
Oct/24/2013	Lawyer: JRU 0.60 Hrs X 125.00									
248497	Finalize Brief.				75.00	35151				
Oct/31/2013	BOM									
248575	PMT - For Services Rendered	18652	325.00							
Nov/14/2013	Lawyer: JRU 0.20 Hrs X 125.00									
248906	Talk to Mary; review decision.				25.00	35151				
Nov/18/2013	Lawyer: JRU 0.20 Hrs X 125.00									
248943	Research pharmacy statute; talk to Nancy.				25.00	35151				
Nov/22/2013	Billing on Invoice 35151									
249176	FEES 125.00			0.00		35151				
Dec/ 4/2013	BOM									
249341	PMT - For Services Rendered	18977	125.00							
Dec/30/2013	Lawyer: JRU 0.10 Hrs X 125.00									
250184	Check due date of decision.				12.50					

UNBILLED				BILLED				BALANCES	
CHE	+ RECOV	+ FEES	= TOTAL	DISBS	+ FEES	+ TAX	- RECEIPTS	= A/R	TRUST
0.00	0.00	12.50	12.50	19.30	4250.00	0.00	4269.30	0.00	0.00
0.00	0.00	12.50	12.50	19.30	4250.00	0.00	4269.30	0.00	0.00

UNBILLED				BILLED				BALANCES	
CHE	+ RECOV	+ FEES	= TOTAL	DISBS	+ FEES	+ TAX	- RECEIPTS	= A/R	TRUST
0.00	0.00	12.50	12.50	19.30	4250.00	0.00	4269.30	0.00	0.00
0.00	0.00	12.50	12.50	19.30	4250.00	0.00	4269.30	0.00	0.00

REPORT SELECTIONS - Client Ledger

Layout Template Default
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 Requested by ADMIN
 Finished Monday, January 06, 2014 at 10:26:41 AM
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 Major Clients All
 Client Intro Lawyer All
 Matter Intro Lawyer All
 Responsible Lawyer All
 Assigned Lawyer All
 Type of Law All
 Select From Active, Inactive, Archived Matters
 Matters Sort by Default
 New Page for Each Lawyer No
 New Page for Each Matter No
 No Activity Date Dec/31/2199
 Firm Totals Only No
 Totals Only No
 Entries Shown - Billed Only No
 Entries Shown - Disbursements Yes
 Entries Shown - Receipts Yes
 Entries Shown - Time or Fees Yes
 Entries Shown - Trust Yes
 Incl. Matters with Retainer Bal No
 Incl. Matters with Neg Unbld Disb No
 Trust Account All
 Working Lawyer All
 Include Corrected Entries No
 Show Check # on Paid Payables No
 Show Client Address No
 Consolidate Payments No
 Show Trust Summary by Account No
 Show Interest No
 Interest Up To Jan/ 6/2014
 Show Invoices that Payments Were Applied to No
 Display Entries in Date Order

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AUG 02 2013

IDAHO STATE BOARD
OF MEDICINE

MALLEA LAW OFFICES
P. O. Box 857
Meridian, ID 83680

Invoice submitted to:
Idaho State Board of Medicine
Attention: Nancy Kerr, Executive
Director
1755 Westgate Drive, Suite 140
Boise ID 83704

August 01, 2013
In Reference To: Ann DeJong, M.D.
Case No. BOM-2012-582

Invoice #21500

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
7/29/2013	KLM Telephone conference with Joe McCollum's office regarding Motion to Vacate Hearing; review Motion and asserted grounds to vacate hearing; review pre-hearing scheduling order.	0.75 125.00/hr	93.75
	KLM Review Motion to Vacate Hearing and correspondence with counsel regarding telephone hearing on motion; conduct telephone hearing on Motion to Vacate Hearing; deny motion and discussion with counsel regarding hearing and testimony; review Complaint and Answer.	1.00 125.00/hr	125.00
	KLM Conduct hearing before State Board of Medicine on complaint; discussion with counsel regarding post-hearing briefs and issues.	6.00 125.00/hr	750.00
7/30/2013	KLM Memo to file regarding hearing testimony and exhibits and memo to file regarding status.	1.00 125.00/hr	125.00
7/31/2013	KLM Review correspondence from Joe McCollum; review audio tape recording of telephone conference with Dr. DeJong and patient and review notes of transcript introduced as Exhibit.	0.50 125.00/hr	62.50

For professional services rendered

9.25 \$1,156.25

Balance due

\$1,156.25

Thank you for the opportunity to be of service.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day 6th of January 2014, served the foregoing **AFFIDAVIT OF CATHLEEN M. MORGAN, J.D.**, upon all parties of record in this proceeding, by facsimile and mailing a true and correct copy thereof, properly addressed with postage prepaid, to:

Joseph D. McCollum, Jr., J.D.
HAWLEY TROXELL
877 West Main Street, Suite 1000
Boise, Idaho 83701
FAX: 208 954 5235

Idaho State Board of Medicine
P.O. Box 83720
Boise, ID 83720-0058

Jean R. Uranga, J.D.
URANGA & URANGA
714 North 5th Street
P.O. Box 1678
Boise, ID 83701
FAX: 208 384 5686

by regular U.S. mail
 by hand delivery
 by facsimile
 by overnight mail


Cathleen M. Morgan, J.D., Attorney for the Board