

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF MEDICAL EXAMINERS

In the Matter of
Brian E. Briggs, MD

FINDINGS OF FACT, CONCLUSIONS,
MEMORANDUM AND ORDER

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck on Tuesday, January 4, 1983, continued on nine additional hearings days, and concluded on January 17, 1983. The record remained open through April 14, 1983, for the receipt of written briefs from the parties.

John A. Breviu, Special Assistant Attorney General, 136 University Park Plaza Building, 2829 University Avenue Southeast, Minneapolis, Minnesota 55414, appeared representing the Minnesota Board of Medical Examiners (hereinafter "Board") in the hearing. Dean A. Nyquist, Attorney at Law, 5637 Brooklyn Boulevard, Brooklyn Center, Minnesota 55429, appeared on behalf of Brian E. Briggs, MD.

On April 19, 1983, the Hearing Examiner issued his Findings of Fact, Conclusions, and Recommendations (hereinafter "HE Report").

In accordance with Minn. Stat. § 14.61 (1982), the parties affected were given opportunity to file exceptions with the Board by May 5, 1983. They were also advised that they would be given an opportunity to present oral argument to the Board at its May 14, 1983, meeting. Exceptions to the HE Report were filed by Mr. Breviu on May 4, 1983. No written exceptions were filed by Mr. Nyquist but he stated his wish to present oral argument to the Board.

The Board met to consider this matter at approximately 9 AM, Saturday, May 14, 1983. Chester A. Anderson, MD, President of the Board, chaired the meeting. All other Board members were present, namely, Dorothy M. Bernstein, MD, Harold R. Broman, Jr., MD, William J. Donkers, DO, Sam S. Grais, William Jacott, MD, George B. Martin, Jr., MD, Loren E. Nelson, MD, Theresa Olson, Richard Tompkins, MD, and Marcia Yugend.

Mr. Arthur W. Poore, Executive Secretary of the Board, was also present, as were Mr. Jack Wallace and Ms. Rita Mendenhall of the Board staff.

Paul G. Zerby, Special Assistant Attorney General, was present to provide the Board legal assistance regarding its proceedings.

Mr. Nyquist appeared for Dr. Briggs, accompanied by Carol Smith, Legal Assistant. Dr. Briggs himself was not present. Mr. Nyquist presented oral argument on Dr. Briggs' behalf and responded to questions from members of the Board for approximately 45 minutes. Mr. Breviu presented argument and responded to questions for approximately 10 minutes. At the close of oral argument, the record was closed.

Before commencing its deliberations, the Board took up the motion made by Mr. Nyquist before the Hearing Examiner to disqualify the Board from hearing this matter. Upon motion made by Dr. Tompkins and seconded by Dr. Broman, it was unanimously decided that Dr. Donkers, who had been chairman of the Discipline Committee and had been consulted by the Attorney General in connection with the investigation of this case, would not vote on any matter pertaining to the case nor remain present during the Board's deliberations. Upon a motion made by Dr. Tompkins and seconded by Dr. Broman, it also was unanimously

decided that Drs. Bernstein and Nelson, who had some contact with the case as members of the Discipline Committee in December, 1980, also would not vote on any matter regarding the case nor remain present during the Board's deliberations. Drs. Donkers, Bernstein, and Nelson thereupon left the room.

By unanimous vote of the eight remaining Board members, based upon review of the entire record of these proceedings, which includes the hearing transcripts, hearing exhibits, briefs of the parties, HE Report, the exceptions and responses filed to the HE Report, oral argument from the parties, and consideration of the material issues, the Board makes the following:

FINDINGS OF FACT

The Board adopts all of the findings of fact contained in the HE Report and those findings are incorporated by reference herein. However, because this order is a public record and not confidential, the names of all patients and witnesses other than expert witnesses shall be deleted from the report and initials substituted for their names.

CONCLUSIONS

Except as provided below, the Board adopts all of the conclusions contained in the HE Report and those conclusions are incorporated by reference herein:

1. Conclusion No. 6 of the HE Report states that the Board has not shown that Dr. Briggs has violated Minn. Stat. § 147.021, subd. 1(i) (1982).

The Board disagrees with that conclusion.

The conclusion states only that the cited Minnesota statute prohibits violations of any statute or rule of the United States relating to the practice of medicine by prescribing drugs and chemicals which are not approved by the US

Food and Drug Administration ("FDA") for use in humans. The cited Minnesota statute also refers to violations of any statute or rule of this state as well as of the United States which relates to the practice of medicine or in part regulates the practice of medicine. In the Board's opinion, the fact that a drug product may be legally obtained without violation of the FDA Act, does not give carte blanche for use of that product. Dr. Briggs used drugs for which the FDA is unaware of any legitimate medical purpose. He used FDA approved drugs for nonapproved purposes. He used drugs approved for use by the FDA only by clinical investigators under an approved protocol in other than such approved situations. He used FDA approved drugs in uses inconsistent with prevailing medical practice in Minnesota. In the Board's opinion, he used such drugs without due regard for his patients so as to constitute unethical or deleterious conduct or practice harmful to the public or demonstrate a willful or a careless disregard for the health, welfare, or safety of patients. The Board's comments may be redundant to the extent that Conclusions 4 and 5 of the HE Report may cover some of these matters, but the Board wishes to leave no possible doubt of its own view.

2. Conclusion No. 7 of the HE Report states that Dr. Briggs has not violated Minn. Stat. § 147.021, subd. 1(b) (1982), which prohibits a licensee from making misleading, deceptive, untrue, or fraudulent misrepresentations in the practice of medicine.

The Board disagrees with that conclusion.

There were representations made by Tom Clague, one of the owners and operators of the Health and Wellness Center, as to "success rates" of the center with cancer patients. Those representations were deceptive and misleading. At

one point Dr. Briggs told Clague not to make the representations since they were inaccurate. Dr. Briggs himself attempted to initiate a follow-up study of cancer patients at the end of his first year at the center to actually determine the effectiveness of the treatment. One release form signed by some patients at the center participating in the 21-day metabolic program stated that no particular disease could be specifically treated or cured by the program and that no guarantees had been made. Another release form signed by some patients provided that Dr. Briggs would be concerned with the patients' nutritional program but not any specific disease the patient might have, also advised the patient that vitamins, minerals, and drugs prescribed by Dr. Briggs may not necessarily benefit the patient, and that Dr. Briggs' views concerning these supplements are not necessarily shared by the FDA, the American Cancer Society, and other organizations. Counsel for Dr. Briggs stressed that Dr. Briggs had difficulty in controlling the conduct of the Clagues in managing the center and even sought help from a management consultant.

With due regard for all of this, it is the strongly held view of the Board that Dr. Briggs himself has violated Minn. Stat. § 147.021, subd. 1(b) (1982). Dr. Briggs entered into a contract with the center in January of 1980. Dr. Briggs was the medical director of the center. He served as the medical director of the center from February of 1980 through February 10, 1982. As medical director, Dr. Briggs was in complete charge of the medical operation of the center and had responsibility for it. There were never any firm results obtained by the center or Dr. Briggs as to how well its cancer patients actually were doing. Dr. Briggs did not take sufficient steps to disassociate himself with respect to the use of "success rate" claims by the center. Nor did the consent forms used excuse the claims

which were made. On the basis of facts not in real dispute, the Board remains of the opinion that Dr. Briggs should be held accountable as having made misleading, deceptive, untrue, or fraudulent representations in his practice of medicine.

RECOMMENDATIONS OF HEARING EXAMINER

The Board adopts the recommendations of the hearing examiner, HE Report at 21, namely:

1. That disciplinary action be taken against the license of Brian E. Briggs, MD; and
2. That Dr. Briggs' motions to dismiss this proceeding and to disqualify the Board be denied.

The Motion to Dismiss is denied for the reasons stated by the Hearing Examiner.

With respect to the Motion to Disqualify all members of the Board, the Board also denies that motion for the reasons set forth by the Hearing Examiner. With respect to Dr. Donkers, chairman of the Discipline Committee in January of 1981 through December, 1982, and the two current Board members who served on the Discipline Committee in December of 1980, Drs. Bernstein and Nelson, as previously noted, these members did not vote on this matter and absented themselves entirely during the deliberations of the Board.

MEMORANDUM OF THE HEARING EXAMINER

Except as indicated otherwise in the Board's Findings of Fact, Conclusions, Memorandum and Order, the Board adopts the memorandum of the Hearing Examiner attached to the HE Report and the memorandum is incorporated by reference herein.

The Hearing Examiner's comments on pages 29 and 30 of the HE Report seem to indicate that harm to patients is a requirement to finding a statutory violation under the provisions of Minn. Stat. § 147.021, subd. 1(g) or (k) (1982). Those provisions, however, each specifically provide that actual injury need not be established.

The Hearing Examiner, HE Report at 29, states that "Minn. Stat. § 147.11 specifically exempts from the unauthorized practice of medicine persons who endeavor to cure disease by prayer." It has been called to the attention of the Board that the appropriate statutory reference appears to be Minn. Stat. § 147.10 (1982) and that the statutory exemption is limited to those who endeavor to prevent or cure disease or suffering "exclusively" by prayer. (Emphasis added.) However, the hearing examiner, although making several findings of fact regarding Dr. Briggs' use of prayer in treating his patients and addressing some comments in his memorandum to that matter, makes no specific conclusions on that issue. Nor has the Board found it necessary to do so for purposes of its decision.

Finally, it should be made explicit that the Board would take the specific disciplinary action ordered below, namely, the revocation of Dr. Briggs' license, even if the Board entirely agreed with the Hearing Examiner in each and every one of his findings of fact, conclusions, and comments in his memorandum. That is, entirely without regard to its views concerning Conclusions 6 and 7 of the HE Report, the participating Board members are of the unanimous opinion that revocation of Dr. Briggs' license is the appropriate disposition of this matter.

ORDER

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that the license of Brian E. Briggs, MD, to practice medicine in the State of Minnesota be and it hereby is revoked.

This order shall become effective immediately upon its service upon Dr. Briggs.

Dated: May 31, 1983

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

BY:

Chester Anderson MD
CHESTER ANDERSON, MD
President

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE BOARD OF MEDICAL EXAMINERS

In the Matter of
Brian E. Briggs, M.D.

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on Tuesday, January 4, 1983, at 9:00 a.m. in Courtroom No. 13, Third Floor, Summit Bank Building, 310 Fourth Avenue South in the City of Minneapolis, Minnesota. The hearing continued on nine additional hearing days and concluded on January 17, 1983. The record remained open through April 14, 1983, for the receipt of written briefs from the parties.

John A. Breviu, Special Assistant Attorney General, 136 University Park Plaza Building, 2829 University Avenue Southeast, Minneapolis, Minnesota 55414, appeared representing the Minnesota Board of Medical Examiners. Dean A. Nyquist, Attorney at Law, 5637 Brooklyn Boulevard, Brooklyn Center, Minnesota 55429, appeared on behalf of the Respondent.

Pursuant to Minn. Stat. § 147.01, subd. 4 (1982), this Report is confidential and not a public record. This Report is a recommendation, not a final decision. The Board of Medical Examiners will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. As provided in Minn. Stat. § 214.10, subd. 2 (1982), a Board member who was consulted during the course of an investigation may participate at the hearing, but may not vote on any matter pertaining to the case. Pursuant to Minn. Stat. § 14.61 (1982), the final decision of the Board of Medical Examiners shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board of Medical Examiners. Parties should contact Arthur W. Poore, Executive Secretary, Minnesota Board of Medical Examiners, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue to be determined in this contested case proceeding is whether or not the Respondent's license to practice medicine in the State of Minnesota should be suspended, revoked, conditioned, qualified or otherwise restricted because of a violation of Minn. Stat. § 147.021, subd. 1(b), (g), (i), (k) or (l).

Based upon all of the proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Dr. Brian E. Briggs (hereinafter "Dr. Briggs" or "Respondent") has been continually licensed to practice medicine in the State of Minnesota since July 16, 1954. (Ex. 5, p. 1). He graduated from the University of Minnesota

Medical School in 1954. (Tr. Vol. I, p. 25). From 1955 to approximately 1976 or 1977, Dr. Briggs had a conventional family practice in Minot, North Dakota. (Tr. Vol. X, p. 5; Ex. 22, p. 4). He was a member of the medical staff of St. Joseph's Hospital in Minot, and in the mid-1970s was made director of its chemical dependency unit. (Ex. 22, p. 4). In approximately 1976, Dr. Briggs' practice began to change in that he began to represent himself as a specialist in nutritional therapy and preventative medicine. In his work with the chemical dependency unit, he began prescribing large amounts of vitamins and minerals and employed a special diet. (Ex. 22, p. 4; Ex. 23, p. 3). Dr. Briggs also changed his approach to the treatment of cancer patients by prescribing a vegetarian diet, a variety of enzymes, large amounts of vitamins, the ingestion of carrot juice and the use of enemas.

2. In October of 1977, St. Joseph's Hospital audited his records concerning the medical care of patients in the chemical dependency unit. (Ex. 23, p. 2). In November of 1977, Dr. Briggs resigned as medical director of the chemical dependency unit. (Ex. 23, p. 4). In June of 1978, Dr. Briggs was directed by the hospital administration to discontinue the type of therapy described above or face suspension of his privileges at the hospital. In August of 1978, Dr. Briggs relocated his practice to the American International Hospital in Zion, Illinois, to practice preventative medicine. (Ex. 22, p. 6; Ex. 23, p. 5). He remained in Zion, Illinois for approximately four months and then returned to Minot in 1979. (Tr. Vol. I, p. 25). Upon returning to Minot, he reapplied to join the medical staff at St. Joseph's Hospital but was denied those privileges by a report of the Medical Staff Executive Committee, dated January 9, 1980. (Ex. 22). The denial was based upon the nature of his medical practice and the prior refusal to comply with directives of the medical staff in the past. (Ex. 22, p. 7; Tr. Vol. II, p. 142). Following the action of the hospital, Dr. Briggs also resigned from the Northwest District of the North Dakota Medical Society while its disciplinary committee was considering action against him. (Tr. Vol. II, p. 145).

The Health and Wellness Center

3. In January of 1980, Dr. Briggs entered into a contract with the Health and Wellness Center located in Bloomington, Minnesota. (Tr. Vol. I, p. 26). He had learned of the Health and Wellness Center from Harold Manner, a Chicago biologist. (Tr. Vol. I, p. 27). Dr. Briggs served as the medical director of the Health and Wellness Center from February of 1980 through February 10, 1982. (Ex. 5, p. 1). He continued to reside in Minot, North Dakota and commuted to Bloomington one or two days each week. (Tr. Vol. I, p. 28; Ex. 5, p. 2). The Health and Wellness Center opened in October of 1979. (Tr. Vol. IV, p. 17). It was owned and operated by Thomas E. Clague and Ann S. Clague. (Tr. Vol. I, p. 31). Thomas Clague was president of the center and also held the title of attitudinal director. (Tr. Vol. IV, p. 31). He has a degree in agricultural engineering, but no degrees in the health field. (Tr. Vol. IV, p. 40, 42). Ann Clague held the title of clinical director of the center and served as a nutritionist. (Tr. Vol. II, p. 33; Tr. Vol. IV, p. 18). She has a Ph.D. in nutrition in December of 1979 from Donshach University in California. The degree was obtained by correspondence. (Tr. Vol. IV, p. 22).

4. The Health and Wellness Center attracted patients with chronic diseases such as arthritis, multiple sclerosis and cancer. (Tr. Vol. I, p. 30, 43). Dr. Briggs saw approximately 800 patients while he was at the Health and Wellness Center. Approximately 15% of these patients had cancer. (Tr. Vol. IV, p. 26; Tr. Vol. I, p. 30). Dr. Briggs' role was to see patients on the days that he was at the clinic, to make a diagnosis and to prescribe a plan of treatment for each patient. (Tr. Vol. I, p. 29). Patients would often have some tests done before seeing Dr. Briggs, such as blood tests, hair analysis or sensitivity testing. (Tr. Vol. I, p. 33). Dr. Briggs' contract called for him to be compensated at a set figure for each day he was at the center. He was a member of an advisory board at the center but not of the Board of Directors. He had no authority to hire or fire personnel. (Tr. Vol. II, p. 110-111). Dr. Briggs consulted with the Clagues about the center's programs; however, they were slow to implement his suggestions. (Tr. Vol. II, p. 110, 113). Dr. Briggs did not take instructions from the Clagues in regard to patient care. (Tr. Vol. II, p. 147).

5. In the course of taking a history from new patients, Dr. Briggs routinely inquired as to the medical events in the patient's life, stressful events which have occurred during the patient's life, current medications, exposure to chemicals, known allergies, the patient's current diet, the patient's religion and religious beliefs and the patient's use of tobacco and alcohol. (Tr. Vol. I, p. 34, 36; Exs. 7-17). Dr. Briggs believes that if a person can resolve major stressful events in their life, then healing becomes a greater possibility. (Tr. Vol. I, p. 38). He also believes that a stressful event may cause a change in metabolism in the body which will result in a sensitivity to certain foods or chemicals. (Tr. Vol. I, p. 41).

Diagnostic Procedures

6. One of the diagnostic procedures employed by Dr. Briggs at the Health and Wellness Center was kinesiology testing or sensitivity testing. This procedure was performed on almost every patient that Dr. Briggs saw at the center. (Tr. Vol. I, p. 38). The purpose of sensitivity testing is to determine whether the patient is sensitive to the food or chemicals tested. Each patient was tested with a minimum of 20 foods or chemicals. (Tr. Vol. I, p. 57). Dr. Briggs would then make dietary or other recommendations to the patient based on results of the test. (Tr. Vol. I, p. 63). The sensitivity testing was accomplished by having the patient place a substance such as chocolate in one hand with their opposite arm held out at a horizontal level. (Tr. Vol. I, p. 43-44). Dr. Briggs would then put pressure on the wrist of the arm being held in the air and compare the arm's resistance to being pulled down while the patient held chocolate, to that when the patient simply held an empty container. (Tr. Vol. I, p. 44, 47, 49). If the arm came down easily, Dr. Briggs concluded that there was a sensitivity to the item being held by the patient. (Tr. Vol. I, p. 50). Dr. Briggs believes that if a person touches a substance to which they are sensitive, they experience a loss of energy which can be determined by this test. (Tr. Vol. I, p. 43; Ex. B).

7. Dr. Briggs found that some people did not respond to or were not available for sensitivity testing. (Tr. Vol. I, p. 47). He would determine

this by placing magnets on the patient's wrist to see if they are sensitive to electromagnetic fields and could therefore be tested. (Tr. Vol. I, p. 48). When a person was determined not to be available for sensitivity testing or the patient was an infant or elderly person, a surrogate was used to conduct the test. The surrogate would place a hand on the neck of the patient and Dr. Briggs would then pull down on the surrogate's arm. (Tr. Vol. I, p. 53). Dr. Briggs estimates that there is a 10 to 20% degree of error in sensitivity testing. (Tr. Vol. I, p. 59). Few physicians in Minnesota use sensitivity testing. Physicians treating allergies commonly employ a skin test to determine allergies. (Tr. Vol. I, p. 65-66; Tr. Vol. VIII, p. 73). Sensitivity testing has been demonstrated not to have any scientific value in determining allergies or sensitivities. (Tr. Vol. VIII, p. 72; Tr. Vol. IX, p. 83).

8. Another diagnostic method employed by Dr. Briggs for patients with chronic illnesses was hair analysis. (Tr. Vol. II, p. 68). This procedure involved removing hair from the patient's neck which was then sent to a lab in Chicago which tested the hair and returned data on the patient's mineral levels. (Tr. Vol. II, p. 69). Dr. Briggs used the test results to determine the amount of heavy metals and trace metals in the patient's body which would indicate any heavy metal poisoning and the efficiency of the patient's intestines in absorbing minerals. (Tr. Vol. II, p. 70; Tr. Vol. X, p. 103). If a mineral deficiency was shown, Dr. Briggs might recommend a mineral supplement or hydrochloric acid, pancreatic enzymes or acidophilus. (Tr. Vol. II, p. 72-73). If the test results showed the presence of heavy metals, Dr. Briggs might recommend chelation therapy, enemas or colonic irrigations. (Tr. Vol. II, p. 72-73).

9. Hair analysis can detect the presence of heavy and potentially toxic metals such as lead, mercury, arsenic, cadmium and aluminum. (Ex. 34, p. 80). It has commonly been used in forensic medicine to uncover heavy metal poisoning. The results, however, are historical in that they reflect heavy metal levels in the body two or three months earlier. (Tr. Vol. IX, p. 80). Trace elements are those elements which occur in the body at very low concentrations. (Ex. DD, p. 260). It has not yet been demonstrated that hair analysis can accurately determine the level of trace elements or major nutrient minerals. (Exs. 34, 35). Analysis of hair samples to determine trace elements has been employed as one method in experimental research, however. (Ex. EE). Further research has been called for on hair analysis to determine trace element levels because of the ease of obtaining specimens and difficulties with the use of blood. (Ex. DD). As yet, there is no clear definition of normal ranges of concentrations of trace minerals in the hair that may have some physiological and health-related significance. (Tr. Vol. IX, p. 80; Ex. 35, p. 946).

10. At one point, employees of the Health and Wellness Center sent two clips of hair from an employee to the lab in Chicago for hair analysis. One of the test results showed a normal level for a particular mineral while the other indicated that the level was very low. (Tr. Vol. III, p. 9-10). Dr. Briggs was aware of the differing results. (Tr. Vol. X, p. 100). Hair analysis is essentially never used by Minnesota physicians to determine trace

mineral levels. (Tr. Vol. VIII, p. 11, 79). Most physicians determine nutrient deficiencies by testing the blood or tissues. (Tr. Vol. IX, p. 70).

General Treatment Methods

11. Dr. Briggs prescribed chelation therapy for patients who had arthrosclerosis, heavy metal poisoning, and some stroke victims. The therapy consists of an intravenous infusion of three grams of a chemical called EDTA three times a week. (Tr. Vol. II, p. 63). The infusion takes about three hours. (Ex. 21, p. 68). The purpose of the therapy is to grasp heavy metals out of the bloodstream and facilitate their excretion. (Tr. Vol. VIII, p. 109; Ex. 21, p. 68). The potential problems associated with this procedure include renal failure and electrolyte imbalance. (Tr. Vol. II, p. 66; Tr. Vol. VIII, p. 112). The drug EDTA is approved in chelation therapy only for the treatment of lead poisoning. (Tr. Vol. X, p. 87). EDTA has not been shown to be effective in the treatment of arthrosclerosis or heart disease. (Tr. Vol. VIII, p. 112; Tr. Vol. IX, p. 89). The use of chelation therapy for anything other than heavy metal poisoning is inconsistent with prevailing medical practice in Minnesota. (Tr. Vol. VIII, p. 114).

12. It is Dr. Briggs' belief that he must as a physician address the body, mind and spirit of a patient. (Ex. 10, p. 118). A means of treatment which Dr. Briggs employed to heal the spiritual wounds which may have been caused by a stressful event was prayer. (Tr. Vol. II, p. 76, 158). Dr. Briggs would commonly inquire as to the patient's religion and whether or not they believed in Heaven. (Ex. 7, p. 3). If Dr. Briggs believed that prayer might be helpful, he suggested that the patient consult with his or her pastor. (Tr. Vol. II, p. 77). Dr. Briggs also told patients that he was an Elder in his church and that, if they wished, he would pray with them. (Tr. Vol. II, p. 78, 83). If the patient agreed to pray with Dr. Briggs, he would anoint their forehead with oil and lay his hands on the patient's head as he prayed. (Tr. Vol. II, p. 78). He would sometimes pray to cast out demons if he believed one was present in a patient. (Tr. Vol. II, p. 81). Dr. Briggs often listed prayer and the laying on of hands as a step in the patient's treatment plan. (Exs. 10, 24A; Tr. Vol. VIII, p. 132).

13. Although faith may have a role in healing (Ex. W) and patients may sometimes have problems that lend themselves to religious counseling (Exs. V, 10, 130), the recommendation for prayer and laying on of hands as a part of the medical program is not common among physicians in Minnesota. (Tr. Vol. VIII, p. 131). Dr. Briggs told one patient that the first step toward any kind of treatment would be the patient becoming a Christian and the laying on of hands in praying. (Tr. Vol. II, p. 166). One problem with this approach is a patient's possible conclusion that a failure to heal is due to his or her lack of faith. (Ex. W, p. 188). Patients were billed for doctor visits which included prayer. (Tr. Vol. II, p. 84; Tr. Vol. III, p. 79).

The Metabolic Therapy Program for Cancer

14. Dr. Briggs recommended to the cancer patients he saw at the Health and Wellness Center that they enter the center's 21-day metabolic therapy program for cancer. (Tr. Vol. II, p. 77). This program was based upon 12-point

metabolic cancer therapy developed by Harold Manner, a Chicago biologist. (Tr. Vol. I, p. 86; Tr. Vol. II, p. 69; Ex. 18). Dr. Briggs modified the program somewhat by administering a different amount of Laetrile and different amounts of supplements; he also individualized the diet for patients. (Tr. Vol. II, p. 70). The patient was required to be present at the center all day Monday through Friday for three weeks to complete this program. Ten-day outpatient programs were available for people with arthritis or multiple sclerosis. (Tr. Vol. I, p. 43).

15. The first step in the cancer program was a two-day juice fast during which the cancer patients ingested only carrot or apple juice. (Ex. 18, p. 3; Tr. Vol. I, p. 92). Dr. Briggs described the purpose of the juice fast as allowing the detoxification of the body of chemicals and heavy metals and cleansing the bowel. (Tr. Vol. I, p. 92). During the juice fast patients consumed 1-1/2 to 2 quarts of carrot juice per day, which would provide approximately 1280 calories per day and 40 grams of protein. (Tr. Vol. X, p. 31; Tr. Vol. I, p. 92). The Recommended Daily Allowance (RDA) for protein in an adult male is 56 grams. (Tr. Vol. X, p. 167).

16. This juice fast weakened some patients. (Tr. Vol. I, p. 94). Generally, a cancer patient is faced with a breakdown of body tissues and body protein which must be countered by a high caloric and high protein intake. (Tr. Vol. VIII, p. 13). The juice fast does not provide sufficient calories or protein for a cancer patient and does not reduce heavy metals in the body or cleanse a patient's bowels. (Tr. Vol. VIII, p. 12-13; Tr. Vol. IX, p. 10). Dr. Briggs did not make a specific recommendation to diabetics to alter their insulin intake during the two-day juice fast. (Tr. Vol. I, p. 96; Tr. Vol. III, p. 94). If a drop in caloric intake is expected, a physician should adjust a patient's insulin dosage downward. (Tr. Vol. VIII, p. 14-16). Dr. Briggs did not alter a patient's blood pressure medication during the juice fast unless there was a change in blood pressure. (Tr. Vol. II, p. 157).

17. Another component of the 21-day program for cancer patients was the administration of enemas and colonic irrigations to patients. (Tr. Vol. II, p. 157-158). Each cancer patient was given a coffee enema in the morning and wheat grass enema in the afternoon each day. Additionally, each cancer patient had three colonic irrigations per week. (Tr. Vol. I, p. 120-121). The enemas involved the retention by a patient of coffee or another substance for 15 to 30 minutes. (Ex. 18, p. 4). The colonic irrigations involved the use of a machine which allowed water to be irrigated at low pressure in and out of the bowel until the entire large bowel is cleaned. (Tr. Vol. X, p. 35). The goal of the coffee enemas and colonic irrigations was to ensure bowel movements and to "detoxify" the patient. (Tr. Vol. I, p. 95; Ex. 18, p. 3-4). Dr. Briggs believes that the caffeine contained in the coffee enema is absorbed up into the liver and stimulates bile secretion which releases toxic elements being detoxified by the liver. (Tr. Vol. I, p. 122; Tr. Vol. X, p. 45). Dr. Briggs also believes that a colonic irrigation is helpful in cleaning the bowel so that it can properly utilize nutrients. (Tr. Vol. I, p. 131). Dr. Briggs has concluded that the wheat grass has an inhibitory effect on the metabolic activation of carcinogens. (Tr. Vol. I, p. 124; Tr. Vol. X,

p. 58). During the first year that he was at the Health and Wellness Center, Dr. Briggs also prescribed DMSO to be used in enemas for cancer patients. (Tr. Vol. X, p. 38-39).

18. One of the dangers of colonic irrigation is the possible perforation of the bowel. (Tr. Vol. I, p. 132). This risk is especially high for a cancer patient who has had bowel surgery and would, therefore, have a fragile bowel. (Tr. Vol. VIII, p. 20, 23). Generally, six weeks of healing is necessary for tests used such as those in the colon. (Tr. Vol. VIII, p. 23). Dr. Briggs did not prescribe colonic irrigations for a patient within six weeks of a colon operation. (Tr. Vol. I, p. 133). Another risk with the use of enemas and colonic irrigations is that patients become debilitated because of a sudden loss of body fluid which causes dehydration and the possibility of an electrolyte imbalance. (Tr. Vol. VIII, p. 20, 29; Tr. Vol. IX, p. 16). Dr. Briggs was aware of this possibility. (Tr. Vol. I, p. 123). The possibility of these problems would be greater in cancer patients who are already debilitated. (Tr. Vol. VIII, p. 22, 30). Two deaths have been reported related to coffee enemas; one involving the administration of coffee enemas four times a day for two weeks and the other involving the administration of somewhere between 12 to 24 enemas in a 24-hour period. (Ex. 33; Tr. VIII, p. 33; Tr. Vol. X, p. 35-36; Tr. Vol. IX, p. 13).

19. There is no scientific evidence that coffee enemas or any other enema removes toxins from the body. (Tr. Vol. VIII, p. 24, 26; Tr. Vol. IX, p. 17). Individual patients may be able to tolerate up to five coffee enemas per day without a mineral imbalance. (Ex. M; Tr. Vol X, p. 48-49, 54). DMSO, which was used in enemas, is a solvent which can force chemicals through tissues that would not ordinarily be absorbed. It could carry a material across the colon wall into the bloodstream which might cause harm. (Tr. Vol. IX, p. 18). The use of colonic irrigation and coffee enemas is at odds with the prevailing standard of medical practice in Minnesota. (Tr. Vol. VIII, p. 24). A patient involved in such procedures should be advised that the procedures are experimental and should sign a waiver. (Tr. Vol. VIII, p. 30-31). The physician prescribing such procedures should monitor blood electrolytes and measure the blood volume to check dehydration. (Tr. Vol. VIII, p. 30-32).

20. Another part of the anticancer program was the prescription of digestive enzymes such as Hydrozyme and "anti-neoplastic" enzymes. Dr. Briggs believes that the Hydrozyme regulates the pH of the gastric contents to facilitate protein digestion and the absorption of mineral tablets. (Tr. Vol. I, p. 97-98; Ex. 18, p. 4). The ingestion of digestive enzymes by a patient would not, however, assure proper digestion or assist in the absorption of minerals because they would themselves be digested by the patient's digestive enzymes in the stomach. (Tr. Vol. IX, p. 19; Tr. Vol. VIII, p. 39-40). Dangers of ingesting digestive enzymes include the possibility that they may digest the edges of a small ulcer or produce anaphylactic shock. (Tr. Vol. IX, p. 20-21). An "anti-neoplastic" enzyme is another name for digestive enzymes from plants or animals which have not in fact been demonstrated to have any anti-neoplastic or anticancer action. (Tr. Vol. IX, p. 22). The only recognized medical purpose for digestive enzymes is to treat pancreas damage. (Tr. Vol. VIII, p. 39).

Metabolic Therapy - Vitamins

21. Another aspect of the cancer patient program was the prescription of vitamin A. The Manner metabolic therapy for cancer program recommended that patients be started at 500,000 International Units ("I.U.s") of emulsified vitamin A. (Ex. 18, p. 4; Tr. Vol. I, p. 98). Dr. Briggs customarily prescribed 250,000 I.U.s at the start of the 21-day program and increased this to 500,000 I.U.s. (Tr. Vol. III, p. 56-57). However, prescriptions were written from 50,000 up to 2,000,000 I.U.s of emulsified vitamin A, depending on the patient's tolerance. (Tr. Vol. I, p. 99, 101). Dr. Briggs checked the patient's tolerance by observing the patient's drying of the skin, mouth, eyes or the presence of headaches. (Tr. Vol. I, p. 99). He prescribed vitamin A because he believes that it promotes healthy skin and mucous membrane which allows resistance to harmful bacteria or chemicals and because it may have an inhibitory effect on carcinoma. (Tr. Vol. I, p. 140, 142). Dr. Briggs believes that 700,000 I.U.s per day of vitamin A may produce toxic symptoms in 90% of all people. (Tr. Vol. I, p. 147). He did observe that about 25% of his patients had some form of toxic reaction to vitamin A. When this appeared he would discontinue vitamin A for three or four days and start again at 50% of the prior level. (Tr. Vol. I, p. 149). The carrot juice ingested during the juice fast supplied additional vitamin A. (Tr. Vol. I, p. 101; Tr. Vol. IX, p. 13). Dr. Briggs was aware that liver damage can result from a toxic dose of vitamin A, but believes that dry, scaly skin does not necessarily mean that liver damage has occurred. (Tr. Vol. I, p. 145, 148). For the last six months he was at the center, Dr. Briggs performed a liver function test on the patient prior to the 21-day program, during it and after the program. (Tr. Vol. II, p. 5).

22. The Recommended Daily Allowance (RDA) for vitamin A is 5,000 I.U.s per day. (Tr. Vol. IX, p. 25). The RDA represents that amount of a vitamin which is adequate for the average person plus some extra. (Tr. Vol. IX, p. 23). A toxic reaction to vitamin A is demonstrated by the loss of appetite, drying and cracking of skin, enlargement of the liver and progressive liver damage. (Tr. Vol. VIII, p. 43). Chronic toxicity has been reported in adults ingesting 40,000 I.U.s for several years or 200,000 to 275,000 I.U.s per day for two months. (Ex. O, p. 133; Ex. N, p. 432; Tr. Vol. IV, p. 74). One textbook states that 160,000 to 180,000 I.U.s daily will produce toxicity. (Tr. Vol. VIII, p. 46). By the time that the skin becomes dry and flaky, liver damage may have occurred. (Tr. Vol. IV, p. 74; Tr. Vol. IX, p. 25). The FDA has prohibited the use of emulsified vitamin A in the United States. (Tr. Vol. IX, p. 29). Emulsified vitamin A is more toxic because more of it is absorbed. (Tr. Vol. IX, p. 28). A prescription of 250,000 to 500,000 I.U.s per day for a three-week period is a highly toxic amount and could be dangerous. (Tr. Vol. IX, p. 33; Tr. Vol. VIII, p. 46).

23. No scientific study supports prescription of an increased amount of vitamin A for a cancer patient nor has any useful purpose been demonstrated for prescribing large amounts of vitamin A to a cancer patient. (Tr. Vol. VIII, p. 41, 47; Tr. Vol. IX, p. 35). A physician prescribing vitamin A should measure the blood level of vitamin A at least weekly. (Tr. Vol. IX, p.

26, 34). Dr. Briggs did such blood tests only during his last six months at the center. (Tr. Vol. I, p. 99). Relief from the toxic symptoms produced by excess vitamin A is prompt on withdrawal of the vitamin from the diet. (Ex. N, p. 432; Tr. Vol. X, p. 59; Exs. O, P). Liver damage resulting from a toxic amount of vitamin A is generally reversible although the impairment of the liver function may continue for anywhere from six months to over two years after the vitamin A is discontinued. (Tr. Vol. VIII, p. 199; Tr. Vol. IX, p. 34; Tr. Vol. X, p. 64; Ex. O, p. 133). The prescription of 250,000 to 500,000 I.U.s per day of vitamin A is inconsistent with the standard of medical care in Minnesota. (Tr. Vol. VIII, p. 48-49). The risk of injury from vitamin A is heightened in cancer patients since they will often have existing liver problems due to the spread of the malignancy to the liver or due to poor liver function. (Tr. Vol. I, p. 150; Tr. Vol. IV, p. 72; Tr. Vol. VIII, p. 44).

24. Vitamin C was also prescribed by Dr. Briggs for cancer patients. He initially prescribed 15 grams of ascorbic acid per day. He found that more than half of the patients could tolerate 15 grams of vitamin C without side effects. (Tr. Vol. I, p. 102). Dr. Briggs believes that vitamin C helps the body to contain infections and increase circulation. It is not stored in tissues in excess, but is passed through the urine. (Tr. Vol. I, p. 136). The RDA for vitamin C is 60 milligrams per day. Sixty milligrams taken daily will force 1,500 milligrams of vitamin C into the tissue stores. (Tr. Vol. IX, p. 24). Generally, the toxic level for vitamins and minerals is 10 times the RDA for water soluble vitamins, five times the RDA for fat-soluble vitamins, and three times the RDA for minerals. (Tr. Vol. IX, p. 71). A megadose of a vitamin is appropriate when absorption is poor due to intestinal disease, in the case of a congenital inability to use a vitamin, and also to counteract the toxicity of an anti-vitamin drug. (Tr. Vol. IX, p. 70-71). Most physicians prescribe only one vitamin at a time as a megadose to avoid one vitamin destroying another. (Tr. Vol. IX, p. 72). Ingestion of 15 grams of vitamin C per day can produce diarrhea, nausea, vomiting and may contribute to the production of kidney stones. (Tr. Vol. IX, p. 36). Vitamin C has also been demonstrated to release some of the cyanide from Laetrile. (Tr. Vol. IX, p. 37).

25. Another step in the anticancer program was the prescription of "vitamin B-15". Dr. Briggs prescribed six B-15 tablets per day. (Tr. Vol. I, p. 102). He believes that vitamin B-15 helps with the oxygenation of tissues. (Tr. Vol. I, p. 138). Vitamin B-15 is not a true vitamin. (Ex. 45, p. 95). As marketed in this country, products labeled "Vitamin B-15" most commonly contain a chemical called Dipa DCA which is a hypotensive and vasodilating agent. Another agent found in products labeled vitamin B-15 or pangamic acid is dimethylglycine hydrochloride or DMGHCL. (Tr. Vol. IX, p. 39-40). Some research suggests that dimethylglycine (DMG) may enhance immune responses in humans. (Ex. Q). Dr. Briggs is uncertain whether the B15 he prescribed at the Health and Wellness Center was DMG. (Tr. Vol. X, p. 70, 179). DMG is not approved by the FDA for use in humans. (Tr. Vol. X, p. 180).

26. Dr. Briggs also recommended that mineral supplements be taken by the cancer patients and he individualized this supplementation based on laboratory

findings. (Tr. Vol. I, p. 104). Dr. Briggs believes that the minerals of cancer patients are usually out of balance. (Tr. Vol. I, p. 89).

Metabolic Therapy - Laetrile

27. Another element of the program for cancer patients was the administration of Laetrile or amygdalin. Dr. Briggs prescribed either two or three three-gram vials of Laetrile to be taken intravenously each day by the patients during the 21-day program. (Tr. Vol. I, p. 102, 108). The typical procedure was for the patient to be on injectable Laetrile during the 21-day program and then switch to four 500-milligram tablets per day after that. At the end of six months, the patient would be taking four tablets per day. (Tr. Vol. I, p. 103). The patients were switched to tablets because they cost only \$1 per tablet as opposed to \$10 for a vial of Laetrile. (Tr. Vol. I, p. 110). Dr. Briggs believes that Laetrile stops tumor growth and prevents its spread to other parts of the body. (Tr. Vol. I, p. 107-108).

28. Laetrile is a trade name for the substance amygdalin. (Tr. Vol. IV, p. 59). Amygdalin is naturally present in the kernels of apricot pits, a number of other stone fruits and nuts such as almonds and macadamia nuts. (Ex. 44, p. 1). The danger of Laetrile or amygdalin is cyanide poisoning. (Tr. Vol. VIII, p. 58). Laetrile is 6% cyanide by weight. (Tr. Vol. IX, p. 43). A dose of anywhere from 60 to 120 milligrams of cyanide is frequently fatal. (Tr. Vol. VIII, p. 64; Tr. Vol. IX, p. 51; Tr. Vol. X, p. 146; Ex. 44, p. 1127). One gram of pure Laetrile contains 60 milligrams of cyanide. (Tr. Vol. IX, p. 51). Lower concentrations of Laetrile may cause loss of appetite, weight loss, cachexia, and mental deterioration. (Ex. 44, p. 1131). The cyanide in Laetrile is released in the body in the presence of the enzyme beta glucosidase or with megadoses of vitamin C. (Ex. 44, p. 1). The intravenous injection of Laetrile has a low toxicity because there is not enough beta glucosidase naturally in the human body to release the cyanide and the Laetrile therefore merely passes through the body. (Tr. Vol. VIII, p. 62; Tr. Vol. IV, p. 86). However, when the Laetrile is ingested with foods containing beta glucosidase, cyanide poisoning can occur. (Tr. Vol. VIII, p. 63, 203; Tr. Vol. IX, p. 51). Foods rich in beta glucosidase include macadamia nuts, almonds, green peppers, lettuce, carrots, celery, bean sprouts, mushrooms, plums, peaches and pears. (Tr. Vol. IX, p. 56; Ex. 44, p. 1132).

29. A physician administering Laetrile should warn patients about its toxicity and obtain a waiver. He should also advise the patient about the effect of beta glucosidase and advise the patient of foodstuffs which contain the enzyme. (Tr. Vol. VIII, p. 65). The physician should also perform both a blood cyanide test and a blood thiocyanate test weekly to determine if poisoning has occurred. Measurement of the blood thiocyanate alone would be inadequate. (Tr. Vol. IX, p. 46, 48; Ex. 44, p. 1129). Dr. Briggs did use a blood thiocyanate test during his last year at the center (Tr. Vol. I, p. 103-104) to measure the cyanide level when the patient started taking oral tablets at the end of the 21-day program. If the first test showed normal levels, a second was not given. (Tr. Vol. I, p. 113-114).

30. The use of Laetrile is not approved by the Federal Food and Drug Administration for use in the treatment of cancer. (Tr. Vol. VIII, p. 71; Ex.

FF, p. 26). Since 1977, however, the FDA has been restrained by a federal district court from interfering with the use of Laetrile by a cancer patient and with interfering with any licensed medical practitioner administering Laetrile to a cancer patient. (Ex. F). Deaths have been reported from cyanide poisoning due to the ingestion of Laetrile. (Ex. FF, p. 26, 31; Tr. Vol. IX, p. 41, 53; Ex. 44, p. 1129, 1139). Twenty-two separate tests of Laetrile in animals found no effectiveness in the treatment of cancer. (Tr. Vol. VIII, p. 51; Ex. DD; Ex. 44, p. 1134). In 1981, the National Cancer Institute sponsored a clinical trial of amygdalin in the treatment of human cancer which was conducted at four cancer centers across the country. (Ex. 26; Tr. Vol. IV, p. 51, 53). The trial included a daily intravenous injection of amygdalin for 21 days, followed by a one-half gram tablet three times a day. The trial also included a "metabolic therapy" program, which included high doses of vitamin A, vitamin C and pancreatic enzymes. (Tr. Vol. IV, p. 71). The patients also followed a diet limited in meats, but emphasizing fruits, vegetables and grains. (Tr. Vol. IV, p. 56; Ex. 27). The 179 cancer patients participating in the study were in generally good condition, were ambulatory and were able to maintain oral nutrition. Seventy percent of the patients were working and 30% had never had any chemotherapy. (Tr. Vol. IV, p. 55). The design of the trial was agreed to by Laetrile proponents such as Harold Manner, Andrew McNaughton and Robert Bradford. (Tr. Vol. IV, p. 66; Tr. Vol. V, p. 13, 92). A number of patients in the study showed symptoms of cyanide toxicity and blood cyanide levels approaching the lethal range. (Ex. 26, p. 203; Tr. Vol. IV, p. 84).

31. No substantive benefit was observed in this clinical trial from the use of Laetrile in terms of cure, improvement or stabilization of cancer, improvement of symptoms related to cancer or extension of life span. (Ex. 26, p. 201). Only one patient showed a reduction in the size of a tumor, which was maintained for 10 weeks. (Ex. 26, p. 204; Tr. Vol. IV, p. 82). The median survival for all patients was 4.8 months from the start of therapy. (Ex. 26, p. 204; Tr. Vol. IV, p. 83). The results of the study were released to the press in April of 1981, and received extensive press coverage. (Tr. Vol. IV, p. 102). The study was published in the New England Journal of Medicine on January 28, 1982. (Ex. 26). Dr. Briggs has not read this article. (Tr. Vol. I, p. 119). The study was later criticized on the grounds that it used only patients who could not benefit from any standard treatment. (Ex. E). The amygdalin used in the study was supplied by the National Cancer Institute and was examined for purity by an independent laboratory. (Tr. Vol. IV, p. 58). Although some criticism of the amygdalin used was made by Laetrile proponents (Tr. Vol. V, p. 16; Ex. GG), other Laetrile proponents were satisfied that the proper substance was used. (Ex. 28, p. 7; Tr. Vol. IV, p. 90). The prescription of Laetrile does not meet the minimum standards of acceptable or prevailing medical practice in Minnesota. (Tr. Vol. IV, p. 104-105).

Metabolic Therapy - Diet

32. Dr. Briggs also prescribed a diet for cancer patients. (Ex. 27). He modified the diet based upon the sensitivities of the individual patient. (Tr. Vol. I, p. 105). The diet provided that no eggs, dairy products or meat

of any kind should be eaten and encouraged eating virtually all vegetables and fruits. Sweeteners and pastries were excluded as was milk, coffee, tea, colas and alcoholic beverages. Only wheat or seven-grain bread was permitted as were roasted nuts. The dietary instructions cautioned that raw nuts, particularly raw almonds, should not be eaten during Laetrile therapy since these could increase the risk of cyanide toxicity. (Ex. 27).

33. The diet prescribed by Dr. Briggs represents a diet which is generally low in calories, low in protein and low in calcium. (Tr. Vol. I, p. 88; Tr. Vol. II, p. 109; Tr. Vol. VIII, p. 35). Cancer patients are in a state of semi-starvation and generally need a diet high in calories and protein. (Tr. Vol. VIII, p. 13, 35; Tr. Vol. IX, p. 11). Encouragement of the starvation may result in an infectious disease since a cancer patient's immune status is already weakened. (Tr. Vol. VIII, p. 35). Oncologists, or physicians specializing in the treatment of cancer, commonly recommend that cancer patients eat six or seven small feedings each day of food high in protein and calories, but low in volume, such as peanut butter. (Tr. Vol. VIII, p. 196). The absence of meat, fish or fowl would deprive the patient of absorbable iron and the absence of dairy products would deprive the cancer patient of adequate calcium to permit bone maintenance. Many cancer patients have a spread of their cancer to the bones. (Tr. Vol. VIII, p. 37). The absence of animal protein and increased ingestion of fruits and vegetables means a diet high in bulk and low in calories which is the opposite of the needs of a cancer patient. An additional problem is that many fruits and vegetables contain beta glucosidase which releases the cyanide from Laetrile. (Ex. 45; Tr. Vol. IX, p. 64; Tr. Vol. VIII, p. 37). While Dr. Briggs recognizes that cancer patients have an increased caloric need, he believed that the content of the diet improved rapidly and that bulk is important for the adequate function of the gastro-intestinal tract. (Tr. Vol. X, p. 168-169).

34. Three classes were presented to patients in the 21-day program at the center. Ann Clague taught a daily nutrition class. (Tr. Vol. II, p. 34). Tom or Ann Clague, or occasionally some other staff member, also taught a daily exercise class. (Tr. Vol. II, p. 35). Tom Clague also conducted an attitudinal program which presented positive thinking techniques to the patients. (Tr. Vol. II, p. 35-36). The exercise program included simple exercises within the abilities of the patients such as finger exercises or thumping the chest. (Tr. Vol. III, p. 21-22). The attitudinal program consisted of the use of Success Motivation Institute tapes, deep relaxation tapes and positive thinking techniques such as visualization by the patients of themselves as healthy. (Tr. Vol. III, p. 17). The program emphasized goals identification and morale management. (Tr. Vol. IV, p. 34). Dr. Briggs believes that a positive mental attitude aids in recovering from cancer. (Tr. Vol. II, p. 37). Published studies have not yet shown that attitude, whether positive or negative, has any effect on the progress of cancer. (Tr. Vol. VIII, p. 142). However, a positive attitude is very important in making the most of the available treatment. (Tr. Vol. VIII, p. 143).

35. After completion of the 21-day program, Dr. Briggs saw the patients again and he modified the diet, Laetrile and supplements to be used during the following nine weeks. (Tr. Vol. II, p. 28). During this period, Dr. Briggs

prescribed injectable Laetrile five days a week for one or two weeks with a gradual decline to three-gram vials twice a week. On the days when patients were not getting injections, they would take oral tablets of Laetrile. (Tr. Vol. I, p. 106). Enemas were recommended three or four times a week. (Tr. Vol. I, p. 123). During this period, the diet was liberalized somewhat and the vitamins and enzymes were modified downward by one-third. Dr. Briggs often saw the cancer patients again at six months at which time the supplements were modified down to one-third of what they had been on the 21-day program. (Tr. Vol. II, p. 29).

Other Cancer Treatments and Tests

36. Dr. Briggs also prescribed hydrazine sulphate for cancer patients at the center. He prescribed one 50-milligram tablet per day for up to three months. (Tr. Vol. II, p. 59). Dr. Briggs believes that the chemical allows some cancer patients to gain weight again. (Tr. Vol. II, p. 60). Dr. Briggs believes that hydrazine can interfere with the recycling of glucose in the body through the tumor in preference to the rest of the body. (Tr. Vol. X, p. 135).

37. After a study of the literature and other available information, the American Cancer Society concluded that there is no evidence that hydrazine sulphate has any objective benefit in the treatment of cancer in human beings. (Ex. 37). Clinical studies of hydrazine sulphate in advanced stage cancer patients have found it to be of little value. (Ex. 39). The Food and Drug Administration is unaware of any legitimate medical use for hydrazine sulphate. (Ex. 38). It is not commonly used by Minnesota physicians to treat cancer and its use represents a departure from the prevailing standard of medical care in Minnesota. (Tr. Vol. VIII, p. 85, 95).

38. Dr. Briggs also prescribed a tablet form of interferon to cancer patients. (Tr. Vol. II, p. 43). He was aware that it was animal interferon or an interferon stimulator because it was inexpensive. (Tr. Vol. II, p. 45; Ex. 21, p. 56). Human interferon is exceedingly expensive. (Tr. Vol. VIII, p. 99). Interferon is currently being investigated for its potential use against cancer. (Tr. Vol. VIII, p. 97). The Food and Drug Administration considers it as an investigational biologic. (Ex. 38). Dr. Briggs is not a clinical investigator involved in any of the ongoing investigational studies of interferon. (Tr. Vol. II, p. 46; Tr. Vol. VIII, p. 100). Interferon is still an unproved drug which has not been approved by the Food and Drug Administration except for experimental use. (Ex. 40). Most patients injected with interferon have some allergic reaction. (Tr. Vol. VIII, p. 100). Dr. Briggs believes that if an article has been published about a drug or technique, it is no longer really experimental. (Tr. Vol. II, p. 92). The non-investigational use by a physician of a drug which is not approved for general use by the FDA is not consistent with the standard of medical practice in Minnesota. (Tr. Vol. VIII, p. 117).

39. Dr. Briggs also prescribed dimethyl sulfoxide or DMSO for cancer patients. (Tr. Vol. II, p. 38). The DMSO was administered intravenously, orally and occasionally rectally. (Tr. Vol. II, p. 39). Dr. Briggs believed that DMSO enhances absorption and helps carry Laetrile and other elements of

the program into the brain tissue. (Tr. Vol. II, p. 40). DMSO is an industrial solvent. According to the American Cancer Society, there is no evidence that DMSO results in any objective benefit in the treatment of cancer in human beings. (Ex. 41). The Food and Drug Administration has approved for use a 50% solution of DMSO for relief of interstitial cystitis under the trade name "Rimso-50". DMSO is also available over the counter as an industrial solvent in a 70% solution and is approved for veterinary use in a 90% solution. (Ex. 41; Tr. Vol. VIII, p. 102). The DMSO used at the center was labeled "For Veterinary Use Only". (Tr. Vol. III, p. 82, 93). DMSO is not approved for the treatment of cancer. (Tr. Vol. II, p. 42). DMSO may contribute to the development of cancer. (Ex. 46; Tr. Vol. IX, p. 104-105). The Food and Drug Administration does not prohibit the use of an approved drug for unapproved uses. (Ex. R). The use of DMSO to treat cancer is contrary to the prevailing medical practice in Minnesota. (Tr. Vol. VIII, p. 105).

40. Dr. Briggs also employed a procedure called Koch therapy in the treatment of cancer patients. (Tr. Vol. II, p. 47). A pamphlet describing the procedure was available at the center. (Ex. 20; Tr. Vol. II, p. 58). The procedure involves enemas, a liquid diet, rest in bed and the injection of "Koch antitoxins or vaccines". (Ex. 20; Tr. Vol. II, p. 48). Dr. Briggs believes that Koch therapy restores the normal energy pattern to body metabolism. (Tr. Vol. II, p. 50). The American Cancer Society has concluded that Koch therapy results in no objective benefit in the treatment of cancer in human beings. (Ex. 42). Studies have found that Koch therapy has no value in the diagnosis, treatment, alleviation or cure of cancer. (Ex. 42, p. 133; Tr. Vol. VIII, p. 107). The use of Koch therapy is inconsistent with the prevailing professional standard for physicians in Minnesota. It is not commonly used by physicians in Minnesota. (Tr. Vol. II, p. 61; Tr. Vol. VIII, p. 107). Dr. Briggs used the Koch therapy for six months at the Health and Wellness Center but stopped because he was not impressed with its effectiveness. (Tr. Vol. II, p. 54). He obtained the vaccine from a distributor in northern Minnesota, but did not check into his qualifications. (Tr. Vol. II, p. 52).

41. Dr. Briggs routinely employed the Arthur Morphologic Immuno-Status Differential (AMID) test to diagnose cancer patients. (Tr. Vol. II, p. 13-15). He generally gave them an AMID test prior to and after the 21-day program. (Ex. 2, p. 8). The test purports to determine the likelihood of a patient having cancer and the status of their immune system based upon an examination of white blood cells. (Ex. 19; Tr. Vol. II, p. 7-8). A brochure describing the AMID test was available at the center. (Ex. 19; Tr. Vol. II, p. 27). Dr. Briggs sent a blood sample from the cancer patient to the Arthur Test and Research Laboratory in California. The laboratory was run by Dr. Thelma E. Arthur. (Ex. 19). The laboratory returned a data sheet to Dr. Briggs which indicated the cancer diagnostic parameters on a scale of one to five and the immune reserves on a scale of A through E. (Ex. 7). Although Dr. Briggs used the test as a means of diagnosis and to determine whether or not the metabolic program was working, it was only one of several tests which he relied upon. (Tr. Vol. II, p. 17, 21; Tr. Vol. X, p. 109).

42. The AMID test results were sometimes the opposite of what Dr. Briggs expected to find. (Tr. Vol. II, p. 16). The AMID test is not used by most

physicians treating cancer in the United States. (Tr. Vol. II, p. 18, 25). It is not commonly used by physicians in Minnesota. (Tr. Vol. VIII, p. 81). In a decision dated August 10, 1982, the Board of Medical Quality Assurance in California revoked Dr. Arthur's medical license because of her use of the AMID test which it described as "a classic example of quackery". (Ex. 36). The AMID test has no scientific foundation as a screening or monitoring technique to detect cancer. (Tr. Vol. VIII, p. 83; Ex. 47; Tr. Vol. IX, p. 107). Dr. Briggs was not aware that Dr. Arthur had lost her medical license until the hearing in this case. (Tr. Vol. X, p. 107).

Patient Testimony

43. DZ first visited the Health and Wellness Center in late June of 1981. He came to the center because he suffered from manic depressive illness and wanted to find an alternative to being on lithium. (Tr. Vol. II, p. 162). Ann Clague performed sensitivity testing on him and told him that he was allergic to lithium and advised him never to take it again. (Tr. Vol. II, p. 163). DZ had an appointment with Dr. Briggs on July 7, 1981. Dr. Briggs performed sensitivity testing again on DZ and also told him that he was allergic to lithium and should no longer take it. He also told DZ that he was sensitive to Coca Cola, cigarette smoking and coffee. (Tr. Vol. II, p. 164-166). The results of the sensitivity testing done by Clague and Dr. Briggs differed in regard to several substances. (Tr. Vol. II, p. 165). Dr. Briggs diagnosed DZ's condition as hypothyroidism and depression caused by his own problems and also by drugs. (Ex. 21, p. 61). Dr. Briggs thought that the hypothyroidism might be causing the depression. (Tr. Vol. X, p. 11; Ex. 2). He, therefore, prescribed desicated thyroid grains for DZ (Tr. Vol. X, p. 113).

44. Dr. Briggs also recommended a supplement program for DZ, including vitamins, minerals, enzymes and concentrates. (Ex. 10; Tr. Vol. II, p. 166). Dr. Briggs also recommended prayer and the laying on of hands as the first step in treatment; however, DZ did not permit him to do this. (Ex. 21, p. 65; Tr. Vol. II, p. 167). DZ did take Dr. Briggs' advice to stop taking the lithium but did not follow his other suggestions. (Tr. Vol. X, p. 116). Approximately two or three weeks after DZ had seen Dr. Briggs he went into a severe depression and was hospitalized. He was in the hospital for approximately one week and then was placed back on lithium and stabilized. (Tr. Vol. II, p. 168). Generally, only a psychiatrist should adjust a medication such as lithium. (Tr. Vol. VIII, p. 164). DZ filed a complaint with the Board of Medical Examiners against Dr. Briggs. (Tr. Vol. II, p. 169).

45. PC visited the Health and Wellness Center in early November of 1980. She saw Dr. Briggs on November 19, 1980. (Ex. 24A). She was seeking treatment for ulcerative colitis and depression. (Tr. Vol. III, p. 42). PC had sensitivity testing at two different visits to the center which produced opposite results in regard to her sensitivity to chocolate. (Tr. Vol. III, p. 47). Dr. Briggs asked her about her family, if she was a Christian, and if she believed in prayer. (Tr. Vol. III, p. 43). Dr. Briggs diagnosed PC as having ulcerative colitis and chronic

anxiety and depression. (Ex. 24A). His treatment plan for her included prayer and the laying on of hands, a low stress diet, a schedule of vitamins, minerals, enzymes and concentrates. (Exs. 24, 24A). Dr. Briggs also told PC that demons were causing her colitis. This shocked and scared PC (Tr. Vol. III, p. 44). Dr. Briggs prayed with PC to free her from the demons. (Tr. Vol. III, p. 45). The staff at the Health and Wellness Center told her that as far as they knew her health insurance would cover her costs incurred at the center. Blue Cross, however, refused to pay her bills. (Tr. Vol. III, p. 47). PC subsequently made a complaint to the State about Dr. Briggs and the Health and Wellness Center. (Tr. Vol. III, p. 51).

46. ET first came to the Health and Wellness Center in September of 1980. At that time, he had had lung cancer for approximately one year. Dr. Briggs' treatment plan for ET was the 21-day cancer program including Laetrile, blood tests, hair analysis and the AMID test. (Ex. 7). Although the ET family was told they would receive instruction on stress management and diet, this was not provided to ET. (Tr. Vol. III, p. 54, 91). ET was taking 112 vitamin supplements each day during the program. He started taking 250,000 I.U.s of vitamin A and increased to 500,000 I.U.s during the 21-day program. (Tr. Vol. III, p. 56-57). His appetite decreased through the 21-day program to the point where he was not able to eat. (Tr. Vol. III, p. 84). He lost 10 pounds during the program. (Tr. Vol. III, p. 60; Ex. 21, p. 45-46). At the end of the program, ET was vomiting, had diarrhea and was confined to bed. At that point, Dr. Briggs told him to return to his family physician. (Tr. Vol. III, p. 84-85; Ex. 21, p. 46). ET was not advised to cut back on the supplements or the enemas at the end of the 21-day program in September of 1980, and first learned of the instruction to cut back in January of 1981. (Tr. Vol. III, p. 58).

47. Patient FP first saw Dr. Briggs at the Health and Wellness Center on August 26, 1980. He had been diagnosed as having cancer of the lung. (Ex. 11; Ex. 21, p. 33). FP had had radiation therapy before coming to Dr. Briggs. Dr. Briggs prescribed the 21-day program for FP

including Laetrile, DMSO, hydrazine sulphate and a schedule of vitamins, minerals and enzymes. (Ex. 11; Tr. Vol. VIII, p. 150). FP lost weight throughout the 21-day program. (Tr. Vol. IV, p. 11). Dr. Briggs' patient records reflect only two recorded weights for FP. (Ex. 11, Ex. 21, p. 40). The colonic irrigations given to FP made him weak. (Tr. Vol. IV, p. 4). He took 140 vitamin supplements per day during the program and sometimes vomitted after taking them. (Tr. Vol. IV, p. 11).

FP experienced seizures after taking Laetrile and hydrazine sulphate at home. (Tr. Vol. IV, p. 6-7). He had experienced both weight loss and seizures prior to coming to the Health and Wellness Center. (Tr. Vol. IV, p. 16).

48. Several patients of Dr. Briggs believe that they were helped by his treatment. PG was diagnosed as having aplastic anemia. (Tr. Vol. VI, p. 32). She believes that since Dr. Briggs placed her on a vitamin supplement program that she has experienced continuous improvement and that it worsened when she discontinued the vitamins for one month. (Tr. Vol. VI, p.

39-41). PG's medical records show that her improvement had already begun when she first saw Dr. Briggs in October of 1981 in North Dakota. (Tr. Vol. VIII, p. 158). Aplastic anemia, which is a sharp reduction in red blood, white blood and platelet counts, is a highly variable disease which can show sudden improvement. (Tr. Vol. VIII, p. 157-158).

49. Patient JZ had breast surgery for breast cancer, following which chemotherapy was recommended for her. (Tr. Vol. VI, p. 44). She completed the 21-day program at the Health and Wellness Center starting in early November of 1981. (Tr. Vol. VI, p. 47, 54). She believes that she has improved her health since that time and is pleased with the program. (Tr. Vol. VI, p. 48).

50. BG is a 12-year-old boy who is being treated by Dr. Briggs in North Dakota. He first became ill in 1974, when he was four years old. (Tr. Vol. VI, p. 57). He was diagnosed in 1976 as having a cervical spinal cord tumor and at that time had surgery and radiation therapy. (Ex. G). In 1977, the tumor had continued to progress and BG's father took him to Mexico for treatment with Laetrile. (Tr. Vol. VI, p. 59, 64). BG continues to take Laetrile today and is gaining weight, although he is a quadriplegic. (Tr. Vol. VI, p. 68-69). BG's tumor is a grade 2 astrocytoma, which is a less aggressive tumor and is consistent with his survival to 12 years of age. (Tr. Vol. VIII, p. 162).

51. Patient BB had a mastectomy in July of 1980, and then took five treatments of chemotherapy. (Tr. Vol. VII, p. 4). She completed the 21-day program at the Health and Wellness Center and felt much better after getting off of the chemotherapy. (Tr. Vol. VII, p. 13). Her cancer of the lung has remained stable, but she has also developed a brain tumor. (Tr. Vol. VII, p. 12).

52. Patient MS completed the 21-day program at the Health and Wellness Center in July of 1980. She had been previously diagnosed as having multiple myeloma and had taken chemotherapy for 1-1/2 weeks. (Tr. Vol. VII, p. 20-21). This type of cancer has a response rate of 50% when treated with chemotherapy. (Tr. Vol. VIII, p. 176). MS passed away in early 1981. Her family feels that she had minimal pain and a good quality of life while on the center's metabolic therapy program. (Tr. Vol. VII, p. 28).

53. Patient RD completed a 10-day program at the center in July of 1981. He has rheumatoid arthritis and had been taking drugs prior to visiting the center. (Tr. Vol. VII, p. 31-32). He experienced relief from the arthritic pain after being on the program for approximately 1-1/2 months. (Tr. Vol. VII, p. 35).

54. Patient GG completed the 21-day program at the center in October and November of 1981. (Tr. Vol. VIII, p. 120). He had been diagnosed as having malignant melanoma, had surgery on his right lung in June of 1981, and completed one round of chemotherapy. (Tr. Vol. VIII, p. 121). He currently takes one 50 milligram tablet of Laetrile each day and two 10cc vials per month. (Tr. Vol. VIII, p. 125). He also takes 125,000 I.U.s of vitamin A per day currently. (Tr. Vol. VIII, p. 128). His chest x-rays show that his left lung has remained stable for 1-1/2 years and the right lung has shown a

very slight growth. (Tr. Vol. VIII, p. 130). Melanoma is a disease which may progress very minimally or very rapidly. (Tr. Vol. VIII, p. 172).

Procedures at the Health and Wellness Center

55. Approximately three months after Dr. Briggs joined the Health and Wellness Center the center conducted a follow-up on patients. (Tr. Vol. X, p. 94-95). Based upon this follow-up, Tom Clague began telling prospective patients that 90% of the patients at the Health and Wellness Center were doing well. (Tr. Vol. III, p. 67; Tr. Vol. X, p. 94-95; Tr. Vol. IV, p. 15; Ex. 5, p. 25). At another point in time, Tom Clague told prospective patients that 65 to 75% of the center's patients were doing well. (Tr. Vol. III, p. 13). Dr. Briggs became aware of the representations being made by Tom Clague and told him to stop making those claims. (Tr. Vol. II, p. 87). Although Dr. Briggs initiated the sending of questionnaires to former patients at one point after he had been there for one year (Tr. Vol. X, p. 94-95), the center never did complete a study of how well the patients were doing. (Tr. Vol. IV, p. 29). According to the American Cancer Society, the survival for all types of cancer except skin cancer is 40% over a five-year period. (Tr. Vol. VIII, p. 208).

56. Patients in the 21-day program were charged \$3,000 for the treatment which was paid in cash. (Tr. Vol. III, p. 54; Tr. Vol. IV, p. 4). Tom Clague advised some patients that their health insurance would pay for the doctor's office visit and for all of the lab tests. (Tr. Vol. III, p. 53; Tr. Vol. IV, p. 4). The insurance companies would not, however, pay for the lab tests. (Tr. Vol. III, p. 53; Tr. Vol. IV, p. 4).

57. The patient charts of the Health and Wellness Center show that two release forms were used at the Health and Wellness Center although not every patient signed each one. One form was a consent to participate in the 21-day metabolic program. It stated that no particular disease could be specifically treated or cured by the metabolic program and that no guarantees had been made. (Ex. 7). Some patients also signed an agreement concerning scope of practice which Dr. Briggs also employed in his medical practice in North Dakota. It provided that Dr. Briggs would be concerned with the patient's nutritional program but not any specific disease which the patient might have. It also advised the patient that vitamins, minerals and drugs prescribed by Dr. Briggs may not necessarily benefit the patient and that Dr. Briggs' views concerning these supplements are not necessarily shared by the FDA, the American Cancer Society and other organizations. (Ex. 11; Tr. Vol. X, p. 73). Neither release form specifically advised about the risks of Laetrile, nor about the risks of large amounts of vitamin A. Dr. Briggs did discuss the use of vitamin A orally with patients. (Tr. Vol. X, p. 181).

58. The injections of Laetrile were performed by Dr. Briggs and by Ann Clague. (Tr. Vol. I, p. 112; Tr. Vol. III, p. 66). The colonic irrigations were performed by Ann Clague. (Tr. Vol. I, p. 129; Tr. Vol. IV, p. 20). The colonic irrigations were also performed by a nurse. At one point after the nurse had quit, Dr. Briggs asked the cook at the center if she would do the colonics but she refused. (Tr. Vol. III, p. 63). The insertion of IVs for chelation therapy was done either by Ann Clague or a lab tech. (Tr. Vol. III,

p. 23). Dr. Briggs was not always at the center when these procedures were performed. A physician is responsible for the supervision of personnel performing medical techniques under his guidance. (Tr. Vol. VIII, p. 134). Because chelation therapy involves an intravenous line, it should be supervised by a physician as should colonic irrigations. (Tr. Vol. VIII, p. 136-138).

59. Practitioners of preventative medicine believe that changes in diet and lifestyle can prevent illness. Since little is taught about nutrition in medical school, a physician must educate himself about it. (Tr. Vol. II, p. 118, 121, 125). Approximately 2% of physicians have had some training in preventative medicine. (Tr. Vol. II, p. 123). The aim of metabolic therapy in regard to treating cancer is to upgrade the patient's condition so that the immune system is not depressed and the patient's own system can cope with the cancer. (Tr. Vol. V, p. 147). Practitioners of metabolic cancer therapy believe that it produces a much better quality of life for the patient compared to chemotherapy, radiation or surgery. (Tr. Vol. V, p. 154).

60. Of the estimated 835,000 newly diagnosed cases of cancer each year, approximately 10% will be treated with chemotherapy only, 54% by surgery, 5.3% by surgery and chemotherapy and 19.4% by radiation. (Tr. Vol. X, p. 8). Chemotherapy can have serious side effects and can cause death. (Tr. Vol. X, p. 23; Ex. I). Radiation therapy can cause nausea, loss of appetite, fatigue, damage to the skin and other organs. (Tr. Vol. VIII, p. 145-146). Radiation can also cause death. (Tr. Vol. VIII, p. 182; Tr. Vol. II, p. 134-135). Chemotherapy and radiation are used by physicians treating cancer because they work, which means that they obtain a response rate above zero which justifies using them in the face of the risk involved. (Tr. Vol. VIII, p. 146, 181).

61. The first complaint about the Health and Wellness Center was made to the Board of Medical Examiners sometime prior to April of 1980. The Minnesota Chapter of the National Multiple Sclerosis Society made a complaint in March of 1980. (Ex. 31). Complaints were also filed by the Hennepin County Medical Society and the Prudential Insurance Company. (Ex. 30; Tr. Vol. VII, p. 44). Individual complainants included DZ, PC, and JT.

(Tr. Vol. II, p. 169; Tr. Vol. III, p. 51; Tr. Vol. III, p. 86). In April of 1980, the Executive Secretary of the Board made a formal complaint to the Attorney General's Office which initiated an investigation. This complaint mentioned Dr. Briggs' name but listed the Health and Wellness Center as the subject of the complaint. (Ex. 29; Tr. Vol. VII, p. 53). The Attorney General's investigation culminated in a report in December of 1980. (Tr. Vol. VII, p. 58). The matter was then considered that month by the disciplinary committee of the Board which consists of three Board members. (Tr. Vol. VII, p. 45). Two of these disciplinary committee members presently remain on the Board of Medical Examiners. (Tr. Vol. VII, p. 45). In January of 1981, Dr. William J. Donkers became the new chairman of the disciplinary committee and from then on he alone handled the complaint concerning Dr. Briggs. (Tr. Vol. VII, p. 45). Dr. Donkers was chairman of the disciplinary committee through January 1, 1983. (Tr. Vol. VII, p. 41). Although the disciplinary committee reports to the full Board at its quarterly meeting, it does not mention the name of individual physicians or discuss the specifics of the complaints against them. (Tr. Vol. VII, p. 42, 49, 60). Disciplinary committee minutes

are not distributed to the full Board. (Tr. Vol. VII, p. 67). On October 29, 1982, the Executive Secretary of the Board filed a complaint with the Attorney General's Office which specifically named Dr. Brian Briggs as the subject of the complaint. (Ex. 32). Dr. Donkers directed the Executive Secretary to initiate this contested case proceeding. The Order for Hearing was issued in July of 1982. (Tr. Vol. VII, p. 50).

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Board of Medical Examiners and the Hearing Examiner have jurisdiction in this matter pursuant to Minn. Stat. §§ 147.021 and 14.50.

2. That the Board of Medical Examiners gave proper notice of the hearing in this matter and that the Board has fulfilled all relevant substantive and procedural requirements of law or rule.

3. Pursuant to Minn. Stat. § 147.021, subd. 1, the Board shall censure, suspend, revoke, condition, limit, qualify or restrict the medical license of a physician who violates any of the provisions of that subdivision.

4. That the Respondent has violated Minn. Stat. § 147.021, subd. 1(g), which prohibits practice harmful to the public and a willful or careless disregard for the health, welfare or safety of patients by the prescription of unapproved, ineffective and unsafe drugs, chemicals and supplements, the use of diagnostic tests which are not scientifically valid, the use of therapy, procedures and techniques which have no demonstrated effectiveness in the treatment of disease and which create a risk of harm for patients, and the use of, and failure to supervise, personnel lacking proper training.

5. That the Respondent has violated Minn. Stat. § 147.021, subd. 1(k), which prohibits unprofessional conduct including any departure from or the failure to conform to the minimal standards of acceptable and prevailing medical practice, by virtue of his prescription of unapproved, ineffective and unsafe drugs, chemicals and supplements, his use of diagnostic tests which are not scientifically valid, his use of therapy, procedures and techniques which have no demonstrated effectiveness in the treatment of disease and which create a risk of harm for patients, and his use of, and failure to supervise, personnel lacking proper training.

6. That the Board has failed to show that the Respondent has violated Minn. Stat. § 147.021, subd. 1(i), which prohibits violation of any statute or rule of the United States relating to the practice of medicine by prescribing drugs and chemicals which are not approved by the federal Food and Drug Administration for use in humans.

7. That the Respondent has not violated Minn. Stat. § 147.021, subd. 1(b), which prohibits a licensee from making misleading, deceptive, untrue or fraudulent representations in the practice of medicine.

8. That the foregoing Conclusions and the Recommendations set out below are arrived at for the reasons set out in the Memorandum which follows and which is incorporated herein by reference.

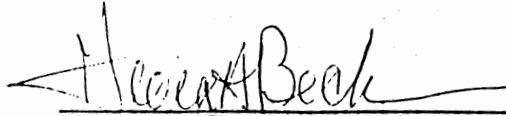
9. That any of the Findings of Fact which should properly be termed Conclusions are hereby adopted as such.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

1. It is respectfully recommended that disciplinary action be taken against the license of Brian E. Briggs, M.D.
2. It is recommended that the Respondent's Motions to dismiss this proceeding and to disqualify the Board be denied.

Dated: April 19, 1983.



GEORGE A. BECK
State Hearing Examiner

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (1982), the agency is required to serve its final decision upon each party and the hearing examiner by first class mail.

Reported: Taped

Transcript Prepared by Karen Toughill

MEMORANDUM

At the beginning of the contested case hearing in this matter, the Respondent submitted two written Motions, one, a Motion to Dismiss and the other a Motion to Disqualify the Board. The Motions were taken under advisement by the Hearing Examiner. Neither Motion can be finally determined by the Hearing Examiner. However, it is the Hearing Examiner's recommendation to the Board that it deny each Motion. The Motion to Dismiss was based first on the Respondent's argument that no violation of the disciplinary statute has been shown. The Motion is answered by the Findings, Conclusions and Memorandum contained in this Report which describes the violations and explains the reasons for the Findings and Conclusions. The Motion to Dismiss also raised, however, the question of whether or not the requirements of Minn. Stat. § 214.10 had been complied with, specifically, the requirement at subdivision 2 that before scheduling a disciplinary hearing, the Executive Secretary must have received a verified written complaint from the complaining party. The statute also provides that the Executive Secretary may initiate a complaint. The Executive Secretary did file a Complaint with the Attorney General's Office on April 11, 1980, prior to the initiation of this contested case proceeding. The Respondent argues that this is insufficient since it named the Health and Wellness Center as the subject of the Complaint. The Complaint did, however, state the Respondent's name. The Executive Secretary regarded it as a complaint against the Respondent since he was the medical director of

the center and the Board has jurisdiction only over licensed physicians. The Executive Secretary filed a Complaint specifically naming Dr. Briggs as the subject of the Complaint in October of 1982, after this contested case proceeding had been initiated by service of a Notice of Hearing after Respondent's counsel had raised this objection.

It is recommended that the Board deny the Motion for dismissal since the April Complaint filed by the Executive Secretary satisfies the statutory requirements. That Complaint was regarded by the Attorney General as a complaint against Dr. Briggs and was investigated accordingly. The purpose of the statutory provision would appear to be to preclude the scheduling of a disciplinary hearing based only upon oral complaints. The record in this case demonstrates that several written complaints were received from the public in addition to the Executive Secretary's written complaint. Both the spirit and the letter of the statutory requirement have therefore been complied with. The Respondent has not demonstrated any prejudice in this contested case proceeding due to the fact that the original Complaint listed the Health and Wellness Center as the subject. Accordingly, it is recommended that the Motion for dismissal on these grounds be denied.

The Respondent also made a second Motion to disqualify all members of the Board of Medical Examiners from a consideration of this contested case proceeding. The Motion is based upon a statutory provision contained in Minn. Stat. § 214.10, subd. 2, which permits the designee of the Attorney General to consult with a Board member in his evaluation and investigation of the case. The statute also provides, however, that a Board member who was consulted during the course of an investigation cannot vote on any matter pertaining to the case. The Respondent suggests that the entire Board has been consulted within the meaning of the statute because the disciplinary committee has discussed the case with the full Board. The testimony in this case did not produce facts to support this allegation. The only relevant testimony was that of the Executive Secretary who testified that this case was first considered by the Board's three-member discipline committee in December of 1980. Two current Board members served on that committee.

In January of 1981, Dr. William Donkers became the new chairman of the disciplinary committee, and he alone handled this case from that point on. Dr. Donkers directed the Executive Secretary to initiate this disciplinary action. The Executive Secretary testified that this case has not been discussed with the full Board nor does the full Board receive the minutes of discipline committee meetings. Although the Respondent took the deposition of Dr. Donkers, he was not called to testify at the hearing. Although the Respondent suggests that there is some confusion about the existence of minutes and who directed initiation of the disciplinary action, it is clear that the full Board has not previously discussed the details of this matter or been consulted within the meaning of Minn. Stat. § 214.10. It should be noted that according to the Board's brief, the Board disqualifies its members from voting on a case when they have served on the disciplinary committee which initially reviewed the matter. (Board's Initial Brief, p. 3).

Moreover, from a constitutional standpoint, it is clear that the combination of investigative and adjudicative functions in an administrative agency

does not violate due process. Withrow v. Larkin, 421 U.S. 35 (1975). In order to justify disqualification of the Board, it must be shown that its members have a bias or prejudice sufficient to render them incapable of a fair judgment. LeBow v. Optometry Examining Board, 191 N.W.2d 47, 50 (Wisc. 1971). Nothing in this record suggest that to be true in this case.

In his post-hearing brief, the Respondent has sought to characterize this proceeding as a dispute between two schools of medicine, namely, those physicians practicing with conventional methods and those practicing preventative medicine and metabolic therapy such as Dr. Briggs. While there is a growing awareness in the field of medicine of the importance of the prevention of disease through modification of the diet and changes in life style, what is at issue in this proceeding is the specific methods of diagnosis and treatment employed by the Respondent in order to fight disease. While the record indicates that some 2% of physicians have had some training in preventative medicine, it was not established that that many physicians have employed the methods used by the Respondent in the treatment of chronic diseases. Nor does the record support the conclusion that there are two competent, recognized schools of thought in medicine, one of which is characterized by the methods employed by Dr. Briggs. What is on trial then in this proceeding is not whether the concept of the prevention of disease has an appropriate place in medicine but rather whether the Respondent's conduct as a physician in the treatment of his patients has been harmful, indicates a careless disregard for their health or safety, or departs from the minimal standards of acceptable and prevailing medical practice.

A closely associated question is the Respondent's assertion that the Board's expert witnesses cannot properly testify as to the Respondent's practice of medicine since they have not practiced metabolic therapy so as to gain expertise in that field. The Respondent has cited a number of older malpractice cases which hold that the standards of practice in different schools of medicine must be established by the testimony of experts in those schools. (See, for example, Martin v. Courtney, 77 N.W. 813 (Minn. 1899); Nelson v. Dahl, 219 N.W. 941 (Minn. 1928); Bush v. Cress, 233 N.W. 317 (Minn. 1930)). The record in this case does not establish a situation parallel to those cases where for example a medical doctor was offering expert testimony on the standard of practice of a chiropractor. The Board's expert witnesses were clearly knowledgeable in the fields of nutrition and oncology and familiar with the methods of treatment used by Dr. Briggs.

At any rate, the rule in Minnesota in regard to administrative licensing cases is that set out in Reyburn v. Minnesota State Board of Optometry, 78 N.W.2d 351 (Minn. 1956). In that case, our Supreme Court stated as follows:

"Unprofessional conduct" is conduct which violates those standards of professional behavior which through professional experience have become established, by the consensus of the expert opinion of the members, as reasonably necessary for the protection of the public interest. In establishing the necessity for and the existence of such standards, every member of the profession should be regarded as an expert. (Quotation omitted). What constitutes unprofessional conduct by an optometrist may be determined by those standards which are commonly accepted by those practicing the profession in the same territory. 78 N.W.2d at 355.

The Board is not therefore limited to expert testimony by a physician who regularly employs methods similar to those used by the Respondent. (See also, Minnesota Rules of Evidence, Rule 702). Testimony by physicians knowledgeable about professional standards in Minnesota is relevant and admissible. It should be pointed out, however, that Dr. Charles Moertel in effect had experience as a metabolic practitioner by virtue of his conduct of the clinical trial of Laetrile which included a metabolic therapy program.

The heart of this disciplinary proceeding is the methods of diagnosis and treatment which Dr. Briggs employed in his metabolic therapy program to treat cancer. The program was initiated by a two-day juice fast which was followed by a diet which excluded meat and dairy products, while emphasizing fruits, vegetables and grains. The great weight of the testimony establishes that a cancer patient needs a high calorie, high protein, low volume diet in order to counter the starving induced by the cancer. The Board's expert testimony established that there is no medical justification for a juice fast since it would not cleanse or "detoxify" the patient's body. In addition, the Respondent failed to adjust the insulin intake for diabetics beginning the juice fast. While it may be that a diet similar to that recommended by Dr. Briggs for the cancer patients may some day be shown to be helpful in the prevention of cancer (see, Respondent's Brief, Exs. C and D), it is specifically contraindicated for the treatment of a cancer patient who has a greater need for calories, protein and calcium than does a healthy person.

Dr. Briggs extensively employed enemas and colonic irrigations to treat cancer patients. The weight of the evidence in this record establishes that they are of no use in the treatment of cancer or other degenerative diseases. The risks associated with enemas and colonic irrigations include perforation of the bowel, water depletion and electrolyte imbalance. Although the Board did submit articles which indicated that coffee enemas could cause death, the articles reflected a much more frequent and aggressive use of enemas than that employed by Dr. Briggs. It must be remembered, however, that the cancer patients seen by Dr. Briggs were already in a debilitated state. Dr. Briggs did not check the blood electrolytes or blood volume of patients and did not warn patients of the risks involved with the procedure. At one point, the Respondent also permitted the use of DMSO in enemas which could force the absorption of colon bacteria across the wall of the colon.

The record also establishes that the ingestion of digestive enzymes are not effective in the treatment of cancer since they are digested themselves before they reach the small intestines.

The Respondent prescribed very large amounts of vitamin A for cancer patients. He commonly started cancer patients at 250,000 I.U.s and then increased it to 500,000 I.U.s during the 21-day cancer program. Dr. Briggs observed toxic reactions in one-fourth of his patients. Toxic amounts of vitamin A will cause liver damage. Cancer patients are already more likely to have a weakened liver due to their condition. Although the record does not convincingly demonstrate that the liver damage is permanent, it may take up to two years for a liver to return to normal after the discontinuation of the vitamin A. There is no evidence that large amounts of vitamin A have any

benefit in the treatment of cancer. While the use of vitamin A in the prevention of cancer is being studied, it does not follow that it has any role in the treatment of cancer. Dr. Briggs' use of extremely large doses of vitamin A can only be classified as experimental. He only performed liver function tests to check for adverse results during the last six months that he was at the center.

The Respondent prescribed both vitamin C and "vitamin B-15" for cancer patients. The record demonstrates that neither substance has any known value in the treatment of cancer. Fifteen grams of vitamin C can have a number of side effects and can permit the release of cyanide from orally administered Laetrile. Dr. Briggs was uncertain exactly what was contained in the vitamin B-15 which he prescribed. The two substances most commonly found in products labeled vitamin B-15 or pangamic acid are not vitamins and are not helpful in the treatment of cancer.

The evidence in this record clearly establishes that Laetrile or amygdalin has no value in the treatment of cancer. Dr. Briggs prescribed both injectable and oral Laetrile for patients at the Health and Wellness Center. He tested for blood thiocyanate levels only during the last year that he was at the center. He should properly have tested both for blood cyanide and blood thiocyanate in order to determine both acute and chronic cyanide poisoning. Laetrile has been found to be ineffective in the treatment of cancer in numerous tests of animals. Attempts to uncover examples of patients treated successfully with Laetrile have not uncovered any beneficial results. The clinical trial of amygdalin sponsored by the National Cancer Institute and directed by Dr. Charles Moertel of the Mayo Clinic, who testified in this proceeding, convincingly demonstrates that Laetrile plus a metabolic therapy program has no benefit in the treatment of cancer. The Respondent had three criticisms of this trial, namely, that the supplements in diet had not be individualized, that the study had not employed enemas and that the wrong form of amygdalin had been used. In order to perform a valid experimental study, it was, of course, necessary to maintain the same supplementation and diet among a large group of patients. It is inconceivable that the absence of enemas from the study would somehow rob the study of any observable benefit from Laetrile or metabolic therapy. As the Respondent has admitted, enemas alone do not have an effect against cancer. The Laetrile used in the study was tested both by an independent laboratory selected by the National Cancer Institute and by the Mayo Clinic and found to be pure sterile amygdalin.

A determination as to the validity of the Moertel/NCI study necessarily involved a consideration of the credentials and credibility of the witnesses who testified in regard to the study and the use of Laetrile generally. The credentials of Dr. Charles Moertel, Dr. Irving Lerner and Dr. Victor Herbert are outstanding. Their testimony was consistent and credible. Each has extensive experience in the treatment of cancer and Dr. Herbert has extensive experience and education in the field of nutrition. Robert Bradford, who testified for the Respondent, is not a college graduate. He is president of the largest manufacturer and distributor of amygdalin in the world, American Biologics. Mr. Bradford was convicted of the felonies of conspiracy to

smuggle and the smuggling of Laetrile in 1977. This witness' lack of credibility is illustrated in the Transcript at Volume V, page 28-29. Mr. Bradford first stated that he did not know who the executive trustee of American Biologics was. He then stated he had no knowledge of who any of the trustees of the trust were. He then indicated he knew who some of the trustees were. He then finally admitted that he knew the identity of the executive trustee of the trust.

The Respondent also called Dr. Rodrigo Rodriguez, who is medical director of the American Biologic Hospital in Mexico. Dr. Rodriguez is not licensed to practice in the United States, and is not board certified in oncology. His practice consists of the two-week treatment of American cancer patients at his hospital in Mexico. His conclusions on Laetrile and metabolic therapy are not based upon any published data. He was not, of course, knowledgeable concerning the prevailing medical standards in Minnesota.

The Hearing Examiner was impressed that the testimony of Dr. Briggs himself was sincere. At the same time, his credentials and experience in the treatment of cancer and nutrition do not compare with the expert witnesses offered by the Board. The record also supports a conclusion that Dr. Briggs attempted to accurately recall the details of his treatment at the Health and Wellness Center, whether or not those details were particularly favorable to his case. The testimony by patients as to the effectiveness or lack of effectiveness of the 21-day cancer program or any particular drug, supplement or test has been carefully considered. It is concluded, however, that patient testimony as to the scientific validity of a test or the efficacy of a treatment should be given less weight than the expert testimony in that regard.

The record also establishes that Laetrile is toxic when taken orally with foodstuffs containing the enzyme beta glucosidase or with large amounts of vitamin C. Although the record does not demonstrate a large number of fatalities from the use of Laetrile, the evidence shows that symptoms of toxicity have occurred in patients using Laetrile and deaths due to cyanide poisoning have occurred from a dose of anywhere from 60 to 120 milligrams of cyanide. Dr. Briggs prescribed two grams of oral Laetrile per day. One gram of pure Laetrile contains 60 milligrams of cyanide. Were all of the cyanide to be released from the Laetrile in the patient's body, the patient would face a serious risk of harm. Low concentrations of Laetrile may cause loss of appetite, weight loss, general physical wasting and mental deterioration. The Respondent has repeatedly sought to point out during this contested case proceeding that there are also serious risks incident to conventional treatment for cancer such as radiation or chemotherapy. The record does in fact reflect that some patients suffer very serious side effects from chemotherapy and radiation and a few patients actually die from the treatments themselves. It makes no sense, however, to compare the risks of different treatments without comparing their efficacy. The evidence shows that radiation and chemotherapy are effective in combatting cancer while Laetrile is not.

The Respondent has also asserted that the Board of Medical Examiners is enjoined from disciplining the Respondent for his use of Laetrile by the Court's Order in Rutherford v. United States, 438 F.Supp. 1287 (W.D. Okla. 1977). The Court's Order was introduced as Exhibit F in this contested case

proceeding. The Court's Order restrains the Food and Drug Administration and those persons in active concert or participation with them from interfering with the importation of Laetrile or interfering with any licensed medical practitioner in administering Laetrile. By a prior decision by the District Court, the class of persons to which the Court's Order applies are those persons declared by a practicing physician in affidavit form to be terminally ill with cancer and for whom orthodox treatment would not reasonably be expected to benefit the patient, or where the patient has made a knowing election to take Laetrile after being advised of other treatments available and the fact that it is considered by most cancer specialists to be of no value. Rutherford v. United States, 429 F.Supp. 506 (W.D. Okla. 1977). It should be noted that the United States Supreme Court later reversed a Tenth Circuit decision in this case and found that the safety and efficacy standards of the Food and Drug Act do apply to the terminally ill. Rutherford v. United States, 442 U.S. 543 (1979). On remand, the Tenth Circuit Court of Appeals reversed the judgment of the District Court and remanded the case to the District Court. Rutherford v. United States, 616 F.2d 455 (10th Cir. 1980). After an unpublished opinion by the District Court, the matter is once again currently on appeal to the Tenth Circuit Court of Appeals.

Assuming that the Order of the District Court is still in effect despite the pronouncement of the United States Supreme Court, there is no evidence in this record that the Board of Medical Examiners is in active concert with the Food and Drug Administration to prevent the use of Laetrile by a person suffering from terminal cancer. The District Court Order cannot be stretched to prohibit disciplinary action by a state medical board. What the Board seeks to do in this proceeding is to measure the Respondent's conduct of his medical practice against the standards set out in the Minnesota Statute. One of those treatment methods employed by the Respondent is the prescription of Laetrile for cancer patients. The question to be considered in this case is whether or not Dr. Briggs followed customary professional standards in his practice of medicine. It must also be pointed out that a 1982 post-Rutherford decision by the New York State Board for Professional Medical Conduct revoked the license of Dr. Donald Cole for the prescription of Laetrile and the manner in which he treated cancer patients. (See, Respondent's Brief, Ex. D). The five-member hearing committee in that case stated that it was not taking a position on the use of Laetrile for terminal cancer patients in a proper clinical setting where the patients seek the substance, all other regimens have failed and the patient is aware that the Laetrile has not been approved for humans by the FDA. The hearing panel also found, however, that the Laetrile was worthless for the cancer patients who were treated by Dr. Cole and it also cited the conclusion of the National Cancer Institute that Laetrile is not effective for cancer. Two other judicial decisions have found that Laetrile is neither effective nor safe. R. A. v. Prudential Insurance Company, L 8093-79 (N.J. Super., Aug. 6, 1982); Free v. Travelers Insurance Company, 551 F.Supp. 554 (D. Md. 1982).

Dr. Briggs' use of certain unapproved drugs for patients and his use of diagnostic tests without any demonstrated accuracy or effectiveness shows a willful disregard for the safety of his patients and a clear departure from

the minimal standards of acceptable and prevailing medical practice. The Respondent has chosen to ignore a basic rule of medical science, namely, that any therapy is unsafe and ineffective until proved otherwise. Dr. Briggs' conduct was guided by his belief that any technique or drug which had been mentioned in writing somewhere was acceptable for use in his medical practice. When a drug or technique has not been shown to be safe or effective, it is likewise true that the nature of the harm it may cause or its side effects is also unknown. The medical testimony in this case establishes that the prevailing standard of medical care in Minnesota is that physicians do not use drugs which have not been approved by the FDA unless they are a part of an authorized clinical study which Dr. Briggs was not. Dr. Briggs was in effect engaging in experimental research on cancer patients without being sanctioned to do so and without disclosing to those patients that the treatment was experimental and without disclosing the risks involved with the experimental drug or therapy.

The record in this case establishes that Koch therapy, hydrazine sulphate, DMSO and interferon have no established or demonstrated value in the treatment of cancer. While DMSO is approved by the FDA for use in interstitial cystitis in humans, it is not approved for the treatment of cancer. It appears that the Respondent used DMSO manufactured for veterinary use only which may have contained a greater percentage of the drug than that manufactured for humans. While research has indicated that interferon may be useful in treating certain cancers, human interferon was not available to Dr. Briggs and was not employed in his practice. Had Dr. Briggs employed an effective form of interferon, he still would not have had the benefit of research to establish what dosage or treatment schedule might be effective. The expert testimony, patient testimony and employee testimony submitted in this case establishes that the AMID test, hair analysis to determine nutrient mineral level, and sensitivity testing have no scientific validity and are contrary to prevailing medical practice in the state of Minnesota. The Respondent's reliance on these tests as a means of diagnosis or as a means of selecting treatment for a patient would result in an inappropriate treatment. Dr. Briggs did little research to examine the validity or effectiveness of these tests. Despite the fact that hair analysis has not been demonstrated to be reliable to determine trace mineral levels and although Dr. Briggs was aware of differing results from a test of the hair of one employee, he would prescribe mineral supplements, hydrochloric acid, pancreatic enzymes or dietary changes based upon the results of this test. Expert testimony has established that sensitivity testing or kinesiology testing performed by Dr. Briggs has no scientific validity. This testimony is corroborated by the description of the process itself, the contradictory results achieved with patients, and the reaction of patients and employees to the testing. An example of the misuse of kinesiology testing was Dr. Briggs' instruction to p2 to discontinue taking lithium because the kinesiology testing established that he was sensitive to it. ✓

Dr. Briggs also prescribed chelation therapy for the treatment of heavy metal poisoning, for stroke victims and for atherosclerosis. Although this procedure, involving the use of a drug called EDTA, is a recognized procedure for the treatment of lead poisoning, it has no value in the treatment of heart

disease or stroke. The procedure presents serious risks to the patient including kidney damage, loss of calicium, allergic reactions, bone marrow depression, hypertension and other problems.

The use by Dr. Briggs of unapproved drugs and chemicals and unsafe amounts of supplements, none of which have any benefit in the treatment of the disease being treated, constitutes a willful or careless disregard for the safety of patients and unprofessional conduct. His use of diagnostic tests without scientific validity also violates the same statutory provisions. The Minnesota Supreme Court has found the use of a method of diagnosis with no scientific basis by a physician to be grounds for disciplinary action. Minnesota State Board of Medical Examiners v. Schmidt, 292 N.W. 255 (Minn. 1940), cert. denied, 311 U.S. 617 (1941). Dr. Schmidt selected the appropriate drug by having the patient hold it in his hand and then observing a "line" created by a piece of paper placed on the patient's abdomen. 292 N.W. at 256. Finally, the treatments prescribed by Dr. Briggs, which were not effective for the patient's condition and which created a risk of harm for the patient, amounts to unprofessional conduct and disregard of his patients' safety. The Board has, however, failed to show that Dr. Briggs violated a federal statute or rule contrary to Minn. Stat. § 147.021, subd. 1(i). The federal Food, Drug and Cosmetics Act prohibits the introduction into interstate commerce of any new drug unless first approved by the FDA. 21 U.S.C. § 355. However, the Board has not cited any federal statute or rule which was violated by the Respondent when he prescribed a drug which is not approved for use in humans by the FDA. It has been held that the Food and Drug Administration does not have jurisdiction to regulate the administration of a drug by a physician. F.T.C. v. Simeon Management Corp., 391 F.Supp. 697, 706-7 (N.D. Cal. 1975), aff'd, 532 F.2d 708 (9th Cir. 1976).

The Board has also questioned three other components of Dr. Briggs' treatment of cancer patients, namely, the exercise program, the attitudinal program and Dr. Briggs' use of prayer. Although none of these methods of treatment have any demonstrated effectiveness in the treatment of cancer, neither has it been shown that they cause any harm to patients. Accordingly, they cannot be said to violate statutory prohibition against the willful disregard of health or safety of patients or the observance of minimal standards of acceptable and prevailing medical practice. Although at least one patient was alarmed by Dr. Briggs' discussion of demons, the evidence indicates that Dr. Briggs initially advised patients to see their own priest, pastor or rabbi for spiritual counseling. Dr. Briggs did advise patients that he would pray with them as a church elder if they wished him to do so. While the record indicates that a patient and an employee were billed for office visits to Dr. Briggs that included prayer, it does not appear that there was any extra charge due to the addition of prayer to the medical diagnosis or treatment involved in the visit. While one may question the appropriateness or advisability of prescribing prayer or a laying on of the hands as a specific means of treatment, it does not rise to the level of a statutory violation. Minn. Stat. § 147.11 specifically exempts from the unauthorized practice of medicine persons who endeavor to cure disease by prayer. There is no evidence in the record indicating that any harm to patients occurred or was likely to occur due to the

exercise or attitudinal components of the 21-day cancer program. It is clear that Dr. Briggs in effect prescribed these elements of the program when he prescribed the entire 21-day program to his cancer patients. It appears that Tom Clague had adequate experience, if any is needed, to conduct a motivational program and that, as Dr. Lerner indicated, a positive attitude is helpful in making use of the treatment which is available for cancer.

The Board has shown that misleading representations were made regarding insurance coverage for the costs of the cancer program. The record demonstrates, however, that these misrepresentations were made by Tom or Ann Clague and not by the Respondent. Likewise, the representations made for a success rate for cancer patients at the Health and Wellness Center were deceptive and misleading, but were made by Tom Clague. Dr. Briggs did at one point tell Tom Clague not to make these representations since they were inaccurate. He also attempted to initiate a follow-up study of cancer patients at the end of his first year at the center in order to actually determine the effectiveness of the treatment. The record does not establish that Dr. Briggs made misleading, deceptive, untrue or fraudulent representations in his practice of medicine.

The Board has established by a preponderance of the evidence that Dr. Briggs has utilized personnel to carry out his treatment program for patients who were not properly qualified. Although Dr. Briggs relied on Ann Clague to teach nutrition classes to cancer patients and to design a diet for them, she is not in fact a trained nutritionist. Her degree from Donsbach University is a mail order degree which can be obtained by payment of \$3,000, together with a self-study program. Ann Clague also performed injections of drugs and chemicals, colonic irrigations and intravenous administration of chelation therapy without any training to do so and usually without Dr. Briggs' supervision. The Respondent's attitude in this regard is demonstrated by his asking a person employed as a cook to administer colonic irrigations. Such a lack of concern that qualified medical personnel carry out his prescribed treatments demonstrates a willful disregard for the safety of his patients and constitutes unprofessional conduct.

Although the Findings of Fact and this Memorandum have pointed out numerous violations of the statute by Dr. Briggs, it should also be pointed out that there are certain things which he did not do. Specifically, he did not claim to prospective patients that he could cure their cancer. He employed a release form signed by the patient which specifically disclaimed an ability to cure any specific disease. Additionally, the evidence in this case does not show that Dr. Briggs treated cancer patients who may have benefitted from conventional cancer treatment and who were willing to undergo that conventional treatment. This last statement must be considered with the fact that Dr. Briggs did not advise his patients of the risks and experimental nature of the individual components of the cancer program he prescribed. The Respondent admits that life expectancy may be extended by conventional cancer therapy, but suggests that the treatment is so disabling that metabolic therapy is preferable. (Respondent's Brief, p. 71). A patient cannot, however, make an intelligent choice without a full disclosure of the risks and benefits of all possible treatments.

G.A.B.