

NORTH CAROLINA MEDICAL BOARD
April 10-11, 2014
1203 Front Street – Board Room

I. HEARINGS:

BRABHAM, Felicia, MD – Cameron, SC

Board Attorney: Brian Blankenship
Opposing Counsel:

On March 3, 2014, the Board issued charges alleging that Dr. Brabham failed to respond to the Board's repeated requests for information; failed to release a copy of a patient's record in a timely manner; and entered and used the offices of another entity without permission. All within the meaning of NCGS 90-14(a).

II. PROPOSED SETTLEMENTS:

MADDOX, Charles Deaton, MD – Asheville, NC

Board Attorney: Todd Brosius
Opposing Counsels: Bill Brazil

MARTIN, Carol Ann, MD – Cary, NC

Board Attorney: Marcus Jimison
Opposing Counsel: Jerry Allen

SHEN, John, MD – Albemarle, NC

Board Attorney: Marcus Jimison
Opposing Counsel: David Fothergill

STRATTA, Robert Joseph, MD – Winston-Salem, NC

Board Attorney: Brian Blankenship
Opposing Counsel: James Wilson

BEFORE THE
NORTH CAROLINA :MEDICAL BOARD

In Re:

Felicia B. Brabham, M.D.,
Respondent.

NOTICE OF CHARGES
AND ALLEGATIONS;
NOTICE OF HEARING

The North Carolina Medical Board (hereafter the Board) has preferred and does hereby prefer the following charges and allegations:

1. The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Article 1 of Chapter 90 of the North Carolina General Statutes.

2. Felicia B. Brabham, M.D., (hereafter Dr. Brabham) is a physician licensed by the Board on June 13, 1987, license number 31248.

3. At times relevant herein, Dr. Brabham practiced internal medicine in the Hendersonville, North Carolina area.

4. In September 2012, the Board received two complaints regarding the inability of former patients to obtain copies of their medical records from Dr. Brabham's office.

5. On September 14, 2012, the Board mailed a letter to Dr. Brabham informing her of the complaint by Patient A. Enclosed with the letter was a copy of the Board's Position Statement *Access to Medical Records*. The letter requested

that Dr. Brabham either release Patient A's medical record to the patient or patient's representative or provide an explanation to the Board why Patient A was not entitled to a copy of her medical record. The letter requested that Dr. Brabham, "Please inform the Board within (3) three weeks of this letter that you have resolved this issue (in writing or email) ." This letter was mailed certified mail, return receipt requested. The return receipt received by the Board indicates that the letter was received at Dr. Brabham 's practice address.

6. Dr. Brabham did not respond to the Board 's September 14 , 2 012 letter and did not provide the patient's medical records to the patient.

7. On September 24 , 2 012 , the Board mailed a second letter to Dr. Brabham informing her of a complaint from a healthcare provider and their inability to obtain the medical records of Patients A and B. This letter was mailed certified mail, return receipt requested. The return receipt received by the Board indicates that the second letter was received at Dr. Brabham 's practice address.

8. The September 24 , 2 012 letter requested that Dr. Brabham either provide a copy of the patients ' records to the patients or the patients ' representative or provide an explanation to the Board why the patients or their

representative were not entitled to a copy of the medical records.

9. Dr. Brabham did not respond to the September 24, 2012 letter and did not request additional time to respond.

10. On October 11, 2012, the Director of the Complaint Department (hereinafter "the Director") e-mailed Dr. Brabham. The e-mail stated in pertinent part, "[t]he Board requested September 12, 2012 that you provide records to [Patient A] based on her complaint and send a letter of confirmation to the Board. To date your response has not been received to the Board's inquiry."

11. Dr. Brabham did not reply to the Director's October 11, 2012 e-mail.

12. On October 18, 2012, Ms. Clark sent a second e-mail to Dr. Brabham. The e-mail stated in pertinent part, "[Patient A] and [Patient B] new providers still have not received their records. I have written, called, and emailed you with no response. You will need to e-mail me notification by Monday, October 22, that all the records have been released."

13. Also on October 18, 2012, the Director faxed a copy of her email to Dr. Brabham's office.

14. Dr. Brabham did not reply to the Director's October 18, 2012 e-mail or fax.

15. Dr. Brabham 's conduct in failing to respond to the Board 's repeated requests for information, as described above, constitutes failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine within the meaning of N.C. Gen. Stat. § 90-14 (a) (14), which is grounds under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, condition, or limit Dr. Brabham 's license to practice medicine and surgery issued by the Board.

Second Charge
Unprofessional Conduct

16. Paragraphs one through fifteen above are re-alleged and incorporated herein by reference.

17. In January 2013 Mr. S requested that Patient C's medical records be forwarded from Dr. Brabham 's office to the office of Patient C's new treating physician.

18. In February 2013 Patient C began treating with her new treating physician. At the time, Dr. Brabham had not forwarded Patient C's medical records.

19. In February 2013 and again in March 2013, Mr. S requested that Dr. Brabham transfer Patient C's medical records to her new treating physician.

20. In April 2013, Mr. S filed a complaint with the Board. At the time of the complaint, Dr. Brabham had not transferred Patient C's medical records.

21. In July 2013, a Board Investigator met with and interviewed Dr. Brabham. The Board Investigator asked Dr. Brabham about the status of Mr. S's request that Patient C's medical records be transferred to another physician.

22. Dr. Brabham told the Board Investigator that the issue had been resolved that the medical records had been provided.

23. Mr. S subsequently told the Board Investigator that the medical records had been transferred in July 2013.

24. Dr. Brabham's conduct in failing to release a copy of Patient C's medical record in a timely manner to the patient, the patient's representative, or the treating physician is unprofessional but not limited to, departure from, or the failure to conform to the ethics of the medical profession and is the commission of an act contrary to honesty, justice or good morals within the meaning of N.C. Gen. Stat. § 90-14 (a) (6), which is grounds under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, condition, or limit Dr. Brabham's license to practice medicine and surgery issued by the Board.

Third Charge
Failure to Respond to Board Inquiry

25. Paragraphs one through twenty-four above are re-alleged and incorporated herein by reference.

26. On April 15, 2013, a Board Investigator mailed Dr. Brabham a letter notifying her of two Board investigations, including an investigation into the complaint filed by Mr. S. Enclosed with the letter were two Notices of Existence of Information. The letter requested that Dr. Brabham sign and date the two Notices of Existence of Information forms and return them to the Board Investigator. The letter also provided the Board Investigator's phone number and email address.

27. The Notices of Existence of Information state, "p]ursuant to 21 NCAC 32N .0107, you are required to submit to an interview within 30 days from the date of an oral or written request for an interview from a Board Investigator... *FaiLure to respond in the time and manner required by 21 NCAC 32N .0107 may be treated as a faiLure to respond to a Board inquiry in a reasonable time and manner as required by G.S. 90-14 (a) (14).* ' "

28. The April 15, 2013 letter was mailed certified mail, return receipt requested. The return receipt received by the

Board Investigator indicates that the letter was received at Dr. Brabham's practice address.

29. Dr. Brabham did not sign and return the Notices of Existence of Information as requested.

30. The Board Investigator called Dr. Brabham's office and left a message asking that Dr. Brabham contact him. Dr. Brabham did not return the Board Investigator's call.

31. On July 3, 2013, the Board Investigator made an unannounced visit to Dr. Brabham's office. During that visit, Dr. Brabham signed the Notices of Existence of Information.

32. During the July 3, 2013 visit and interview of Dr. Brabham, the Board Investigator verbally informed Dr. Brabham that, on July 2, 2013, the Board had received a complaint from Patient D.

33. Dr. Brabham agreed to provide the Board Investigator a written response to Patient D's complaint within 30 days of the interview.

34. To date, Dr. Brabham has not provided the Board Investigator with a written response to Patient D's complaint.

35. Dr. Brabham's failure to respond to the Board Investigator, as described above, constitutes failure to

respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine within the meaning of N.C. Gen. Stat. § 90-14(a) (14), which is grounds under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, condition, or limit Dr. Brabham's license to practice medicine and surgery issued by the Board.

Fourth Charge
Unprofessional Conduct

36. Paragraphs one through thirty-five above are re-alleged and incorporated herein by reference.

37. Dr. Brabham's medical practice in Hendersonville was located in an office complex and adjoined the offices of Carolina Plastic Surgery. Carolina Plastic Surgery uses their Hendersonville offices approximately once a month.

38. In late September or early October 2013, Dr. Brabham surreptitiously and without the permission of Carolina Plastic Surgery, obtained a copy of the key to Carolina Plastic Surgery.

39. On or about October 3, 2013, Hendersonville Police received a report of breaking and entering at Carolina Plastic Surgery offices. That same day, Dr. Brabham admitted to Hendersonville Police that she had

entered and begun using Carolina Plastic Surgery offices without the permission or consent of Carolina Plastic Surgery.

40. On or about October 11, 2013, Hendersonville Police and a representative of Carolina Plastic Surgery confirmed that Dr. Brabham had entered and was using Carolina Plastic Surgery offices to see and treat patients. Hendersonville Police and the Carolina Plastic Surgery representative also found evidence that Dr. Brabham had used Carolina Plastic Surgery office supplies, including medications.

41. By entering and using the offices of Carolina Plastic Surgery without their permission or consent and by using Carolina Plastic Surgery's supplies without their permission or consent, Dr. Brabham committed unprofessional conduct, specifically, the commission of an act contrary to honesty, justice or good morals within the meaning of N.C. Gen. Stat. § 90-14 (a) (6), which is grounds under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, condition, or limit Dr. Brabham's license to practice medicine and surgery issued by the Board.

Notice to Dr. Brabham

Pursuant to N.C. Gen. Stat. § 90-14.2, it is hereby ordered that a hearing on the foregoing Notice of Charges and Allegations will be held before the Board, or a panel thereof, on April 10, 2014 at 8:00 a.m. or as soon thereafter, at the offices of the Board at 1203 Front Street, Raleigh, North Carolina, to continue until completed. The hearing will be held pursuant to N.C. Gen. Stat. § 150B-40, 41, and 42, and N.C. Gen. Stat. § 90-14.2, 14.3, 14.5, 14.6 and 14.7 as well as 21 NCAC 32N .0110 and 21 NCAC 32N .0111. You may appear personally and through counsel, may cross-examine witnesses and present evidence in your own behalf.

Unless otherwise permitted by the presiding officer, all exhibits shall be provided to the Board electronically.

All preliminary motions, including motions for continuances, shall be filed no later than 14 days prior to the date of the hearing.

Pursuant to N.C. Gen. Stat. § 150B-40(c)(5) and 21 NCAC 32N .0110(c), it is further ordered that the parties shall arrange a prehearing conference at which they shall prepare and sign a stipulation on prehearing conference. The proposed prehearing stipulation shall be submitted to the undersigned no later than ten (10) days prior to the hearing date. The

prehearing conference shall occur no later than seven (7) days prior to the hearing date.

You may, if you desire, file written answers to the charges and complaints preferred against you within thirty (30) days after the service of this notice.

The right to be present during the hearing of this case, including any such right conferred or implied by N.C. Gen. Stat. § 150B-40 (d) or N.C. Gen. Stat. § 90-14.2(b), shall be deemed waived by a party or his counsel by voluntary absence from the Board's office at a time when it is known that proceedings, including deliberations, are being conducted, or are about to be conducted. In such event, the proceedings, including additional proceedings after the Board has retired to deliberate, may go forward without waiting for the arrival or return of counsel or a party.

This the 3rd day of March, 2014.

NORTH CAROLINA MEDICAL BOARD

By: 
Paul S. Camnitz, M.D.
President