



COMMONWEALTH of VIRGINIA

Department of Health Regulatory Boards
Board of Medicine

GEORGE J. CARROLL, M.D.
SECRETARY-TREASURER
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EXECUTIVE SECRETARY

June 21, 1985

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RICHMOND, VIRGINIA 23261
(804) 786-0575

Byron B. Timberlake, M.D.
125 Medical Circle
Winchester, VA 22601

CERTIFIED MAIL

RE: Virginia State Board of Medicine v.
Byron B. Timberlake, M.D.

Dear Dr. Timberlake:

Please take notice that pursuant to Section 9-6.14:12 of Code of Virginia (1950), as amended, the Virginia State Board of Medicine will review and act upon the report of the Hearing Officer and exceptions filed thereto, in the above listed matter on July 21, 1985, at 8:30 a.m. in the Old Cavalier Hotel, 42nd & Pacific, Virginia Beach, Virginia. Any exceptions to the Hearing Officer's report must be filed with the Board office no later than July 8, 1985.

You will have an opportunity to be heard in person and/or by counsel. Both parties will be allowed up to thirty (30) minutes for oral argument before the Board enters into deliberation in this matter; however, no additional testimony will be taken.

Please indicate to the Board office your intention to be present.

Sincerely,


George J. Carroll, M.D.
Secretary-Treasurer
Virginia State Board of Medicine

GJC/ph
Enclosure

cc: Howard Casway
Assistant Attorney General
Thomas A. Schultz, Jr., Esquire
Addison Hurst, Inspector (0101-049-1183)
Stephanie A. Sivert, Deputy Administrator

VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE:

BYRON B. TIMBERLAKE, M.D.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

This case was heard by the Hearing Officer on March 4 and 5, 1985 in Winchester, Virginia, pursuant to Notice Of Hearing/ Statement Of Particulars dated November 14, 1984 and by agreement of counsel, the State Board of Medicine and Byron B. Timberlake, M.D. each being represented by counsel at hearing and Byron B. Timberlake, M.D. being present in person. In addition, the Hearing Officer received, considered and ruled on certain motions as set out in the Hearing Officer's letter dated February 13, 1985, a copy of which is made part of this record, and has received and considered the written memoranda of counsel submitted after the hearing. Finally, the Hearing Officer hereby reaffirms all rulings previously made as to any motions made or objections raised by counsel. All sections and titles cited herein refer to the Code of Virginia of 1950, as amended.

FINDINGS OF FACT

1. Dr. Timberlake has limited his practice of medicine to the speciality of otolaryngology.
2. Dr. Timberlake sees approximately 100 patients a week.
3. The complaints against Dr. Timberlake are with respect to six unrelated patients.
4. The six unrelated patients were all adolescent boys at the time of the alleged behavior of Dr. Timberlake about which they complained.

5. All alleged actions by Dr. Timberlake in relation to the six adolescent boys occurred between the years 1977 and 1984.

6. Patient A, presenting a history of chronic sinus infections and an abscessed ear, was seen by Dr. Timberlake on October 12, 17 and 20, 1983.

On October 12, 1983 in the presence of patient's mother, Dr. Timberlake examined the patient's ear, nose and throat. On the same date Dr. Timberlake examined Patient A in the operating room with no person present other than Dr. Timberlake and the patient.

7. During the October 12, 1983 examination in the operating room, Dr. Timberlake used the palm of his hand to rub or brush over the testicles and penis of Patient A.

8. On October 20, 1983 Dr. Timberlake examined Patient A in the operating room with no person present other than Dr. Timberlake and the patient.

9. During the October 20, 1983 examination in the operating room, Dr. Timberlake used the palm of his hand to rub or brush over the testicles and penis of Patient A several times.

10. Dr. Timberlake stated that his reason for examining an adolescent male's chest or genital area in a room separate from the patient's mother and the doctor's office staff was that he felt that the male adolescent patient would feel awkward and embarrassed.

11. Although Dr. Timberlake testified that when he rechecked Patient A's groin area on the third visit he was "checking for mono mainly", Dr. Timberlake never advised the patient or the patient's mother that he suspected the patient might have mononucleosis.

12. Dr. Timberlake's examination of Patient A's genitals were not customary nor reasonable for an otolaryngologist.

13. There is no medical reason to examine the chest of an adolescent male patient outside the presence of the patient's mother.

14. On July 14, 1983, Dr. Timberlake examined Patient B in an examining room in the presence of patient's mother. Dr. Timberlake then stated that he wanted to examine the patient's heart and lungs, took the patient to the operating room where only Dr. Timberlake and the patient were present. During the examination in the operating room, Dr. Timberlake touched the patient's penis with the heel of his hand.

15. On August 8, 1983, patient B returned to Dr. Timberlake's office for a scheduled pre-operative examination. Dr. Timberlake examined the patient's ears, nose and throat in the presence of the patient's mother and then took the patient to the operating room for the expressed purpose of examining the patient's heart and lungs. During the examination in the operating room, with only Dr. Timberlake and the patient present, Dr. Timberlake placed his hand on the patient's lower abdomen, touching the top of the patient's penis with the heel of his hand.

16. On September 20, 1983, Dr. Timberlake operated on Patient B. Postoperatively, Dr. Timberlake came to Patient B's hospital room and checked the packs in the patient's nose. Dr. Timberlake also pulled the curtains around the patient's bed, told the patient to lower his pajama bottom and then placed his hand on the patient's lower abdomen, touching the top of the patient's penis with the heel of his hand.

17. It was not within the scope of an appropriate otolaryngology examination to palpate the abdomen of Patient B following a septoplasty since there were no complaints by Patient B of abdominal pain. The postoperative examination conducted by Dr. Timberlake in the hospital room was not within the scope of an appropriate otolaryngology examination.

18. On October 27, 1982, Patient C was examined by Dr. Timberlake in an examining room in the presence of the patient's mother. Dr. Timberlake then stated that he was going to take Patient C to another room to check his lungs. Dr. Timberlake then took Patient C to the operating room and in the presence of only the patient placed his hand on the patient's penis and then his ear on the patient's lower abdomen.

19. Dr. Timberlake examined Patient C seven other times and each occasion took the patient to the operating room, where only the doctor and the patient were present, and placed his hand upon the patient's penis and then placed his ear upon the patient's lower abdomen.

20. It is not with the scope of an appropriate otolaryngology examination for a doctor to place his ear on the

patient's lower abdomen. It was not within the scope of an appropriate otolaryngology examination for Dr. Timberlake to examine Patient C's genitalia.

21. On April 21, 1977, Dr. Timberlake performed a pre-operative physical examination on Patient D, including a hernia check, for surgery scheduled for April 28, 1977. Dr. Timberlake testified that he generally performs pre-operative physical examinations two days prior to scheduled surgery.

22. Dr. Timberlake on five occasions squeezed the penis of Patient D during pre-operative examinations. Dr. Timberlake's squeezing of Patient D's penis was not within the scope of an appropriate otolaryngology examination.

23. Postoperatively, Dr. Timberlake squeezed Patient D's penis during examinations. There was no medical reason to perform a postoperative examination of Patient D's genital area or to squeeze his penis.

24. On October 17, 1983, Dr. Timberlake examined the ears, nose, throat and chest of Patient E in the presence of the patient's mother. Dr. Timberlake and a nurse took the patient to the operating room for the purpose of removing wax from the patient's ears. In the presence of only the patient, Dr. Timberlake touched the patient's testicles and penis while conducting what Dr. Timberlake described as a check for a hernia.

25. Patient E was examined on two other occasions in the operating room when Dr. Timberlake, only in the presence of the

patient, touched with his hand the testicles and penis of the patient.

26. The examination of Patient E's genital area was not with the scope of an appropriate otolaryngology examination.

27. Dr. Timberlake treated Patient F during the period of February 25, 1975 through October 26, 1977, including twenty-two office visits.

28. During most of the office visits, Dr. Timberlake took the patient to the operating room and, in the presence of only the patient, on repeated occasions held or cupped the patient's testicles, on some occasions squeezed the patient's penis with his fingers and on one occasion placed his ear on the patient's abdomen below his navel.

29. Dr. Timberlake's repeated examinations of F's genital area were medically unnecessary and not within the scope of an appropriate otolaryngology examination.

30. Dr. Timberlake performs all aspects of his physical examinations in the examining room for all patients other than male adolescent boys.

31. Dr. Timberlake's practice routinely included the examination of the chest or groin of an adolescent boy in private while Dr. Timberlake's nurse or staff member waited in the hallway while Dr. Timberlake performed the examination behind a closed door.

CONCLUSIONS OF LAW

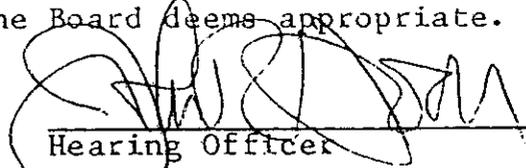
1. Dr. Timberlake is guilty of fraud or deceit in the practice of otolaryngology based on the above stated findings of fact.

2. Dr. Timberlake is guilty of unprofessional conduct as defined in §54-317 of the Code of Virginia. Particularly, Dr. Timberlake's inappropriate examinations as described in the findings of fact are contrary to the standards of ethics of his branch of the healing arts and were conducted to such a manner as to make his practice a danger to the health and welfare of his patients. § 54-317(11)

RECOMMENDATIONS

The Hearing Officer recommends that the Board of Medicine, based on the findings of fact and conclusions of law set out above, place Dr. Timberlake on probation for such time as it may designate and direct that during such period Dr. Timberlake not provide any professional services as a medical doctor to any person under the age of 18 years and that he receive such psychiatric counseling as the Board deems appropriate.

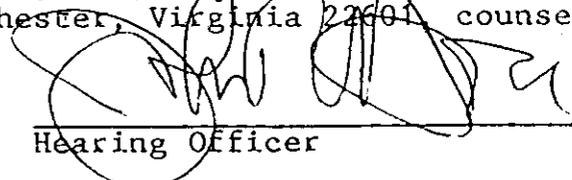
Date: 06-03-85



Hearing Officer

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was mailed to Howard M. Casway, Esquire, Assistant Attorney General, 101 N. Eighth Street, Richmond, Virginia 23219 and to Thomas A. Schultz, Jr., Esquire, Harrison & Johnson, P. O. Box 809, Winchester, Virginia 22601, counsel for the respondent.



Hearing Officer