BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ANN DeJONG, M.D.
Physician's and Surgeon's Certificate No. A118790
Respondent

File No. 8002014002486

DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 31, 2015.

IT IS SO ORDERED July 1, 2015.

MEDICAL BOARD OF CALIFORNIA

By:

Jamie Wright, J.D.
Chair, Panel A
IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled proceedings as follows:

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. This action has been at all times brought and maintained solely in the official capacity of the Medical Board’s Executive Director, who is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Jane Zack Simon, Supervising Deputy Attorney General.

2. Ann De Jong, M.D. (Respondent) is represented in this matter by Robert J. Sullivan of Nossaman LLP, 50 California Street, 34th Floor, San Francisco, CA 94111.
3. On October 21, 2011, the Medical Board of California issued Physician’s and Surgeon’s Certificate No. A118790 to Respondent. The certificate is renewed and current.

4. Accusation No. 800-2014-002486 (Accusation) was filed by the Medical Board of California (Board) and is currently pending against Respondent. The Accusation and all other statutorily required documents were served on Respondent, who filed a Notice of Defense. A copy of the Accusation is attached as Exhibit A.

5. Respondent has carefully read, discussed with counsel and understands the charges and allegations in the Accusation. Respondent has also carefully read, discussed with counsel and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reprimand (Stipulation.)

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. For the purpose of resolving the charges and allegations in the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that based upon the action taken by the Idaho Board of Medicine as alleged in the Accusation, cause exists to discipline her California physician’s and surgeon’s certificate pursuant to Business and Professions Code sections 2305 and 141.

8. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

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Stipulated Settlement and Disciplinary Order for Public Reprimand (Ann De Jong, M.D.)
9. This Stipulation shall be subject to the approval of the Board. Respondent acknowledges that she shall not be permitted to withdraw from this Stipulation unless it is rejected by the Board. Respondent understands and agrees that Board staff and counsel for Complainant may communicate directly regarding this Stipulation, without notice to or participation by Respondent or her counsel. If the Board fails to adopt this Stipulation as its Order, the Stipulation shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action in this matter by virtue of its consideration of this Stipulation.

10. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED THAT respondent Ann De Jong, M.D., as holder of Physician’s and Surgeon’s Certificate No. A118790, shall be and hereby is publicly reprimanded pursuant to Business and Professions Code section 2227. This Public Reprimand is issued as a result of action undertaken by the Idaho Medical Board:

On January 6, 2014, the Idaho Board of Medicine issued a Final Order regarding Respondent’s license to practice medicine in Idaho. The Final Order included findings that Respondent treated a patient by “telemedicine,” which consisted of a telephonic encounter during which the patient complained of watery eyes, itchy ears, mild sore throat, drainage, aches and pains and a slight fever. Respondent failed to conduct any physical examination. After a review of a patient questionnaire and a brief telephonic consultation, Respondent advised the patient that her symptoms sounded like a cold. However, Respondent volunteered to and did issue a prescription for an antibiotic to be used at the patient’s discretion, “in case something changes.” It was determined by the Idaho Board of Medicine that Respondent failed to meet the standard of care for assessment and treatment of a respiratory infection, prescribed without a medical basis, and failed to
create an adequate medical record of the patient encounter. Based on these findings, the Final Order prohibited Respondent from providing any type of medical/health care via telephone/e-mail medical consultation (telemedicine) to Idaho citizens. She was required to reimburse the Idaho Board for its costs, and complete a course in Ethics.

B. PRESCRIBING PRACTICES COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (PACE), approved in advance by the Board or its designee. Respondent shall provide PACE with any information and documents that PACE may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after her initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later. If Respondent fails to enroll, participate in, or successfully complete the prescribing practices course within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until she has completed the prescribing practices course.

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Stipulated Settlement and Disciplinary Order for Public Reprimand (Ann De Jong, M.D.)
Failure to enroll, participate in, or successfully complete the prescribing practices course within the designated time period shall constitute unprofessional conduct and grounds for further disciplinary action.

ACCEPTANCE

I have read the foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand and have discussed it with my attorney. I fully understand the terms of the Stipulation and their legal significance and the consequences of signing the Stipulated Settlement and Disciplinary Order for Public Reprimand, and I agree to this Stipulation.

DATED: 5-27-15

ANN DeJONG, M.D.
Respondent

APPROVAL

I have read and fully discussed with respondent Ann De Jong, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reprimand. I approve its form and content.

Dated: 5-27-15

ROBERTO SULLIVAN
Nossaman LLP
Attorneys for Respondent
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 5/29/15

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California

JANE ZACK SIMON
Supervising Deputy Attorney General

Attorneys for Complainant
Exhibit A

Accusation
In the Matter of the Accusation Against:

ANN De JONG, M.D.
1253 84th Street
New Richmond, WI 54017

Physician's and Surgeon's Certificate No. A118790

Respondent.

The Complainant alleges:

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California, Department of Consumer Affairs, and brings this Accusation solely in her official capacity.

2. On October 21, 2011, Physician's and Surgeon's Certificate No. A118790 was issued by the Medical Board of California to Ann De Jong, M.D. (Respondent.) The certificate is renewed and current with an expiration date of September 30, 2015.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board) under the authority of the following sections of the California Business and Professions Code (Code) and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

C. Section 141 of the Code provides:

(a) For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or by another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by the board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.
FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On January 6, 2014, the Idaho Board of Medicine issued a Final Order regarding Respondent’s license to practice medicine in Idaho. The Final Order includes findings that Respondent practiced telemedicine and was affiliated with an entity called “Consult A Doctor, Inc. (CADR).” Potential patients contacted CADR via their internet website, submitted completed patient questionnaires, and were then scheduled for telephone consultations with affiliated physicians. Respondent had a telephonic encounter with a CADR Idaho patient on February 9, 2012. The patient complained of an upper respiratory infection described as a cold with watery eyes, itchy ears, mild sore throat, drainage and aches and pains. The patient reported a slight fever. Respondent failed to conduct any physical examination. After reviewing the patient questionnaire and having a brief telephonic consultation, Respondent advised the patient that her symptoms sounded like a cold. However, Respondent volunteered to and did issue a prescription for an antibiotic to be used at the patient’s discretion, “in case something changes.” It was determined that Respondent failed to meet the standard of care for assessment and treatment of a respiratory infection, prescribed without any medical basis, and failed to create an adequate medical record of the patient encounter. The Idaho Board also found that Respondent “suffered from a serious lack of credibility” and made misrepresentations during her testimony before the Idaho Board. Based on these findings, the Final Order prohibited Respondent from providing any type of medical/health care via telephone/e-mail medical consultation (telemedicine) to Idaho citizens. She was required to reimburse the Idaho Board for its costs, and complete a course in Ethics. A copy of the Final Order issued by the Idaho Board of Medicine is attached as Exhibit A.

5. Respondent’s conduct and the action of the Idaho Board of Medicine as set forth in paragraph 4, above, constitute unprofessional conduct within the meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A118790 issued to respondent Ann De Jong, M.D.;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants;

3. Ordering Respondent, if placed on probation, to pay the costs of probation monitoring; and

4. Taking such other and further action as the Board deems necessary and proper.

DATED: May 22, 2014

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant
EXHIBIT A
In the Matter of: 

ANN DE JONG, M.D., 
License No. M-11037, 

Respondent. 

Case No. 2012-BOM-582 

BEFORE THE IDAHO STATE BOARD OF MEDICINE 

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

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

BACKGROUND 

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

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

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

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

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

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

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

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

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

The Board determined Respondent violated IDAPA 22.01.01.101.03.h as she failed to maintain adequate patient records. Pursuant to IDAPA 22.01.01.101.03.h, patient records are required to "contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care." Respondent's patient record of L.H., consisting only of a patient questionnaire submitted to CADR, the telephonic consultation and the CADR recording of the telephonic consultation, was deemed a wretched substitute for a valid patient record. (Exhibit 8)
The events in the provision of health care via telephonic patient consultation to patient L.H., as recognized in Respondent's Closing Brief, are largely not in dispute. (Respondent's Closing Brief, p.2) The Board found no competent evidence in the record rebutting or even undermining the standard of care testimony provided by Dr. Devitt. The Board deemed Respondent's testimony was, at best, unpersuasive and, at worst, questionable.

Accordingly, the Board concluded that Respondent failed to provide the community standard of care in violation of Idaho Code §54-1814(7) and IDAPA 22.01.01.03.h.

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

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

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

RESPONDENT VIOLATED IDAHO CODE § 54-1814(5)

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

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

THE RECORD UNDERMINED RESPONDENT'S TRUSTWORTHINESS

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

FINAL ORDER Case No. 2012-BOM-582
evidence documents Walgreen's pharmacy filled a second prescription after Fred Meyer's pharmacy refused to fill the first, Respondent, in her Closing Brief, questioned whether this actually occurred.  

(Board’s Reply Brief, p. 2 pp. 5)

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

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

FINAL ORDER

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

1. Respondent shall not provide any type of medical/health care via telephone/e-mail medical consultations (telemedicine) to Idaho citizens.

2. Within ninety (90) days of the date of the last signature of this Final Order, Respondent shall reimburse the Board in toto for its costs and attorney’s fees incurred in this contested case proceeding, unless the Board approves of a prior payment schedule submitted by Respondent. An accounting of the Board’s costs and attorney’s fees is attached hereto as Exhibit B and incorporated herein.

3. Within nine (9) months of the date of the last signature of this Final Order, Respondent shall submit written documentation of the completion of a Board approved Ethics Course. All cost and fees incurred for the Ethics Course shall be borne by Respondent.

4. That this Final Order shall be considered a public record as that term is used in the Idaho Code.

5. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Idaho.

DATED This 2 day of December, 2013.

IDAHO STATE BOARD OF MEDICINE

BARRY FRANKLIN BENNETT, M.D.
Chairman
BEFORE THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:

ANN DE JONG, M.D.,
License No. M-11037,
Respondent.

Case No. 2012-BOM-582

SCHEDULE FOR REVIEW OF FINAL ORDER

Pursuant to IDAPA 04.11.01.740.02 (Rule 740):

a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code.

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:
   i. A hearing was held,
   ii. The final agency action was taken,
   iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
   iv. The real property or personal property that was the subject of the agency action is located.

c. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 6th day of January, 2014.

IDAHO STATE BOARD OF MEDICINE

CATHLEEN M. MORGAN, J.D.
Attorney for the Idaho State Board of Medicine
CERTIFICATE OF SERVICE

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

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

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

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

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

Cathleen M. Morgan, J.D.
BEFORE THE IDAHO STATE BOARD OF MEDICINE

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

Respondent.  Case No. BOM-2012-582

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

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

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

Following the hearing, the parties submitted closing arguments and briefs, and the matter is now fully submitted and ready for the entry by the Hearing Officer of Recommended Findings of Fact and Conclusions of Law.
Based upon the record in this case, the exhibits submitted during the hearing, the testimony of the witnesses, and having reviewed the post-hearing briefs of counsel and reviewed applicable legal authorities, the Hearing Officer respectfully submits to the Board the following Recommended Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT/CONCLUSIONS OF LAW**

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

2. This case arises out of Dr. De Jong’s affiliation with an entity called “Consult A Doctor, Inc.” (“CADR”) and a telephonic patient encounter with patient L.H. that occurred February 9, 2012. Respondent’s Exhibit A indicates that Dr. De Jong was affiliated with GADR beginning July 1, 2011 and continuing until March 1, 2012. The exhibit indicates that this corporation maintains an office in Miami Beach, Florida. At hearing Dr. De Jong testified that she learned of CADR through a patient, and that she then contacted CADR and requested that she be considered to provide on call telephonic physician consultations to individuals who might contact CADR for medical services. Respondent’s arrangement with CADR required her to be
available for certain blocks of time and to be available for patient consultations. The business model of CADR was that individuals would contact the entity via the internet, fill out a patient questionnaire, and the patient would then be scheduled for a telephonic consultation with the affiliated physician. Although the business mechanism for adding Idaho as a CADR state is not in the record, it appears that Idaho became a part of the CADR system in February of 2012. Dr. De Jong testified that she “guesstimated” that she had acted in this on call telephonic physician role for 75 patients through CADR, but she was unable to recall how many consultations she had provided to Idaho residents. Her recollection at hearing was that she received a $20 fee from CADR for each patient consultation.

3. The telephonic patient consultation involved in this case occurred February 9, 2012 with patient L.H. On that date, patient L.H. contacted CADR and was required to complete a medical questionnaire. The completed patient questionnaire was admitted as Exhibit 8. The patient questionnaire was available to Dr. De Jong and was followed by a brief telephonic communication between patient L.H. and Dr. De Jong. The telephone conversation between Dr. De Jong and patient L.H. was tape recorded by CADR and a transcript of that telephone consultation was admitted as Exhibit B. That transcript reveals that patient L.H. advised Dr. De Jong that she had a bad cold in her nose with watery eyes, itchy ears, mild sore throat, drainage, and aches and pains. She reported a slight fever of 99.6°. During the call, Dr. De Jong initially stated that the patient complaints described symptoms of a traditional cold and that symptomatic therapy was normally what was required. However, and without the patient even requesting a prescription for an antibiotic, Dr. De Jong voluntarily suggested to write an order for an antibiotic to be used, at the patient’s discretion, “in case something changes.” (See Respondent Exhibit B, p.2) The antibiotic ordered by Dr. De Jong was Azithromycin and was to be called in to the Fred Meyer pharmacy on Chinden Boulevard in Garden City. At that point patient L.H. asked Dr. De
Jong if she could pick up the antibiotic at the pharmacy and Dr. De Jong confirmed that it would be at the pharmacy and available to her "if you feel like you need it." In concluding the brief telephonic consultation, Dr. De Jong did encourage patient L.H. to follow up with her primary care physician if her symptoms were not improving.

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

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

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

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

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

9. The foregoing events, as recognized by Respondent in her closing brief "are largely not in dispute." (Respondent's Closing Brief, p.2) From these events, the Board staff in its' Complaint alleges that Dr. De Jong's participation in the CADR system, and her prescription
to this patient for the antibiotic, warrant disciplined under several theories, including affiliation with an unlicensed entity, allowing an unlicensed entity to practice medicine through her medical license, providing healthcare below the community standard, and unlawful fee sharing in exchange for a referral. These four separate theories of discipline against Dr. De Jong break down into categories. 1) her affiliation with an online unlicensed entity purporting to provide physician services and 2) patient encounter with L.H. and the prescription for Azithromycin which is alleged to be in violation of the applicable community standard of care.

a) **Violation of Community Standard of Care.**

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

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

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

The standard of care provided by physicians in the Boise-Meridian area was provided by Angeline Devitt, M.D., a family practice physician from Boise. She has practiced in the area since 1994. Dr. Devitt is Board Certified in family medicine. In preparation for her testimony at the hearing, Dr. Devitt reviewed records provided to her by the Board staff related to the
encounter between L.H. and Dr. De Jong. Dr. Devitt testified that the standard of care in the local community is to treat respiratory infections with supportive therapy for patient's subjective complaints, including Tylenol, nasal saline and decongestants. She further testified that it is the local community standard of care to conduct a physical exam and evaluation of a patient prior to prescribing drugs for a patient complaining of a respiratory tract infection. Prior to prescribing any medications beyond those available over the counter, Dr. Devitt testified that a physical examination should be performed. Dr. Devitt testified that Dr. De Jong violated the community standard of care in this case by prescribing the antibiotic Z-pak for the patient's symptoms and without benefit of a medical exam and assessment. Specifically, Dr. Devitt testified that an appropriate examination for this patient would have included a blood pressure test due to the patient's reported history of hypertension, taking her temperature, taking her respiratory rate and pulse rate; it would also have included a physician examination of her ears, nasal mucosa, throat, checking for lymph nodes, listening to her heart, and listening to her lungs. (Hr.Tr. p.18)

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

Based on the testimony and evidence in this case, Dr. De Jong violated the community standard of care established under Idaho Code §54-1814(7). In failing to perform an evaluation and prepare a report of objective findings and assessment, Dr. De Jong likewise violated IDAPA 22.01.01.101.03.h.
The Complaint in this case alleges that Dr. De Jong violated the community standard of care by virtue of an alleged violation of any state or federal law relating to controlled substances. The prescription for the Z-pak in this case was certainly a prescription for a legend drug, but the medication itself is not a controlled substance. The drug prescribed in this case by Dr. De Jong is a legend drug, but it is not defined as a controlled substance. (Hr.Tr. p.77-78) It must be concluded that the rule at IDAPA 22.01.01.101.03.e pertains only to violation of a state or federal law governing controlled substances and is not an additional basis for discipline in this case.

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

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

a. Using advertising or representations likely to deceive, defraud or harm the public.

b. Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his or her direction in the treatment of any disease or other condition of the body or mind.”

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

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

c) **Aiding or Abetting the Unlicensed Practice of Medicine.**

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

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

d) Division of Fees for Professional Services.

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

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

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

(1) Violated the Community Standard of Care established by Idaho Code §54-1814(7) and IDAPA 22.01.01.101.03.h;

(2) Advertised the practice of medicine in an unethical or unprofessional manner in violation of Idaho Code §54-1814(4) and IDAPA 22.01.01.101.02;

(3) Aided and abetted the unlicensed practice of medicine in violation of Idaho Code §54-1814(5).

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

DATED this [ ] day of November, 2013.

[Signature]
Kenneth L. Mallea, Hearing Officer
SCHEDULE FOR REVIEW

1. These are the Recommended Findings of Fact and Conclusions of Law of the Hearing Officer.

2. Any party may file a petition for reconsideration of the Recommended Findings of Fact and Conclusions of Law with the Hearing Officer within fourteen (14) days of the service date of the Recommended Findings of Fact and Conclusions of Law. The Hearing Officer issuing the Recommended Findings of Fact and Conclusions of Law will dispose of any petition for reconsideration within twenty-one (21) days of its receipt or the petition will be considered denied by operation of law.

3. Within fourteen (14) days after the latter of (a) the service date of the Recommended Findings of Fact and Conclusions of Law, (b) the service date of any modification of the Recommended Findings of Fact and Conclusions of Law by the Hearing Officer on his own motion, (c) the service date of a denial of a petition for reconsideration from this Recommended Findings of Fact and Conclusions of Law, or (d) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this Recommended Findings of Fact and Conclusions of Law, any party may in writing support or take exception to any part of this Recommended Findings of Fact and Conclusions of Law and file briefs in support of the party's position on any issue in the proceeding.

4. Written briefs in support of or taking exception to the Recommended Findings of Fact and Conclusions of Law shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board will issue a final Order within fifty-six (56) days of receipt of the written briefs. The Board may remand the matter for further evidentiary hearing if further factual development of the record is necessary before issuing a final Order.
5. No additional oral argument on this Recommended Findings of Fact and Conclusions of Law will be conducted by the Board.

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

Dated this 17 day of November, 2013.

Kenneth L. Mallea
CERTIFICATE OF SERVICE

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

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Idaho State Board of Medicine
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by facsimile
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[Signature]