



**Via Federal Express
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[REDACTED], 2009

USMLE ID#: [REDACTED]

[REDACTED]
C/O George F. Indest III, J.D., M.P.A., LL.M.
The Health Law Firm
1101 Douglas Avenue
Altamonte Springs, Florida 32714

Dear [REDACTED]:

As referenced in my letter to you of [REDACTED], and as stated in the *Bulletin of Information*, the USMLE program has established rules to govern administration of the examinations to ensure that no examinee or group of examinees receives unfair advantage on the examination, inadvertently or otherwise. The *Bulletin* further notes that those rules include standard test administration conditions consistent with the principles on which the examinations are developed and scored. For example, examinations are designed to sample knowledge across specified content domains, and unauthorized access to examination content prior to testing violates that principle. Scores may be classified as *indeterminate* if the scores are at or above the passing level and the USMLE program cannot certify that they represent a valid measure of an individual's knowledge or competence as sampled by the examination.

As also referenced in my [REDACTED] letter, the sponsoring organizations of the USMLE program have filed suit in federal court, alleging copyright infringement by Optima University ("Optima"), a provider of USMLE review courses. The Complaint filed on behalf of the National Board of Medical Examiners and the Federation of State Medical Boards in the United States District Court for the Western District of Tennessee against Optima, its owner, and various Doe Defendants sets forth the specific allegations with respect to the unauthorized copying, reconstruction, and distribution of copyrighted USMLE test questions and answers. While the investigation into this matter is ongoing, information is available that, over a period of years, secure USMLE test materials have been made available to participants in the Optima courses. This information raises concerns regarding the validity of the passing level scores obtained by individuals who were involved with the Optima courses prior to testing.

A Joint Program of the Federation of State Medical Boards of the U.S., Inc. and the National Board of Medical Examiners®



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My [REDACTED] letter specifically noted that the evidence of Optima's unauthorized access to, and reproduction and dissemination of, USMLE test materials and the evidence of your involvement with Optima raise concerns about the validity of the passing level scores reported to you for the Step 1 taken by you on [REDACTED] and for the Step 2 Clinical Knowledge (CK) taken by you on [REDACTED]. A copy of the *USMLE Policies and Procedures Regarding Indeterminate Scores* was enclosed with that letter. Also, in that letter, you were offered the option of expediting the resolution of this matter by waiving your right to present information for the consideration of the USMLE Committee on Score Validity and electing to promptly take Step 1 and Step 2 CK "validating examinations." By letter of [REDACTED], your counsel, George Indest III, has advised that you wish to avail yourself of the available procedural review regarding the validity of your Step 1 and Step 2 CK scores. Accordingly, this matter is being referred to the USMLE Committee on Score Validity for further consideration and action consistent with the processes described in the above-referenced Policies and Procedures. In accordance with Mr. Indest's request, this matter will be submitted to the Committee for its review and consideration at its next meeting on [REDACTED].

In addition to the information provided by you on USMLE applications and Mr. Indest's letter to me of May 14, 2009, the available information relating to you that will be shared with the Committee is as follows:

- In postings made on [REDACTED] at www.usmleforum.com under "Step 1," an individual, who self-identified as [REDACTED] reported taking an Optima course, taking the examination on [REDACTED], and obtaining passing scores of [REDACTED]. (Copies of those postings are enclosed.) Three individuals, including you, obtained scores of [REDACTED] on a [REDACTED] administration of Step 1. Of the three individuals, you were the only one who took the [REDACTED] Step 1 in New Jersey.
- In an interview with representatives of [REDACTED] Associates in [REDACTED], you admitted attending Optima courses prior to taking Step 1 in [REDACTED] and prior to taking Step 2 CK in [REDACTED].
- At those periods in time, Optima was doing business in Totowa, New Jersey.
- Between [REDACTED] 2002 and [REDACTED] 2005, you took the Step 1 in [REDACTED] on four occasions. You failed those four administrations, with the following scores:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

- On [REDACTED], you took the Step 1 at the [REDACTED] New Jersey test center and received a passing score of [REDACTED].

- There is evidence that approximately 31% of the test items that appeared on the Step 1 form taken by you in ██████████ and that were used in scoring that form may have been subject to unauthorized reproduction and dissemination through Optima prior to ██████████. Your percent correct score on those scored items believed to have been exposed was higher than your percent correct score on scored items about which there is no current evidence of exposure (80.5% versus 63.4%). The average performance of a comparison group of examinees that took that same form of Step 1 shows greater consistency in performance on those two sets of items (an average of 68.3% on exposed items and 72.2% on non-exposed items).
- You took the Step 2 CK in ██████████ on ██████████ and received a failing score of ██████████.
- You took the Step 2 CK on ██████████ at the ██████████ test center and received a passing score of ██████████.
- There is evidence that approximately 33% of the test items that appeared on the Step 2 CK form taken by you in ██████████ and that were used in scoring that form may have been subject to unauthorized reproduction and dissemination through Optima prior to ██████████. Your percent correct score on those scored items believed to have been exposed was higher than your percent correct scores on scored items about which there is no current evidence of exposure (83.2% versus 73.6%). The average performance of a comparison group of examinees that took that same form of Step 2 CK shows greater consistency in performance on those two sets of items (an average of 75.3% correct on exposed items and 75.0% on non-exposed items).

As further explained in the Policies and Procedures, you have the opportunity to submit information relevant to the Committee's assessment of the validity of your scores, and have the opportunity to appear personally before the Committee, accompanied by counsel if you so wish. It is my understanding from Mr. Indest's letter of ██████████ that you wish to appear before the Committee on Score Validity on ██████████ and that you will be accompanied by counsel. Please be advised that the meeting will be held in Philadelphia at the 3750 Market Street office building in University City, which is located at the southeast corner of 38th and Market Streets. I will advise you of the specific time assigned for your personal appearance as soon as the agenda is finalized. (For purposes of facilitating your travel arrangements, I can advise you at this time that your personal appearance will be concluded prior to 2 P.M.) A court reporter will be present at the meeting to swear you in, and you will be given half an hour to make your statement/presentation under oath. Also, the Committee may wish to ask you questions while you are under oath.

Please be advised that the 3750 Market Street office building is a secure facility. Applicable security measures may include identification of visitors, metal detection checks, and inspection of briefcases, packages, and other personal belongings being brought into or out of the building. Please bring with you a photo-bearing form of identification.

If you also wish to submit any written information for the Committee's consideration on ██████████, it is requested that such information be sent to me for receipt by ██████████

Following consideration of all of the information presented to it, the Committee on Score Validity will determine whether your Step 1 and Step 2 CK scores can be certified as representing valid measurements of your competence in the domains assessed by each of those examinations or whether to classify your Step 1 and/or Step 2 CK score as indeterminate.

As explained in the Policies and Procedures, in the event that your Step 1 and/or Step 2 CK scores are classified as indeterminate, you will have the opportunity to take a validating examination(s) at no charge. Those materials further describe the validating examination process and the potential outcomes of that process.

As previously noted, the investigation into this matter is ongoing. In the event that a subsequent determination is made that the available evidence provides a reasonable basis to conclude that you may have engaged in irregular behavior, this matter may be referred to the USMLE Committee on Irregular Behavior for its further consideration and action. Please note that the consideration of the validity of your Step 1 and Step 2 CK scores by the Committee on Score Validity does not preclude a subsequent referral to the Committee on Irregular Behavior for action consistent with the applicable policies and procedures (enclosed).

If you or your attorney have any questions regarding the foregoing, please do not hesitate to contact me (██████████@nbme.org; (215) ██████████) or ██████████, counsel for the USMLE program (██████████@nbme.org; (215) ██████████).

Sincerely,
██████████

Office of the USMLE Secretariat

Enclosures

***United States Medical Licensing Examination (USMLE)
Policies and Procedures Regarding Irregular Behavior***

Introduction

USMLE is an examination program that provides a common evaluation system for applicants for medical licensure in the United States. USMLE consists of three *Steps*, Step 1, Step 2, and Step 3. Results of USMLE are reported to medical licensing authorities in the United States for use in granting the initial license to practice medicine. Many medical schools in the United States require that students pass USMLE Step 1 and/or Step 2 prior to graduation. Graduates of foreign medical schools use USMLE Steps 1 and 2 for purposes of the medical science examination requirement for Educational Commission for Foreign Medical Graduates (ECFMG) certification, which is required to enter an accredited graduate medical education program in the United States. The following policies and procedures regarding irregular behavior are intended to assure the integrity of the examination system. Policies and procedures for indeterminate scores are described in another document, entitled *USMLE Policies and Procedures Regarding Indeterminate Scores*.

A. Policies

1. *Irregular behavior* includes all actions or attempted actions on the part of applicants, examinees, potential applicants, or others when solicited by an applicant and/or examinee, that would or could subvert the examination process. Examples of irregular behavior include, but are not limited to: failing to comply with any USMLE policy, procedure, and/or rule; seeking and/or obtaining unauthorized access to examination materials; providing false information; impersonating an examinee or engaging a proxy to take the examination; giving assistance to or receiving or obtaining assistance from another individual in answering test items; possessing unauthorized items, equipment or materials during an examination; altering or misrepresenting examination scores; engaging in disruptive or unprofessional behavior at a test center; theft of examination materials; unauthorized reproduction by any means and/or dissemination of copyrighted materials, recording or disclosing any information, including that related to examination content, that may give or attempt to give advantage to individuals who may be taking the examination, etc.
2. If the Committee on Irregular Behavior determines that irregular behavior has occurred, an annotation to that effect will be entered in the USMLE record of the examinee, and this annotation will appear on applicable score reports and on transcripts for that examinee. Information regarding the decision of the Committee on Irregular Behavior and the basis for such decision will be provided with USMLE score reports and transcripts and may also be provided to legitimately interested entities.
3. If the Committee on Irregular Behavior determines that an individual engaged in irregular behavior, the individual may be barred from future administrations of USMLE in the event the irregular behavior is deemed to be egregious and/or deemed to threaten the integrity of the examination system.

4. An individual may be barred from examinations or subjected to special administrative procedures for taking examinations when information regarding behavior of the individual with respect to the USMLE or the former Federation Licensing Examination (FLEX), the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS), and/or any Part(s) of the certifying examinations of the NBME indicates such procedures are justified to protect the integrity of USMLE.

B. Procedures

1. After receipt of a report or other information suggesting irregular behavior on the part of an individual, or after acquiring information from statistical analysis, fact investigation, or otherwise, staff will evaluate the information and will assess whether there is sufficient evidence of irregular behavior. When indicated and feasible, staff will conduct a follow up investigation to gather additional information, including the conduct of additional statistical analyses that are appropriate. If the individual is an examinee, staff will also assess whether the suggested irregular behavior would affect the validity of scores.
2. If the follow up analysis and/or follow up investigation referenced above will not be concluded until after the typical period for the reporting of scores, the examinee, and the entity to which scores would normally be reported, will be notified that the reporting of the scores in question is being delayed pending further review and/or analysis.
3. If, at the conclusion of such investigation and analysis of available information, staff finds that suggested irregular behavior raises concerns about the validity of scores or that a clearly reasonable and satisfactory explanation for the aberrancy(ies) in performance has not been disclosed, appropriate measures will also be taken in accordance with the *USMLE Procedures Regarding Indeterminate Scores*.
4. If, at the conclusion of such investigation and analysis of available information, staff finds that there exists a reasonable basis to conclude that an individual has engaged in irregular behavior, the matter will be referred to the Committee on Irregular Behavior, which has been appointed by the Composite Committee. If the individual is an examinee, his/her scores will be withheld, if not already released, and the examinee may not be permitted to sit for subsequent examinations, nor will Step applications be processed, pending a decision by the Committee on Irregular Behavior. Furthermore, if the Committee on Irregular Behavior refers the matter to the Committee on Score Validity, as provided for in Paragraph 10 below, the scores will be withheld unless and until the Committee on Score Validity decides to release such scores.
5. Evidence relating to the suggested irregular behavior is referred to the Committee on Irregular Behavior, if the evidence provides a reasonable basis to suspect that any action has been taken or attempted that would or could subvert any part of the examination process. Using the individual's last known address, the individual involved will be advised of the nature of such irregular behavior and will be provided with a copy of the

applicable USMLE policies and procedures. The individual will be advised of the information which initiated the investigation and relevant findings of the investigation. The individual will be given an opportunity to provide an explanation for the findings that have been obtained and/or to present other relevant information. The individual may request the opportunity to appear personally before the Committee. In instances in which the individual involved appears personally before the Committee on Irregular Behavior, a stenographic or audio recording may be made of that portion of the proceedings during which the individual is in attendance. The oral presentation will be made under oath.

6. All pertinent information, including a description of any statistical analyses employed and any explanation or other information that the individual may provide, will be presented to the USMLE Committee on Irregular Behavior which is authorized to decide whether irregular behavior has occurred. The Committee on Irregular Behavior will make a determination based on the information available and the individual will then be notified of the decision. Unless the Committee on Irregular Behavior refers the matter to the Committee on Score Validity, as provided for in Paragraph 10 below, the individual's score will be released. If it is determined that irregular behavior has occurred, an annotation to that effect, indicating the nature of the irregular behavior, will be entered in the individual's USMLE record. This annotation will appear on the applicable score report and transcripts for the individual. Information regarding a decision of the Committee on Irregular Behavior and the basis for such decision will be provided when scores for the individual are reported and pursuant to requests for such information from legitimately interested entities. At the discretion of the Committee on Irregular Behavior, such information may also be provided, without request, to the entity that certified the individual's eligibility for the examination in question and/or to a medical education or training program in which the individual is participating at the time of the Committee's decision. The information will include the time period in which the examinee may appeal to the Composite Committee, as provided for in Paragraph 11 below, if that time period has not yet expired. All medical licensing authorities that have received a score report or transcript for this individual in the past will receive an updated transcript which includes this information. If indicated by the Committee on Irregular Behavior, information will also be reported to the Federation of State Medical Boards' Board Action Data Bank.
7. In instances involving suspected irregular behavior which raise concerns about the validity of the score, the Committee on Score Validity and the Committee on Irregular Behavior may elect to review jointly the pertinent information presented to them and/or make a determination jointly regarding an examinee, or either the Committee on Score Validity or the Committee on Irregular Behavior may be the first of the two committees to review evidence and/or make a determination regarding a particular examinee.
8. In the event of irregular behavior that is egregious and/or deemed to threaten the integrity of the examination system in the present or at some point in the future, the Committee on Irregular Behavior may implement special administrative procedures for future examinations and/or may recommend to the Composite Committee that the individual be barred from future examinations. In considering recommendations to bar, the Composite Committee may invite comment from any interested medical licensing authority. If an

individual is barred from future examinations, the Composite Committee may, upon petition of a medical licensing authority, provide for special examination under terms and conditions defined by the Composite Committee. In those instances in which the Committee on Irregular Behavior is recommending to the Composite Committee that an individual be barred from future examinations, the Committee on Irregular Behavior itself has the authority to bar the examinee from Step administrations (for which the individual is otherwise eligible) during the interim between the time that the Committee on Irregular Behavior makes its determination and the next regular Composite Committee meeting.

9. When there is information regarding behavior of an individual with respect to FLEX, FMGEMS, and/or any Part(s) of the certifying examinations of the NBME that raises concerns regarding the security of the USMLE, the matter may be referred to the Composite Committee. The individual will be advised that the matter has been referred to the Composite Committee and will be given an opportunity to present relevant information regarding the matter. The Composite Committee will review the matter and may decide to bar the individual from an examination(s) or direct the NBME, FSMB, and/or ECFMG to implement special administrative procedures for examination.
10. The Committee on Irregular Behavior may decide to refer a matter to the Committee on Score Validity, regardless of the determination by the Committee on Irregular Behavior, or instead of or prior to a determination by the Committee on Irregular Behavior, if it determines that the information available raises concerns about the validity of scores.
11. A decision of the Committee on Irregular Behavior may be appealed to the USMLE Composite Committee if the individual involved has a reasonable basis to believe the Committee on Irregular Behavior did not act in compliance with applicable USMLE policies and/or procedures or that the decision of such Committee was clearly contrary to the weight of the evidence before it. The request for such an appeal must be received within 90 days of the date on which the notification advising the individual of the Committee's decision was mailed to the individual. Notice that the matter is the subject of an appeal will be included when the score for the examinee is reported during the pendency of such appeal. A written record, including information available to the Committee on Irregular Behavior, a transcript of the recording made during the individual's appearance before the Committee (if there was such an appearance), and the basis for appeal set forth by the individual, will be reviewed by the Composite Committee. If the Composite Committee determines that the Committee on Irregular Behavior did not act in compliance with applicable USMLE policies and procedures and/or that the decision of the Committee on Irregular Behavior was clearly contrary to the weight of the evidence, the Composite Committee may reverse the decision of the Committee on Irregular Behavior or remand the matter to the Committee on Irregular Behavior for further consideration. If the Composite Committee reverses the decision of the Committee on Irregular Behavior to annotate the individual's USMLE record, all entities having received USMLE transcripts indicating irregular behavior will be notified of the decision of the Composite Committee and provided with an updated transcript. Otherwise, the determination of the Committee will stand.