



# YOUR REPORT

FROM THE STATE MEDICAL BOARD OF OHIO

FALL 1996

## The State Medical Board

### President

Charles D. Stienecker, M.D.  
Wapakoneta

### Vice President

Nora M. Noble  
Newark

### Secretary

Thomas E. Gretter, M.D.  
Cleveland

### Supervising Member

Raymond J. Albert  
Amanda

Ronald C. Agresta, M.D.  
Steubenville

Anant R. Bhati, M.D.  
Cincinnati

David S. Buchan, D.P.M.  
Columbus

Carol Lynn Egner, M.D.  
Cincinnati

Anand G. Garg, M.D., Ph.D.  
Youngstown

Robert S. Heidt, Sr., M.D.  
Cincinnati

Bradley K. Sinnott, J.D.  
Columbus

Anita M. Steinbergh, D.O.  
Westerville

### Executive Director

Ray Q. Bumgarner, J.D.



## A WORD FROM THE EDITORS

*Your Report's* Spring 1996 article about the Ohio Medical Board's centennial anniversary drew some engaging responses from historically-minded readers. Excerpts from letters we received about the Medical Board's past appear beginning on page 6 of this issue, along with a fascinating look back through the time tunnel at a turn-of-the-century disciplinary hearing.

Lest we forget the modern-day practitioner, this issue of *Your Report* also addresses such timely topics as recent Ohio legislation pertaining to physician assistants and advanced practice nurses; sexual harrassment; and the controversial weight-control medication Redux. A summary of important new State Medical Board rules detailing the responsibilities of HIV/HBV-positive licensees and their treating physicians begins on page 22.

We hope that you find this issue of *Your Report* informative, and look forward to your continuing feedback.

*Charles D. Stienecker, M.D., President  
& Lauren Lubow, J.D., co-editors*

## Inside YOUR REPORT

A Word from the Editors .....	1
<i>Editorial: Sexual Misconduct</i> .....	2
Legislative Update .....	3
A Look Back at Medical Regulation in Ohio .....	6
Appealing a Medical Board Order .....	9
Ohio's New Physician Assistant Law .....	10
Disciplinary Actions .....	12
Regulating Redux .....	20
New Rules Focus on HIV/HBV .....	22

## **Sexual Misconduct: Accountability & Responsibility**

*by Charles D. Stienecker, M.D., President*

The subject of sexual harassment has become a hot topic on the medical staff dinner circuit. More and more hospitals are being held responsible for maintaining a harassment-free workplace and are finding that doctors are the subjects of the complaints and grievances. While a recent Federation of State Medical Boards policy defines sexual violation and impropriety in physician/patient terms, the precepts are being extended to all those circumstances in which the physician, by virtue of his/her position, has dominance, or "power," over another. The questions of moral turpitude and ethics are then extended to relationships with nurses, hospital staff, students and residents, and even to patients' families.

The physician in the workplace is held to the same level of accountability and responsibility as in the doctor/patient relationship because of this power position and the public trust. Sexual harassment is thus placed in a different light when committed by a physician, who becomes much like an employer where the quid pro quo situation is more likely to be perceived by the victim, who has accepted physician dominance.

The following definitions of sexual violation and sexual impropriety are excerpted from the *Report on Sexual Boundary Issues* by the Federation of State Medical Boards' Ad Hoc Committee on Impairment, which was adopted as policy by the Federation in April 1996.

\* \* \* \* \*

Physician sexual misconduct is behavior that exploits the physician-patient relationship in a

sexual way. This behavior is nondiagnostic and nontherapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual.

The committee believes that there are primarily two levels of sexual misconduct: sexual violation and sexual impropriety. Behavior listed in both levels may be the basis for disciplinary action by a state medical board if the board finds that the behavior was an exploitation of the physician-patient relationship.

Sexual violation may include physician-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient that is sexual or may be reasonably interpreted as sexual, including but not limited to:

1. sexual intercourse, genital to genital contact;
2. oral to genital contact;
3. oral to anal contact, genital to anal contact;
4. kissing in a romantic or sexual manner;
5. touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;
6. encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
7. offering to provide practice-related services, such as drugs, in exchange for sexual favors.

Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient, including but not limited to:

1. disrobing or draping practices that reflect a lack of respect for the patient's privacy, deliberately watching a patient dress or undress, instead of providing privacy for disrobing;

- 
2. subjecting a patient to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient or when consent has been withdrawn;
  3. examination or touching of genitals without the use of gloves;
  4. inappropriate comments about or to the patient, including but not limited to making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation (homosexual, heterosexual, or bisexual), making comments about potential sexual performance during an examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction, requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of consultation;
  5. using the physician-patient relationship to solicit a date;
  6. initiation by the physician of conversation regarding the sexual problems, preferences, or fantasies of the physician;
  7. examining the patient intimately without consent.
- \* \* \* \*
- It is the difficult "obligation of nobility" to be more sensitive and circumspect in one's actions in order to avoid being seen as taking advantage of a position of power. In this case, the cry that, once again, the physician is being discriminated against is balanced by the long history of tolerance people have shown for questionable liberties because the perpetrator was a physician. But the tenor of the times is changing, and physicians, like all others in the workplace, must be cognizant of the boundaries of conduct and their particular vulnerability.

---



## LEGISLATIVE UPDATE

The following summary of legislation is provided to assist licensees in being aware of changes in the law that may affect their practices. The summary does not purport to be all-inclusive. Licensees are encouraged to periodically review relevant portions of the Ohio Revised Code (statutes) and Ohio Administrative Code (rules) to remain current in their knowledge and understanding of the legal parameters impacting their medical practice. You may also wish to consult your state and local professional associations for further information.

The summary in this newsletter utilizes language taken directly from the Final Analysis of the bill, as prepared by the Legislative Service Commission of the State of Ohio.

\* \* \* \*

**Amended Substitute Senate Bill 154** was passed by the 121st General Assembly, signed by the Governor, and became effective on September 10, 1996.

(continued on next page)

---

Sponsors: Sens. Kearns, Drake, Sheerer, Gaeth, Greenwood, McLin, Kucinich, J. Johnson, Furney, Howard, Ray, Oelslager, Watts, Zaleski, Carnes, Long, Latell, Cupp, Herington, Horn, Nein, Vukovich, Burch, Espy, Boggs, B. Johnson, Yarbrough, Snyder. Reps. Lawrence, Van Vyven, Beatty, Blessing, Brading, Ford, Fox, Grendell, Hagan, Jacobson, Jones, Maier, Ogg, Olman, Sawyer, Sines, Sweeney, Taylor, Terwilleger, Wachtmann, Walen.

- Provides for issuance by the Board of Nursing of certificates of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner.
- Defines the scope of practice and establishes certification and educational requirements for each nursing specialty.
- Establishes for each nursing specialty requirements for collaborating with or being supervised by a physician, podiatrist, or dentist.
- Extends until January 1, 2010 (from January 1, 1997), the pilot programs for advanced practice nurses operated by the schools of nursing at Case Western Reserve University, Wright State University, and the University of Cincinnati.
- Creates the Direct Entry Midwifery Study Council consisting of 11 members to study the regulation of direct entry midwives.

\* \* \* \*

The bill establishes four advanced nursing specialties: certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, and certified nurse practitioner. To practice in one of these specialties, an individual must be a registered nurse and must obtain a certificate of authority from the Board of Nursing by meeting

certain educational requirements, as well as the certification and examination requirements of specified national credentialing organizations.

Supervision requirements apply to certified registered nurse anesthetists. "Supervision" means being under the direction of a physician, podiatrist, or dentist. **When administering anesthesia, the nurse must be in the immediate presence of the physician.** When performing other functions related to anesthesia, the nurse must be supervised, but the bill does not require the immediate presence of the physician.

Collaboration requirements apply to the remaining three nursing specialties. "Collaboration" means that a physician or podiatrist is continuously available to communicate with the nurse either in person or by radio, telephone, or other form of telecommunication. Clinical nurse specialists and certified nurse practitioners may collaborate with physicians or podiatrists. Certified nurse-midwives may collaborate only with physicians.

For the three nursing specialties subject to collaboration requirements, the bill requires that the relationship between a nurse and physician or podiatrist be established by their entering into a "standard care arrangement." The arrangement is a written, formal guide for planning and evaluating patients' health care. **The bill requires the nurse and the physician or podiatrist to maintain the standard care arrangement on file at the site where the nurse practices.**

**A nurse may enter into a standard care arrangement with one or more physicians or podiatrists, but may not enter into an arrangement with a physician or podiatrist whose practice is not the same or similar to the nurse's specialty.** A standard care arrangement is not required for a clinical nurse specialist whose nursing specialty is mental health or psychiatric mental health, as determined by the

---

Board of Nursing. Such nurses are, however, required to practice in collaboration with physicians.

**The nurse practicing under a standard care arrangement may practice only in accordance with the arrangement. Prior approval of the arrangement by the Board of Nursing or the State Medical Board is not required, but either board may review it periodically to determine compliance with the bill.** Under the bill, each standard care arrangement must contain the following:

- (1) Criteria for referring a patient to a collaborating physician or podiatrist;
- (2) A process for the nurse to obtain a consultation with the physician or podiatrist;
- (3) A plan for coverage in instances of emergency or planned absences of either the nurse or the collaborating physician or podiatrist that provides the means whereby a physician or podiatrist is available for emergency care;
- (4) The process for resolution of disagreements regarding matters of patient management between the nurse and the collaborating physician or podiatrist;
- (5) A procedure for a regular review of the referrals by the nurse to other health care professionals and the care outcomes for a random sample of all patients seen by the nurse;
- (6) If the nurse regularly provides services to infants, a policy for care of infants up to age one and recommendations for collaborating physician visits for children from birth to age three;

- (7) Any other criteria required by rule of the Board of Nursing.

Applicants for renewal in the three specialties subject to collaboration requirements are required to submit the names and business addresses of their current collaborating physicians or podiatrist. **In turn, physicians and podiatrists are required to report the names of all nurses with whom they are collaborating when renewing their licenses with the State Medical Board.**

The bill specifies that its requirements for standard care arrangements do not prohibit a hospital from hiring a nurse as an employee and negotiating standard care arrangements on behalf of the employee as necessary to meet the bill's requirements. A standard care arrangement between a nurse employed by a hospital and the nurse's collaborating physician are subject to approval by the medical staff and governing body of the hospital prior to implementation of the arrangement at the hospital.

The bill authorizes the State Medical Board to impose its existing licensing sanctions against a physician or podiatrist who fails to maintain standard care arrangement with a nurse practicing one of the three specialties that require collaboration and a standard care arrangement: certified nurse-midwives, certified nurse practitioners, and clinical nurse specialists other than those specializing in mental health or psychiatrist mental health.

All nurses practicing a nursing specialty are authorized to provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience. Within each specialty, a nurse is authorized to perform services consistent with the nurse's education and national credentials and in accordance with rules adopted by the Board of

See LEGISLATION on page 6

---

# Regulation of Medical Practice in Early Ohio

It is estimated that in the early part of the nineteenth century, less than twenty percent of Ohio physicians held medical degrees. The usual procedure to become a medical practitioner was a preceptorship of three years with a physician, after which a letter of proficiency was issued. Upon registration with legal authorities, one became a “legal practitioner.”

In 1811, a legislative act established five medical districts in Ohio, in which medical censors were appointed to examine non-degree candidates for the practice of medicine. Candidates who passed these examinations were called “licensed practitioners.” An 1821 act provided for censors to

meet yearly in Columbus. This body was called the Medical Convention of Ohio, the forerunner of the Ohio State Medical Association. Holders of medical degrees, in general, became licensed practitioners without examination and members of district medical societies.

In the early 1830’s competitiveness and animosity between “regular” and “sectarian” physicians—as well as rivalries and jealousies within these groups—precluded any uniform standards regarding medical regulation. Consequently, out of frustration, in 1833 the Ohio legislature repealed all laws pertaining to the regulation of the

practice of medicine! This opened the way for proponents of outlandish theories and charlatans to settle in Ohio and—with little or no formal education—be allowed to practice medicine. This situation existed for 35 years, with only limited influence from local and state medical societies.

In 1868, a legislative act required two twelve-week courses of instruction and graduation from a medical college to practice medicine. Since there was an abundance of medical colleges in Ohio at the time, it was easy to receive a medical degree; and

see **REGULATION** on page 8

---

## **LEGISLATION** (cont.)

Nursing. When being supervised by a podiatrist or dentist, the nurse’s scope of practice is limited to the procedures the podiatrist or dentist is authorized to perform. The bill specifies that the existing prohibition against nurses engaging in medical diagnosis, prescription of medical measures, and the practice of medicine or surgery or any of its branches does not prohibit a nurse from practicing in one of the specialties established by the bill.

Under the bill, the Board of Nursing is required to adopt in accordance with the Administrative Procedure Act rules establishing (1) standards and procedures for approving certificates of authority to practice

a nursing specialty and for the renewal of those certificates, and (2) quality assurance standards for nurses practicing a nursing specialty.

For purposes of the medical assistance program, the bill provides that the division of any reimbursement between a collaborating physician or podiatrist and a nurse practicing a specialty requiring collaboration must be determined and agreed on by the nurse and the collaborating physician or podiatrist. The bill prohibits Medicaid reimbursement from exceeding the payment that the physician or podiatrist would have received had the physician or podiatrist provided the entire service.

The bill creates the Direct Entry Midwifery Study Council consisting of 11 members to study the regulation of direct entry midwives. The council has until December 31, 1996, to submit an interim progress report to the Senate President and the Speaker. The Council must prepare and submit a final report to the President and the Speaker no later than December 31, 1997. The final report is to contain the Council’s recommendations regarding whether Ohio should recognize and regulate direct entry midwives and what qualifications are needed for recognition of direct entry midwives. After submitting the final report, the Council will cease to exist. ◆

---

# A PROTEST FROM OUT OF THE PAST

*"I have labored hard and earnestly for more than 20 years. I want to forever efface the memory of the past four months and be remembered by you, and everyone, as an earnest, true, loyal member of the grand old army of high minded medicos."*

The words could ring as true today as they did in 1910, when Dr. B. P. Ivey of Cincinnati wrote to the State Medical Board of Ohio trying to clear his name of charges.

Ivey's case is one of the older disciplinary actions taken by the board, which was established by state law February 27, 1896. From 1811 to 1824, doctors had been licensed by county medical societies. Beginning in 1831, young doctors were screened by examiners appointed by the Ohio Medical College in Cincinnati who gauged whether they were competent to practice medicine. A battle among medical schools forced the repeal of laws governing medicine, and from 1868 until the board was founded there actually were no laws to

regulate the practice of medicine in Ohio.

The dry, old legal-sized pages recording Ivey's hearing tell a tale of intrigue, drama, even poetry. Ivey graduated from the Medical College of Alabama in Mobile in 1887. He applied for an Ohio medical license in 1896, at age 35.

At age 48, in 1909, he was charged with gross immorality by the board, which threatened to revoke his license. Ivey was working with the "Phenomenal Kraus," a man who claimed he could fill patients with so much electricity that a piece of paper held to the patient's toes would be ignited.

Kraus' methods, according to an article in a Cincinnati medical journal, were "extremely crude, but his skill in extracting reluctant dollars from the pockets of his victims is unsurpassed."

The 1910 hearing record detailed the account of James Harvey Stewart, 56, a Catlettsburg, Ky., man

see **PROTEST** on page 8

## Dr. H. E. Beebe, Oldest Physician In Co., Dies; His Reputation Was State-Wide

Sidney and Shelby county are mourning the death of their oldest medical servant today as Dr. H. E. Beebe, 89, widely known over the state in medical societies, passed away Friday morning at 8:20 at his home.... Dr. Beebe retired from active medical practice several years ago after he completed 55 years of service to the citizens of this community and county....

Henry E. Beebe was born on July 24, 1849, at Carey, Wyandot county, the son of Buell S. and Lucinda Keir Beebe, who resided on a farm in that community. Both of his parents have preceded him in death. He attended public schools there and went to Wittenberg College, Springfield, for a short time until he turned to the study of medicine.

He went to the Cleveland Homeopathic College at Cleveland from which institution he graduated in 1873 and in casting about for a place to locate, he often told how he investigated several cities before deciding to locate in Sidney. He like to tell that he came here with just enough money to get here but not enough to leave....

Dr. Beebe's acquaintance grew in medical circles throughout the state and he served on the first Ohio Medical board, holding several offices during the thirteen years of incumbency. He had been a member of the Ohio Homeopathic Medical society since 1873 and at the time of his death was its oldest member. He had been president of this group in 1886. He was a member of the American Institute of Homeopathy for over fifty years and served as its president in 1904. He was on the state examining board, which he helped organize, for seven years, serving as president in 1903.

One of his most highly prized awards was his membership in the American College of Surgeons, which was organized in 1913 and he was awarded his membership in the following year. This was an honor of which he was justly proud....

*Sidney Daily News, Feb. 11, 1938; contributed by T. Baumann, M.D., of Sidney, Ohio*

---

**PROTEST** (cont.)

who paid Ivey \$200 for treatments of “Bright’s disease” and liver and heart trouble. Stewart said doctors took a glass tube and rubbed it on his back and spinal column.

While the treatments were supposed to make him “sleep like a baby,” Stewart said he couldn’t sleep at all. During the hearing, Stewart said he told Ivey, “Hold on right there. I want you to stop. I have got tired of that. I want to sleep like a man once. You have said that I would sleep like a baby and I says, ‘Two babies like me would have kept all Cincinnati awake last night!’”

Hearing officers asked Ivey about false advertising claims. Ivey said the advertising was injudicious, he didn’t think he should be held liable for that.

“Do you know of the advertising?” the board asked.

“Certainly, but I will tell you this plainly, that the cases that come in there . . . receive the very best treatment at the hands of the medical fraternity, when they get there,” Ivey responded.

“And you stick them for all the money they have?”

“And so do outside doctors,” Ivey shot back.

A member of the Board said, “I beg your pardon.”

Ivey said, “Everyone is out after the money. There are a great many of us who would like to make more money. We are poor collectors. You may be a fine physician, but you may have to work hard to get the people to pay. The doctor is the last man some people will pay. I have absolutely carried on my books professional people who

didn’t pay and who could have paid.”

Ivey’s license was revoked April 5, 1910.

Ivey wrote a scathing letter to the board after the verdict: “Now so far as the constitutionality of your act is concerned, my authority for revoking each of your licenses is as good as yours. But out of respect for the efforts of the state legislature to clothe ‘plaintiffs,’ as in your case, with both judge and jury powers I shall not pretend to practice medicine

in Ohio until the courts have set aside your action against me. Concerning your charge of gross immoral conduct I will not pass by so easily. I am in Ohio yet, fearless and exultantly, I am, B. P. Ivey.”

\* \* \* \*

*This story by Catherine Gilfether originally appeared in the Cleveland Plain Dealer on October 14, 1990. It is reprinted here with the Plain Dealer's permission.*

**REGULATION** (cont.)

there is no record of prosecution under this law, which proved to be ineffective.

Little effective regulation existed until 1896, when the Ohio Medical Protection Act was passed, authorizing the formation of a State Board of Medical Registration and Examination. The purpose of the Board was to issue medical licenses by endorsing candidates with medical degrees and to examine those without degrees. In the few years following the passage of the 1896 act, 900 non-degree physicians left Ohio to practice elsewhere, and more prosecutions for the illegal practice of medicine took place in Ohio than in any other state. A law that became effective in 1900 provided for a high educational requirement prior to entering medical school and for the examination of all applicants for medical licenses.

The stricter educational requirements endorsed by the State Medical Board and national organizations, such as the Association of American Medical Colleges (organized 1890) and the AMA Council on Medical Education (organized 1904), resulted in the closing of all but a few of Ohio’s medical colleges. With the exception of the powerful Cincinnati Eclectic Medical College, which existed until 1939, by 1914 all of Ohio’s proprietary medical schools had become extinct—leaving the medical departments of the University of Cincinnati, the Ohio State University, and Western Reserve University. These were the only medical schools in Ohio for half a century until the 1960s and 1970s, when the state legislature approved schools in Toledo, Dayton, Rootstown, and Athens.

*Contributed by Emil R. Pinta, M.D., Worthington, Ohio*

---

# APPEALING A STATE MEDICAL BOARD ORDER

*In past editorials published in Your Report, Medical Board Member Charles D. Stienecker, M.D., touched on aspects of the Medical Board's administrative hearing process that can seem intimidating to those who don't make a regular practice of appearing before the Board. Dr. Stienecker noted that, if a practitioner feels that the decision entered by the Medical Board in his or her case isn't right, an appeal of that decision can be taken. The following explanation of the appellate process appears courtesy of the Office of Ohio Attorney General Betty Montgomery.*

\* \* \* \*

Any licensee adversely affected by an Order of the State Medical Board may appeal that Order to the Franklin County Court of Common Pleas ("FCCCP"). If the licensee desires to appeal, he or she must, within fifteen days after the mailing of the notice of the Board's Order, file a Notice of Appeal with the Board setting forth the Order appealed from and the grounds of the appeal. Within this fifteen-day time period, the licensee must also file a copy of the Notice of Appeal with the FCCCP.

The filing of the Notice of Appeal does not automatically operate to suspend ("stay") the effect of the Board's Order while the appeal is being considered by the FCCCP. The effect of the Board's Order will only be suspended during the appeal if the licensee requests a stay from the FCCCP and can demonstrate (1) that an unusual hardship to the licensee will result from the execution of the Board's Order pending determination of the appeal, and (2) that the health, safety and welfare of the public will not be threatened by suspension of the Board's Order. If the FCCCP decides that these criteria are met and grants a stay pending appeal, the stay will continue until the FCCCP renders a final decision regarding the appeal, or fifteen months after the filing of the Notice of Appeal with the FCCCP, if a decision has not been rendered prior to that time. Additional stays, or extensions of existing stays, may be granted throughout the appeals process.

Within thirty days after receipt of the Notice of Appeal, the Medical Board must prepare and certify to the FCCCP a complete record of the proceedings that resulted in the Board's Order. Furthermore, upon the request of the licensee, the Board must provide the licensee, at his or her expense, with a complete copy of the record, as well as a copy of the transcript and evidence submitted at the hearing.

In reviewing the Board's Order, the FCCCP is limited to considering only that which is included in the record certified by the Board. In limited circumstances, however, the FCCCP will admit additional evidence if the requesting party demonstrates that the evidence is newly discovered and could not reasonably have been discovered prior to the Medical Board hearing.

In deciding the appeal, the FCCCP is required to apply the standard of review established by R.C. 119.12. The FCCCP may affirm the Board's Order if, upon consideration of the entire record (and any additional evidence the Court elected to admit), the Court finds that the Order is supported by "reliable, probative and substantial evidence and is in accordance with law." If the FCCCP does not make such a finding, it may reverse, vacate, or modify the Order, or make another ruling that is supported by the evidence and in accordance with law.

To assist the FCCCP in deciding the appeal, the licensee, typically through legal counsel, submits a written brief to the Court setting forth the factual and legal arguments that form the basis of the appeal. Then the Board, represented by the Ohio Attorney General, submits a written brief setting forth reasons why the Board's Order should be upheld. Following submission of the Board's brief, the licensee is provided with an opportunity to address the Board's arguments via a written reply brief. Finally, before deciding the appeal, the FCCCP may, in its discretion, allow counsel for the parties to orally present the parties' respective positions to the Court.

see **APPEALS** on page 10

The decision of the FCCCP is final unless it is reversed, vacated or modified on appeal to the Tenth District Court of Appeals. An appeal to the Court of Appeals mirrors many of the elements of an appeal to the FCCCP. In particular, appeals to both courts involve the filing of a timely Notice of Appeal, the certification of a complete record of the proceeding, the submission of written legal briefs supporting or opposing the basis of the appeal, and the potential opportunity to present oral argument. However, in deciding the appeal, the Court of Appeals is required to apply a different standard of review than the FCCCP applied. In an appeal of a question of fact, the decision of the FCCCP is given great weight and will be overturned only if the Court of Appeals determines that the decision of the FCCCP was an abuse of discretion. The Court of Appeals is not so limited when reviewing questions of law. When evaluating questions of law, the Court of Appeals, like the FCCCP, exercises unrestricted powers of review.

The decision of the Court of Appeals is final unless the Supreme Court of Ohio grants jurisdiction to hear the appeal and decides to reverse, modify or vacate the Court of Appeal's decision. Unlike lower courts, the Ohio Supreme Court is not obligated to accept an appeal. In determining whether or not to review a case, the Ohio Supreme Court will look to see if the matter in contention involves a constitutional issue or is of public or great general interest. ♦

## HOW OHIO'S NEW PHYSICIAN ASSISTANT LAW AFFECTS YOU

Just a few months after legislative efforts to restructure laws governing physician assistants (P.A.s) took effect, Ohio Governor George Voinovich has been presented with a second bill that reduces the expenses and paperwork to be borne by physician assistants and the physicians who supervise them. Both bills—Substitute Senate Bill No. 143 and Substitute Senate Bill 259, respectively—promise to bring changes to medical practices that utilize P.A. services, as well as to the State Medical Board's P.A. registration process. Here, in brief, is an overview of Ohio's new P.A. statutes and how they could affect you.

### **Delegation to and Supervision of Physician Assistants**

While the new law changes the title "physician's assistant" to "physician assistant," it does not alter the kinds of tasks a P.A. may ordinarily perform. The following duties are often delegated to P.A.s:

- Obtaining comprehensive patient histories;
- Taking patient histories, performing physical examinations, including pelvic, rectal, and genital-urinary examinations when indicated;
- Initiating requests for and/or performing routine laboratory, radiologic and diagnostic studies as indicated;

- Assessing patients for development of treatment plans;
- Implementing treatment plans that have been reviewed and approved by the supervising physician;
- Providing patient education; and
- Assisting in surgery in a hospital setting.

Under previous law, employment of P.A.s was limited to any currently licensed physician who received Board approval. The new legislation expands that employment authority to permit institutional hiring of P.A.s, although they must still function under the supervision and control of an individual physician practicing within the parameters of a Board-approved P.A. utilization plan. The level of supervision required is dependent on the tasks the P.A. undertakes and the practice setting. In every instance, however, a physician must always be available for consultation and direction. Patients who are new to a physician's practice may only be seen by a P.A. when the supervising physician is actually on site, unless a Board-approved standard or supplemental utilization plan specifies otherwise. New patients or established patients with new conditions must be personally seen and evaluated by the supervising physician before any treatment plan proposed by a P.A. can be initiated.

---

Although a supervising physician may enter into supervision agreements with an unlimited number of P.A.s, he or she may not supervise more than two P.A.s at a time, and may not delegate tasks to a P.A. that are beyond the physician's or the P.A.'s expertise or normal course of practice. When a supervising physician authorizes a P.A. to practice in a facility's emergency department, the physician must always provide on-site supervision.

### The P.A. Registration Process

The new legislation codifies a process for obtaining authorization to supervise a P.A. that is similar to the process that the Board already had in place. The law now clearly specifies that the individual physician who chooses to utilize a P.A. is in charge of supervision and is ultimately responsible for patient care. Substitute Senate Bill No. 259 does establish a system under which a group may submit a utilization plan; nevertheless, every physician within that group must sign a statement approving its terms and agreeing to practice within its parameters.

The new legislation codifies a three step process for obtaining approval for a P.A. to work under physician supervision.

#### Step I: The Physician Assistant

The P.A. must hold a **Registration Certificate**. Any P.A. who holds a current, valid certificate from the National Commission of Certification of Physician's Assistants (NCCPA) may apply to the Medical Board for a

registration certificate by submitting an application form along with a nonrefundable \$100 fee. Once granted by the Board, the unique registration number issued by the Board continues to be assigned to the P.A. throughout his or her career in Ohio, regardless of employment status. A biennial renewal of the registration is required, whether or not the P.A. is currently employed. Each renewal application for registration must be accompanied by a \$50 fee. To be eligible for renewal, the P.A. must also maintain NCCPA certification and complete that organization's continuing education requirement. The Board will also issue a temporary registration number to applicants who are scheduled for but have not yet taken the NCCPA examination. If the applicant fails the examination, the temporary registration cannot be renewed. However, if the applicant succeeds in passing the examination, the Board will automatically issue full registration upon receipt of notice directly from the NCCPA.

#### Step II: The Supervising Physician

A physician who desires to supervise a P.A. must submit a **Physician Assistant Utilization Plan** on a form provided by the Board. The plan includes a practice description, a listing of the P.A.s functions, and a quality assurance plan. In an effort to reduce processing time and enhance understanding between the Board and physician supervisors as to how P.A.s may be used, the Board and the P.A. Policy Committee plan to develop

model utilization plans for different types of practices, including emergency medicine, family practice, and surgery. Substitute Senate Bill 259 provides that each utilization plan submitted for Board approval must be accompanied by a fee of \$75 per physician, up to a maximum fee of \$750 for groups of ten or more physicians who are applying for identical plans. Once approved by the Board, the utilization plan does not need to be resubmitted for Board review at the time a P.A. is hired.

#### Step III: Employment of the P.A.

When a physician who has obtained approval for a utilization plan and a currently registered P.A. wish to enter into an employment relationship, the physician need only notify the Board by filing a **supervision agreement** on a form provided by the Board. The form must be accompanied by a nonrefundable \$25 fee, and biennial renewal of the supervision agreement is required. The form previously utilized by the Board for supervision agreements has been significantly revised as a result of the new legislation to permit the signatures of multiple physician assistants and multiple supervising physicians on one form. The modifications are intended to reduce paperwork while accommodating large group practices. If and when the supervision agreement is terminated, both the supervising physician and P.A. must submit written notification to the Board

see **P.A. LAW** on page 12

---

**P.A. LAW** (cont.)

within two weeks, along with an explanation of the reason(s) for the termination.

The Medical Board wants to be certain that registered P.A.s are working within the guidelines set by approved utilization plans and are not involved in the independent practice of medicine. Accordingly, the Board's Quality Assurance Committee has instituted an audit process to assess compliance with approved P.A. utilization plans in order to achieve that goal. Each month, one group practice and one non-group practice that have utilization plans on file with the Board are randomly selected for review by a Board Investigator Supervisor. The Investigator Supervisor will make an unscheduled visit to the practice site to observe the P.A.'s activities and verify that the responsibilities of both the supervising physician and P.A., as outlined in the approved utilization plan, are being met. The P.A.'s daily patient load, the level of supervision, and the expediency of countersignatures will all be noted. Group practices will also be

evaluated for compliance with their approved quality assurance plan, including the mechanisms utilized following the group's QA review to ensure that identified deficiencies are corrected. The findings of the Investigator Supervisor are forwarded to the Board's Quality Assurance Committee for assessment.

While the new physician assistant legislation promises to ease and expedite the registration process for all concerned, there will inevitably be a transition period between the old law to the new. During that time, general questions about the process should be directed to the Board's Public Inquiries Division. If you have questions or concerns about a specific application, please call the Licensure Division. Both divisions can be reached through the Board's reception desk at 614/466-3934.

-- Anand G. Garg, M.D., Ph.D., Member

State Medical Board staff members Sandra Caldwell, Thomas Dilling, J.D., Lauren Lubow, J.D., and Penny McKenzie contributed to this article.

---



---

## STATE MEDICAL BOARD OF OHIO DISCIPLINARY ACTIONS

*March 1996 - July 1996*

**BASCH**, John Steven (MD #65667) - Akron  
**Consent Agreement** - Probationary terms, conditions and limitations imposed based on doctor's admissions that he has suffered from chemical dependency, for which he received treatment through a Board-approved provider; that he has suffered from depression and personality disorder, not otherwise specified; that during a period in 1994, he wrote prescriptions for controlled substances in the names of others in order to obtain controlled substances for his own use; and that he was found guilty in 4/95 of Attempted Deception to Obtain a Dangerous Drug, a first degree misdemeanor. Effective 6/12/96; Agreement to remain in effect for at least two years prior to any request for termination.

**BERRY**, Kevin R. (MD #48752) - Columbus  
**Pre-hearing Suspension** - Pursuant to Section

3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to three felony counts of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction. Notice mailed 4/18/96. **Consent Agreement** - Medical license indefinitely suspended for at least six months, such time to be calculated from 4/17/96 (the effective date of doctor's pre-hearing suspension); conditions for reinstatement and subsequent probation for minimum of five years established; doctor ineligible to hold D.E.A. registration without prior Board approval. Based on doctor's plea of guilty to three felony counts of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction. Effective 6/12/96.

**BOYD**, Theresa Elaine (MD #62722) - Cleveland  
**Board Order** - Permanent revocation of medical license

stayed, subject to one year suspension retroactive to 6/2/95; probationary terms, conditions and limitations established for at least five years; doctor ineligible to hold or apply for D.E.A. registration without prior Board approval. Based on doctor's plea of guilty to one felony count of drug abuse. Effective 6/13/96.

**BREWER**, Eugene Allan (MD #45064)  
Kansas City, MO

**Board Order** - Medical license indefinitely suspended, min. three months; conditions for reinstatement and subsequent probation for at least three years established. Based on doctor's failure to employ acceptable scientific methods in the selection of modalities for treatment of disease and failure to conform to minimal standards of care with respect to treatment of patients in the course of his practice of urology. Effective 7/11/96.

**CINELLI**, Albert Burton (MD #29750) Youngstown  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to one felony count of knowingly possessing, with the intent to illegally dispense and distribute, controlled substances. Notice mailed 7/11/96.

**CINTRON**, Emma L. (MD #46146) - Perrysburg  
**Consent Agreement** - Medical license indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on doctor's admission that she suffers from alcohol dependence, major depression, and post-traumatic stress disorder, and has been determined to be disabled and unable to perform her regular work as a physician. Agreement effective 3/14/96.

**COLVIN**, George Leslie (DO #1899)  
Woodmore, NY

**Board Action** - Doctor's license permanently limited and restricted to prohibit practice of radiology in Ohio; license suspended for one year, but suspension stayed subject to probationary terms, conditions and limitations for at least five years. Based on prior action by New York's Medical Board based upon that board's findings of fact that doctor had deviated from acceptable medical standards in his practice as a radiologist. Effective 5/9/96.

**DANIAL**, Azmy T. (MD applicant) - Solon  
**Consent Agreement** - Application for medical license

granted subject to reprimand based on doctor having been employed as a physician, performed physical exams and lab work on patients for compensation, and held himself out as a physician prior to being licensed as a physician in Ohio. Agreement effective 5/8/96.

**DAVIS**, John M. (MD #46572) - Hilliard  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to one felony count of Illegal Processing of Drug Documents, for which he was found eligible for treatment in lieu of conviction. Notice mailed 4/18/96.

**Consent Agreement** - Medical license indefinitely suspended for at least one year; conditions for reinstatement and subsequent probation for a minimum of five years established; doctor required to immediately surrender D.E.A. certificate. Based on doctor's plea of guilty to one felony count of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction. Effective 6/12/96.

**DOBSON**, Walter Albert (DO #2298)  
Grand Prairie, TX

**Consent Agreement** - Probationary terms, conditions and limitations imposed based on prior action by Texas State Board of Medical Examiners, which was itself based upon incidents of upcoding, unbundling fees, incorrectly identifying services and performing I.V. sedation and monitoring in cases in which it was not required. Agreement to remain in effect until at least 10/5/96 and until doctor is released from terms and conditions imposed by his 10/4/91 Texas Board Order. Agreement effective 3/14/96.

**ESTROFF**, Todd Wilk (MD #40893) - Atlanta, GA  
**Board Action** - Medical license permanently revoked based on doctor's plea of guilty to and conviction of one count of mail fraud and filing false claims, constituting a felony committed in the course of practice. Effective 5/9/96.

**FIGENSCHUH**, William Harold, Jr.  
(MD #37859) - Alliance

**Consent Agreement** - Medical license indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on doctor's admission that he has suffered from alcohol dependence and alcohol induced mood disorder. Agreement effective 3/13/96.

**FIGEL**, John Nicholas (MD #57016) - Steubenville  
**Board Order** - Permanent revocation of medical license stayed subject to minimum one year suspension, retroactive to 12/6/95; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established; doctor ineligible to hold or apply for D.E.A. registration without prior Board approval. Based on doctor having been found guilty of 26 misdemeanor counts of Drug Abuse, 26 felony counts of Deception to Obtain Dangerous Drugs, and 26 felony counts of Illegal Processing of Drug Documents, for which doctor was found eligible for treatment in lieu of conviction. Effective 6/19/96.

**GARDNER**, Robert R. (DO #3219) - Englewood  
**Consent Agreement** - Probationary terms, conditions and limitations established for a minimum of three years based on doctor's admission that he was found guilty of Attempted Illegal Processing of Drug Documents, that he has been diagnosed with chemical dependence, alcohol abuse, major depression and generalized anxiety disorder, and that he has received treatment from an approved provider. Agreement effective 4/17/96.

**GARWOOD**, Richard M. (DO #2655)  
Garfield Heights  
**Board Order** - Permanent revocation stayed subject to indefinite suspension of medical license for at least one year; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established; license permanently limited to prohibit doctor from utilizing anorectic agents. Based on improper utilization of controlled substance anorectics in the course of treating at least 15 specified patients. Effective 4/25/96. **Court Action** - Notice of appeal of Board's 3/13/96 suspension Order filed by doctor in Franklin County Court of Common Pleas on or about 3/28/96. By Decision and Entry filed on or about 4/10/96, Franklin County Court of Common Pleas granted doctor's motion for a stay of Board's 3/13/96 suspension Order pending Common Pleas Court's final decision on the appeal, provided that doctor fully complies with probationary monitoring conditions set forth in Board's 3/13/96 Order.

**GUANZON**, Noel Araneta (MD #67652) - Belpre  
**Board Order** - Permanent revocation based on doctor's failure to advise Ohio Medical Board during the licensure process that he was being investigated by the West Virginia Board of Medicine and had been asked to appear before that board's complaint committee. Effective 6/13/96.

**Court Action** - Notice of appeal of Board's 6/12/96 permanent revocation Order filed by doctor in Franklin County Court of Common Pleas on or about 6/28/96. By Decision and Entry filed 7/15/96, Franklin County Court of Common Pleas granted doctor's motion for a stay of Board's 6/12/96 permanent revocation Order.

**HANING**, Ray Vernon, Jr. (MD #30918)  
Harahan, LA  
**Voluntary Surrender** - Permanent revocation authorized by doctor in lieu of formal disciplinary proceedings based on prior action by Rhode Island's medical board for immoral conduct in the practice of medicine. Effective 5/23/96.

**HIGGINS**, Thomas Leo (MD #43709) - Bratenahl  
**Consent Agreement** - Medical license reinstated subject to probationary terms, conditions and limitations for at least three years based on doctor's admission that he has undergone treatment through an approved provider for chemical dependency relapse, that his current offer of employment in Massachusetts does not include clinical anesthesiology, and that he will not be credentialed in anesthesia. Agreement effective 4/17/96.

**HUTCHISON**, Charles (MD applicant) - Kettering  
**Consent Agreement** - Application for medical license granted subject to probationary terms, conditions and limitations based on doctor having been found guilty of one misdemeanor count of public indecency. Agreement effective 5/8/96; agreement to remain in effect for a minimum of two years prior to any request for termination.

**JOSEPH**, David Lee, Jr. (MT #5819) - Columbus  
**Board Order** - Massage therapy certificate suspended for thirty days; subsequent probationary terms, conditions and limitations imposed for one year. Based on massage therapist's plea of guilty to a charge of Solicitation, a first degree misdemeanor, after he solicited another to engage in sexual activity for hire. Effective 8/11/96.

**KAYE**, Larry Carl (DPM #2678)  
Mayfield Heights  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's podiatry license immediately suspended based on his plea of guilty to four felony counts of Trafficking in Drugs and five felony counts of Illegal Processing of Drug Documents. Notice mailed 4/18/96. **Court Action** - Notice of Appeal to Franklin County Court of Common Pleas filed with Board by doctor on 6/20/96 based on 4/17/96 pre-hearing

suspension. Notice of Appeal filed with Franklin County Court of Common Pleas on 7/22/96.

**KELNER**, Paul Evan (MD #61460) - Bucyrus  
**Consent Agreement** - Medical license indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on doctor's admission that, subsequent to his release from terms of prior consent agreement in 3/93, he relapsed on oral opiates for a period of three months. Agreement effective 6/12/96.

**KIM**, Michael Kwangsoo (MD #70563) - Dayton  
**Consent Agreement** - Medical license granted subject to probationary terms, conditions and limitations for a minimum of three years based on doctor's admission that he suffered from narcotic dependency, for which he has received treatment. Agreement effective 6/12/96.

**KITCHEN**, Alfred George Ernest (MD #41199)  
Vermillion  
**Consent Agreement** - Probationary terms, conditions and limitations imposed based on doctor's admission that he was diagnosed with alcohol dependency following a Board-ordered evaluation and that he subsequently received treatment through a Board-approved provider and has remained compliant with aftercare. Agreement effective 7/10/96; Agreement to remain in effect for a two years prior to any request for termination.

**KRALIK**, Rita Marie (MD #50161) - Roosevelt Island, NY  
**Court Action** - Medical license indefinitely suspended; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least two years established. Based on impairment of ability to practice due to mental illness. Order mailed 4/18/96; Order effective 4/18/96. **Court Action** - Notice of Appeal of Board's 4/17/96 indefinite suspension Order filed by doctor with Franklin County Court of Common Pleas on 5/2/96. By Decision and Entry filed 8/1/96, Franklin County Court of Common Pleas granted Board's motion to dismiss doctor's appeal based on doctor's failure to file notice of appeal with Board.

**KRATZ**, Arthur W. (DO #526) - Dallas, TX  
**Voluntary Surrender** - Permanent voluntary surrender of license accepted; doctor ineligible for reinstatement in future. Effective 4/18/96.

**LARACH**, Fernando C. (MD #51160)  
St. Petersburg, FL  
**Board Action** - Medical license indefinitely suspended for at least one year; conditions for reinstatement and subsequent probationary terms, conditions and limitations for five years established. Based on doctor's failure to advise Medical Board on license renewal application that disciplinary action had been initiated against him by Florida Board of Medicine. Order mailed 5/9/96; Order effective 5/9/96. **Court Action** - Notice of appeal of Board's 5/9/96 suspension Order filed by doctor in Franklin County Court of Common Pleas on or about 5/13/96. Doctor's request for stay of Board's 5/9/96 suspension Order granted by Franklin County Court of Common Pleas by Entry filed 6/5/96.

**LITTLE**, David E. (DO #2895) - Pickerington  
**Pre-hearing Suspension** - Pursuant to Section 4731.22(D), O.R.C., doctor's license summarily suspended upon receipt of notice based on determination that there is clear and convincing evidence that doctor has violated Sections 4731.22(B)(10), (15) and (26), O.R.C., and that doctor's continued practice presents a danger of immediate and serious harm to the public. Notice hand-delivered on 4/17/96; notice mailed 4/18/96. **Court Action** - Notice of appeal of 4/17/96 summary suspension Order filed by doctor in Franklin County Court of Common Pleas on 4/19/96, but voluntarily dismissed by doctor. **Board Order** - Osteopathic license permanently revoked based on violation of conditions of limitation imposed on license by 5/2/92 Board Order; commission of an act that constitutes a felony, to wit: Illegal Processing of Drug Documents; and impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. Order mailed 7/11/96; Order effective 7/11/96. **Court Action** - Notice of Appeal of Board's 7/11/96 permanent revocation Order filed by doctor on 7/29/96.

**MAHER**, William Patrick (DO #4405)  
Westerville  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to Drug Abuse, for which he was granted treatment in lieu of conviction. Notice mailed 4/18/96.

**MILLER**, Ronald L. (MD #44451) - Columbus  
**Consent Agreement** - Immediate suspension imposed on

2/14/96 terminated; permanent revocation of medical license stayed subject to indefinite suspension for at least one year; conditions for reinstatement and subsequent probation for at least five years established; doctor ineligible to hold or apply for D.E.A. registration without prior Board approval. Agreement effective 7/10/96.

**NARAMORE**, Lloyd Stanley, Jr. (DO #2518)  
Lovell, WY/Topeka, KS

**Pre-hearing Suspension** - Pursuant to Section 4731.22(F), O.R.C., doctor's license automatically suspended as of 1/26/96 by operation of law based on his having been found guilty in District Court of Cheyenne County, Kansas, of second degree Murder, a felony. Notice of opportunity for hearing mailed 7/11/96.

**NASIR**, Iqbal (MD #100315) - Bowling Green  
**Board Order** - Medical license permanently revoked based on doctor's failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease; failure to conform to minimal standards of care; and commission of fraudulent misrepresentations in the course of practice. Order mailed 3/19/96; Order effective 4/19/96, but doctor immediately ineligible to undertake care of new patients.

**NASSIF**, Rita Mae (MD #25916) - Cleveland  
**Board Order** - Medical license permanently revoked based on doctor's publication of false, fraudulent, deceptive or misleading statements with respect to prior Board action on a hospital privilege application; improper prescribing; and failure to comply with conditions of limitation imposed on her license by prior consent agreement with Medical Board. Order mailed 3/19/96; Order effective 4/19/96, but doctor immediately ineligible to undertake care of new patients. **Court Action** - Notice of appeal of Board's 3/13/96 permanent revocation Order filed by doctor in Franklin County Court of Common Pleas on 4/2/96. By Entry filed 7/8/96, Franklin County Court of Common Pleas granted doctor's motion for a stay of Board's 3/13/96 permanent revocation Order, provided that she not prescribe or dispense controlled substances during the pendency of appeal.

**OLAF**, Charles R. (DO #5909) - Allentown, PA  
**Board Order** - Osteopathic license suspended for thirty days based on doctor's plea of guilty in Kentucky to practicing medicine without a license, a misdemeanor; and denial of doctor's application for license in Kentucky by that state's medical board based on the misdemeanor conviction. Order mailed 6/19/96; Order effective 6/19/96.

**OLSON**, Dettleff Elmer (DO #5936) - Clayton  
**Consent Agreement** - Probationary terms, conditions and limitations imposed for a minimum of three years based on doctor's admission that he has suffered from opiate dependence, for which he received treatment through a Board-approved provider; that he relapsed on opiates in 9/94; that following subsequent treatment and aftercare through a Board-approved provider, he has maintained continuing full compliance with an advocacy contract since 12/94; and that he has suffered from and received treatment for depressive disorder, not otherwise specified. Agreement effective 6/12/96.

**ORR**, Dennis Paul (DO #2473) - Canfield  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to twelve felony counts of distributing controlled substances without a legitimate medical purpose. Notice mailed 5/9/96.

**PAJARI**, Karen L. (MD #34578) - Hazard, KY  
**Consent Agreement** - Medical license suspended for at least one year; conditions for reinstatement and subsequent probation for a minimum of three years established. Based on doctor's admission that she improperly used sick leave on dates for which she billed a second employer for services rendered, resulting in payments for sick leave by her employer, Hamilton County Community Mental Health Board, in excess of \$14,000. Agreement effective 6/12/96. (Note: doctor's license was suspended by operation of law on 10/1/94 for failure to renew, and remained suspended at the time of this consent agreement.)

**PARGHI**, Ajay H. (MD ##66057) - Salisburg, MD  
**Voluntary Surrender** - Permanent voluntary surrender of medical license accepted by Board in lieu of doctor's fulfillment of probationary terms established by 10/11/95 Board Order. Effective 7/11/96.

**PARK**, Hyun Young (MD #37629)  
Moreland Hills  
**Consent Agreement** - Medical license indefinitely suspended for at least thirty days, such time to be calculated from 2/14/96, when doctor voluntarily ceased practice; conditions for reinstatement and probationary terms, conditions and limitations established for three years; license permanently limited to practice in supervised, structured environment. Based on doctor's admissions that he failed to advise Ohio Medical Board on licensure renewal applications that action had been taken against his hospital privileges, that action had been initiated his Georgia license by that state's medical board,

and that he had agreed to place his Georgia license on inactive status and remain ineligible to petition for active status for a specified time period; and that he had provided incorrect information on applications for hospital privileges and professional liability insurance in response to questions about prior actions against hospital privileges and his medical license. Doctor denied that the above acts or omissions were done deliberately or with fraudulent intent. Agreement effective 7/10/96.

**PRICE**, William Anthony (MD #51195)  
Boardman

**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to one felony count of Distribution of a Controlled Substance. Notice mailed 4/18/96.

**RICE**, Phillip Lynn (MD #45865) - North Canton  
**Consent Agreement** - Medical license to remain suspended; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established. Based on doctor's admission that he has suffered from alcohol dependence. Agreement effective 3/14/96; Agreement supersedes 6/16/93  
Consent Agreement between doctor and Medical Board.

**RICHMOND**, Katherine Lily (DO #6407)  
Garfield Heights

**Consent Agreement** - License to practice osteopathic medicine and surgery granted subject to probationary terms, conditions and limitations for a minimum of three years based on doctor's admission that she has suffered from opiate dependency. Agreement effective 4/17/96.

**ROSS**, Alan Jay (DO #1987) - Knoxville, TN

**Board Order** - Osteopathic license permanently revoked based on prior action by Tennessee Board of Osteopathic Examination following that board's finding that the doctor's conduct constituted (1) unprofessional and unethical conduct, (2) gross malpractice and a pattern of continued or repeated malpractice, negligence, and incompetence in the course of medical practice, and (3) dispensing, prescribing, or otherwise distributing any controlled substance not in good faith to relieve pain and suffering, and not to cure an ailment, physical infirmity, or disease; doctor's failure to advise Ohio Board on license renewal applications that his Tennessee license had been summarily suspended, that disciplinary action had been initiated and taken against his Tennessee license by that state's board, and that he had pled no contest in 1974 Assault and Battery, a misdemeanor. Order mailed 7/12/96; Order effective 7/12/96.

**RUBEN**, Alan Marshall (MD #41800)  
Wheeling, WV

**Consent Agreement** - Probationary terms, conditions and limitations imposed, including prescribing restrictions. Based on doctor's admissions that he permitted office nurses to write and sign his name to prescriptions, subject to his review; and that he permitted, but did not adequately supervise, wholesale ordering of dangerous drugs by his office staff for use by themselves or their families, by utilizing his D.E.A. number and/or name; and that disciplinary action had been imposed by West Virginia's medical board on the basis of the same conduct. Agreement effective 6/12/96; Agreement to remain in effect for a minimum of three years prior to any request for termination.

**SINGH**, Rajinder (MD #46289) - East Liverpool

**Consent Agreement** - Probationary terms, conditions and limitations established for at least three years based on doctor's admission that he has suffered from opioid dependence and dysthymia, that he has suffered relapses, and that he has received treatment through a Board approved provider. Agreement effective 4/17/96.

**SOMERSALL**, Morley Valentine (MD #63114)  
Warren

**Board Order** - Doctor reprimanded based on failure to advise Ohio Medical Board on license renewal application that disciplinary action had been initiated against him by New York's medical board. Order mailed 6/13/96; Order effective 6/13/96.

**SPENCER**, Jeffrey C. (MD #40551) - Lyndhurst

**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his having been found guilty of one felony count of unlawful operation of a methadone treatment program. Notice mailed 6/13/96.

**TAYLOR**, Rodger Lloyd Moore (MD #18485)  
Dayton

**Voluntary Surrender** - Permanent voluntary retirement of medical license accepted by Board in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(6), O.R.C., which permits the Board to take disciplinary action based on failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances. Effective 5/23/96.

**VYAS**, Subhash A. (MD #41388)  
Williamson, WV

**Board Order** - Probationary terms, conditions and limitations established for at least four years based on

prior action by the Kentucky Board of Medical Licensure based on doctor's failure to conform to acceptable standards of care in his surgical treatment of a patient. Order mailed 6/13/96; Order effective 6/13/96.

**WARD**, James C. (DO #440) - North Olmsted  
**Voluntary Surrender** - Doctor's voluntary permanent surrender of medical license accepted on behalf of Medical Board in lieu of further formal proceedings. Based on doctor's admissions that he maintained medical records for six specified patients that failed to meet minimal standards of documentation, and that he prescribed controlled substances and other dangerous drugs and over the counter medications to those patients without appropriate substantiating documentation. Effective 7/8/96.

**WEINER**, Mark Aaron (DO #5502) - Toledo  
**Consent Agreement** - Probationary terms, conditions and limitations established for at least three years based on doctor's admission that he suffers from opiate dependency, for which he received treatment through an approved provider. Agreement effective 4/17/96.

**WINSTON**, Frederick Benjamin (MD #32807)  
Cincinnati  
**Voluntary Surrender** - Permanent revocation authorized by doctor in lieu of formal disciplinary proceedings based on his plea of guilty to one count of Illegal Processing of Drug Documents; one count of Deception to Obtain Dangerous Drugs; one count of Drug Abuse; and one count of Conspiracy, all felonies. Effective 4/17/96.

#### Continuing Medical Education Actions

**CLEMENT**, John Francis (MD #41785)  
Cincinnati  
**Board Order** - Indefinite suspension, minimum thirty days; conditions for reinstatement; subsequent probation for three biennial registration periods. Based on doctor's failure to comply with Continuing Medical Education requirements. Effective 7/14/96.

**KARSON**, Tom H. (MD #64179)  
Jamaica Plain, MA  
**Consent Agreement** - Doctor reprimanded; probationary terms, conditions and limitations imposed for three biennial registration periods. Based on doctor's failure to timely submit documentation of Continuing Medical

Education hours in response to Board audit, although required hours had been timely completed. Agreement effective 3/14/96.

**NICKELS**, Russell A. (MD #30241)  
Brookings, OR  
**Consent Agreement** - Probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor having certified on license renewal application that he had completed required Continuing Medical Education hours when, in fact, he had not completed those hours at the time of certification. Required hours were completed subsequently. Agreement effective 4/17/96.

**SHEAKOSKI**, Steven Leon (MD #55220)  
Hubbard  
**Consent Agreement** - Doctor reprimanded; probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor's failure to submit documentation of compliance with Continuing Medical Education requirements in response to Board audit, although required hours had been timely completed. Agreement effective 4/17/96.

**TABENKIN**, Hava (MD #60373) - ISRAEL  
**Consent Agreement** - Probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor having certified on license renewal application that she had completed required Continuing Medical Education hours when, in fact, she had not completed those hours at the time of certification. Required hours were completed subsequently. Agreement effective 4/5/96.

**TREECE**, Timothy Allen (MD #59861)  
Columbus  
**Consent Agreement** - Doctor reprimanded; probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor's failure to timely submit documentation of compliance with Continuing Medical Education requirements in response to Board audit, although required hours had been timely completed. Agreement effective 5/8/96.

**ZOLNA**, Sheldon (MD #38333) - Keyport, NJ  
**Consent Agreement** - Medical license suspended for at least thirty days; conditions for reinstatement and subsequent probation for three biennial registration periods established based on doctor's failure to submit documentation of compliance with Continuing Medical Education requirements in response to Board audit. Agreement effective 4/17/96.

---

## **COURT APPEAL UPDATE**

**ALLEN**, William H. (MD #16996) - Athens  
**Court Action** - By Decision filed 3/21/96, Franklin County Court of Common Pleas granted doctor's motion for stay of Board's 2/14/96 indefinite suspension Order pending resolution of doctor's appeal.

**BERNAT**, Donald Russell (MD #17723) - Youngstown  
**Court Action** - By Decision filed on 7/25/96, Franklin County Court of Common Pleas affirmed Board's 10/11/95 permanent revocation Order.

**BEYER**, Carolyn T. (DO #1366) - Chesterton, IN  
**Court Action** - Notice of appeal of Board's 2/14/96 indefinite suspension Order filed by doctor with Franklin County Court of Common Pleas on 3/11/96.

**BHARMOTA**, Harjit S. (MD #100171) - Marion  
**Court Action** - By Decision rendered 2/14/96 and filed 3/12/96, Franklin County Court of Common Pleas affirmed Board's 9/6/95 Order denying restoration of revoked medical license. Entry filed 4/3/96.

**BONGIORNO**, Frank Paul (MD #53146)  
Wayne, MI  
**Court Action** - By Decision rendered 3/28/96 and filed on 4/5/96, Tenth District Court of Appeals affirmed the 7/27/95 decision of the Franklin County Court of Common Pleas, which had affirmed Board's 7/14/94 reprimand Order.

**DAVIDSON**, Jerome Philip (DPM #1210)  
Youngstown  
**Court Action** - By Entry filed 5/13/96, Franklin County Court of Common Pleas granted doctor's motion to extend the court's prior stay of the Board's 10/11/95 revocation Order, pending the court's final decision on the doctor's appeal. By Decision filed 6/11/96 and documented by Entry filed 7/1/96, Franklin County Court of Common Pleas reversed Board's 10/11/95 revocation Order and remanded case to Medical Board for further proceedings.

**EASTWAY**, Robert J., Jr. (DO #2367) - London  
**Court Action** - By Opinion filed on 6/20/96 and documented by Entry filed on 6/24/96, Tenth District Court of Appeals modified Board's 4/23/95 Order on Remand and affirmed Order as modified. Stay lifted and Board directed to proceed with doctor's suspension. Doctor's motion for continuance of stay pending appeal

to Ohio Supreme Court denied by Tenth District Court of Appeals on 7/17/96.

**GOLDMAN**, Douglas S. (CT #3754) - Springfield  
**Court Action** - By Decision rendered 3/29/96, Tenth District Court of Appeals reversed Court of Common Pleas Decision that had affirmed Board's 3/9/94 permanent revocation Order and remanded matter to Common Pleas Court with instructions to remand to Medical Board to conduct a hearing pursuant to Section 4731.22, O.R.C. Decision notes that "a full adversarial and evidentiary proceeding" is not required. Notice of appeal of 3/29/96 Court of Appeals Decision filed on behalf of Medical Board with Ohio Supreme Court on 05/10/96. Notice of cross-appeal of 3/29/96 Court of Appeals Decision filed on behalf of cosmetic therapist with Ohio Supreme Court on 5/20/96.

**HILL**, Sam (DO #3607) - Lynchburg  
**Court Action** - By Decision filed 4/19/96, Franklin County Court of Common Pleas affirmed Board's 4/14/95 suspension Order. Entry filed 5/7/96.

**KOLLI** Suresh (MD #44837) - Rocky River  
**Court Action** - By Decision filed 3/25/96, Franklin County Court of Common Pleas affirmed Board's 8/9/95 permanent revocation Order. Judgment Entry filed 5/1/96.

**KREMER**, Richard M. (MD #29821) - Akron  
**Court Action** - By Opinion rendered 3/12/96, Tenth District Court of Appeals affirmed the judgment of the Franklin County Court of Common Pleas, which had upheld Medical Board's 10/13/94 reprimand Order.

**MIDWESTERN COLLEGE OF MASSOTHERAPY/**  
Robert T. McKinney (MT #4296) - Columbus  
**Court Action** - By opinion rendered 4/30/96, the Tenth District Court of Appeals affirmed the 8/24/95 Decision of the Franklin County Court of Common Pleas, which had upheld Board's 10/12/94 Order denying school a certificate of good standing and revoking the school's provisional certificate of good standing.

**OHIO COLLEGE OF LIMITED MEDICAL**  
**PRACTICE/Lawrence Kramer (MT #4412) - Cleveland**  
**Court Action** - Notice of appeal to Ohio Supreme Court filed on behalf of school on 4/12/96. By Entry filed 7/3/96, Ohio Supreme Court declined to accept jurisdiction of appeal.

see **COURT APPEAL UPDATE** on page 21

## REGULATING REDUX



*The applicability of the State Medical Board's controlled substance rules to the use of the new weight control medication Redux (dexfenfloramine) has been one of the most common queries directed to the Medical Board's Prescribing Committee since marketing of the drug began this past spring. The following Compliance Bulletin 96-003 issued to pharmacists by the Ohio State Board of Pharmacy on June 17, 1996 includes important information about the regulation of Redux. Representatives of Wyeth Laboratories, the drug's manufacturer, anticipate that their product will be declared an unscheduled drug by the end of 1996, at which point the State Medical Board's controlled substance rules will no longer apply to this medication. Compliance Bulletin 96-003 is reprinted below in its entirety.*

In May 1996 Wyeth Laboratories started distribution of the new diet drug Redux. This is the first new drug approved by the FDA for obesity in twenty years. Recently, staff from the Board of Pharmacy met with the Prescribing Committee of the Medical Board about how the Medical Board rule, Ohio Administrative Code (OAC) Rule 4731-11-04, applies to Redux. That meeting resulted in the Pharmacy Board staff and the Medical Board Prescribing Committee agreeing to the following:

Information needed to be considered by a pharmacist when dispensing Redux:

- (1) Currently, Redux is a Schedule IV controlled substance. Thus, it falls under the requirements of OAC Rule 4731-11-04.
- (2) A pharmacist may only dispense a fourteen-day supply of the drug. The approved package insert calls for a maximum dosage of 30mg per day. Thus, a pharmacist may dispense a total of 28 doses of the 15mg capsules every fourteen days.
- (3) A practitioner may not authorize refills. A new prescription, written or oral, must be issued after a reduction in weight is documented by the practitioner within every fourteen days.
- (4) The length of time that Redux may be prescribed is different than for fenfluramine and the other weight-reduction products. The package insert, official labeling approved by the FDA, indicates that Redux may be used for up to one year. Fenfluramine and the other diet products are only indicated for a "short period (a few weeks)."
- (5) In the Redux package insert, under "Precautions", combination therapy with other weight-loss agents is not recommended. Thus, under Rule 4731-11-04(B)(3), its use in combination with other weight-loss agents is not permitted.

see REDUX on next page

---

**COURT APPEAL UPDATE (cont.)**

**OLYNYK**, Maryanne S. (MD #60217) - Cleveland  
**Court Action** - By Decision rendered 3/21/96 and filed on 3/22/96, Franklin County Court of Common Pleas granted a stay of Board's 12/6/95 indefinite suspension Order pending resolution of appeal before Common Pleas Court.

**RAJAN**, Semur P. G. (MD #33496) - Mansfield  
**Court Action** - By Decision rendered 6/6/96 and filed on 6/7/96, Franklin County Court of Common Pleas affirmed Board's 9/13/95 suspension Order. Entry filed 6/26/96. Entry specifies that if judgment is appealed, stay previously granted by Court is to remain in effect until any appeals are finally adjudicated. Notice of Appeal to Tenth District Court of Appeals filed by doctor on 7/18/96.

**RICHTER**, Ronald Joseph (MD #63175)  
Cincinnati  
**Court Action** - Notice of appeal of Board's 2/14/96 permanent revocation Order filed by doctor with Franklin County Court of Common Pleas on or about 3/15/96.

**SCHUTTE**, Harry Anthony (DO #4128)  
Columbus  
**Court Action** - By decision filed 3/12/96, Franklin County Court of Common Pleas affirmed Board's 10/11/95 permanent revocation Order.

**TANDON**, Mahendra Kumar (MD #36402)  
Mayfield  
**Court Action** - By Decision rendered 3/13/96 and filed on 3/14/96, Franklin County Court of Common Pleas dismissed doctor's appeal and lifted stay of Board's 6/22/95 Order that had been previously granted based on Court's lack of jurisdiction to hear appeal due to its having been untimely filed. By Decision and Entry filed 4/12/96, Franklin County Court of Common Pleas granted doctor's motion to continue stay until his notice of appeal to Court of Appeals is filed or 4/20/96, whichever occurs first. Entry notes that "the stay of the agency's order continues automatically upon the filing of the notice of appeal." Notice of appeal to Tenth District Court of Appeals filed by doctor on 4/10/96.

**URELLA**, Rocco Philip (MD #61396)  
Ardmore, PA  
**Court Action** - By Decision rendered 3/13/96, Franklin County Court of Common Pleas reversed Board's 8/9/95 Order and remanded case to Medical Board with instructions to immediately reinstate doctor's Ohio medical license. Entry filed 5/8/96.

**VAUGHN**, Mattie Lou (MD #41503) - Columbus  
**Court Action** - By Entry filed 4/24/96, Ohio Supreme Court declined to accept jurisdiction of doctor's appeal and ordered that it be dismissed. By Entry filed 5/29/96, Ohio Supreme Court denied doctor's motion for reconsideration. By Entry filed 6/17/96, Ohio Supreme Court denied doctor's motion for a stay of Court's 4/24/96 Judgment Entry pending appeal to the U.S. Supreme Court.

**REDUX (cont.)**

- (6) The "Indications And Usage" section of the Redux package insert contains a height and weight chart showing which patients meet the standards of obesity for Redux therapy. Patients with BMI values of 30 or greater qualify. Patients with BMI of 27 to 29 may qualify for Redux therapy if they have a concomitant risk factor. While it is the physician's responsibility to assure compliance with this guideline, pharmacists should be aware of its implications.

Since this is a new drug, pharmacists should read the package insert and familiarize themselves with Redux prior to dispensing.

---

Effective July 31, 1996, State Medical Board of Ohio licensees are subject to new rules about HIV and HBV. The rules, appearing in Chapter 4731-19 of the Ohio Administrative Code (O.A.C.), incorporate guidelines and procedures that the Ohio Department of Health's Task Force on the Transmission of Blood Borne Pathogens by Health Care Professionals identified as being necessary to minimize the risk of HIV/HBV transmission from health care providers to the public.

The rules establish a three-pronged approach to preventing physicians from transmitting HIV and HBV to their patients. First, a physician is required to obtain testing if s/he has reason to suspect s/he is infected with HIV/HBV. Second, a physician who learns that s/he is infected is required to submit to assessment and monitoring by an appropriate panel established or approved by the Ohio Department of Health. That physician must observe any practice restrictions established by the panel to minimize the risk to patients. Third, a physician who learns that a colleague is seropositive is required to assure that the colleague is referred to an appropriate entity for assessment and monitoring. If an infected colleague fails to self-report within seven days after the physician advises the colleague of their duty to do so, the physician must report their knowledge of the colleague's seropositivity to the Board.

Recognizing the sensitive nature of the information with which it

## NEW RULES FOCUS ON **HIV/HBV**

---

was dealing, the Medical Board's rules encourage voluntary compliance and minimize the risk that a practitioner's seropositivity will be publicly divulged.

The Ohio Department of Health (ODH) plays a crucial role in providing the public protection envisioned by the rules. Rule 4731-19-02(A), O.A.C., requires a physician who has learned s/he is seropositive to report him/herself either to ODH or an institutional review panel approved by ODH, or to the State Medical Board. It is the Board's belief that nearly all affected physicians will choose to be monitored exclusively by ODH or by an ODH-approved institutional review panel, rather than by the Board. Indeed, the Board reworded paragraph (A) as requested by ODH to list ODH as the first reporting option and the Board as the last. Also, under Rules 4731-19-03 and 4731-19-06(B), O.A.C., the Board will refer physicians to the ODH or to an approved panel in most cases, in lieu of direct intervention. Even those physicians who the Board determines must be directly monitored will be required, as part of that process, to submit to monitoring by ODH or by an approved panel.

The monitoring panel, be it an ODH-approved institutional

review panel or a panel convened by ODH itself, will perform the evaluation and recommend practice restrictions, particularly restrictions relating to exposure-prone invasive procedures. "Exposure-prone invasive procedures" are defined by reference to existing Board Rule 4731-17-01, O.A.C. Rule 4731-19-05(A), O.A.C., now requires, consistent with the Centers for Disease Control's Guidelines, that physicians infected with HIV or HBV notify prospective patients of their seropositivity before they undergo exposure prone invasive procedures.

The Board appreciates that a physician who learns of a colleague's HIV/HBV positive status in the course of providing medical care to that colleague may be precluded by Section 3701.243, Ohio Revised Code, from reporting the colleague's test results to the Board. In such cases, paragraph (C) of Rule 4731-19-02, O.A.C., provides that the physician is nevertheless required to report any information s/he may obtain that leads him or her to believe that the colleague is in violation of Section 4731.22, O.R.C. For example, if the colleague shows signs of AIDS-related dementia, but continues to practice medicine, the physician would report the behavioral problems s/he has observed that suggest an inability to practice according to minimal standards of care, but would not reveal that the colleague has tested positive for HIV. Specific questions regarding the application of existing mandatory reporting requirements

set out in Chapter 4731-15, O.A.C., may be directed to the Secretary and Supervising Member of the State Medical Board for an advisory opinion, as permitted by Rule 4731-15-01.

Complete sets of all the new HIV/HBV rules comprising Chapter 4731-19, O.A.C., are available upon request from the State Medical Board's Public Inquiries Department. Two of those rules, 4731-19-02, O.A.C., concerning the licensee's duty to report infection with HIV/HBV, and 4731-19-05, O.A.C., outlining the duty to refrain from certain procedures, are reprinted on the following pages, along with Rule 4731-17-01(C), "Definition of Exposure Prone Invasive Procedure."

4731-19-02 LICENSEE'S DUTY TO REPORT INFECTION WITH HIV OR HBV.

- (A) A LICENSEE WHO LEARNS THAT HE IS INFECTED WITH HIV OR HBV SHALL REPORT THAT FACT TO ODH OR TO AN INSTITUTIONAL REVIEW PANEL APPROVED BY ODH OR TO THE BOARD.
- (B) A LICENSEE WHO LEARNS THAT ANOTHER LICENSEE IS INFECTED WITH HIV OR HBV SHALL ADVISE THE INFECTED LICENSEE OF HIS DUTY TO REPORT UNDER PARAGRAPH (A) OF THIS RULE, AND SHALL FOLLOW-UP WITH THE LICENSEE TO ASSURE THAT HE HAS SELF-REPORTED. IF THE INFECTED LICENSEE HAS NOT SELF-REPORTED WITHIN SEVEN DAYS AFTER BEING ADVISED OF HIS

DUTY TO DO SO, THE ADVISING LICENSEE SHALL REPORT THE IDENTITY AND HIV/HBV STATUS OF THE INFECTED LICENSEE TO THE BOARD WITHIN FORTY EIGHT HOURS.

- (C) A LICENSEE WHO BELIEVES THAT ANOTHER LICENSEE IS INFECTED WITH HIV BUT WHO IS PROHIBITED BY A PREVAILING LAW FROM DIVULGING THE BASIS OF HIS BELIEF SHALL REPORT TO THE BOARD AS REQUIRED BY RULE 4731-15-01 OF THE ADMINISTRATIVE CODE IF HE BELIEVES THE INFECTED LICENSEE IS OTHERWISE PRACTICING BELOW MINIMUM STANDARDS OF CARE OR IS UNABLE TO PRACTICE ACCORDING TO ACCEPTABLE AND PREVAILING STANDARDS OF CARE BY REASON OF MENTAL ILLNESS OR PHYSICAL ILLNESS. THE REPORTING LICENSEE NEED NOT INCLUDE IN HIS REPORT TEST RESULTS OR OTHER INFORMATION WHICH THE PREVAILING LAW PROHIBITS HIM FROM DIVULGING.

4731-19-05 DUTY TO REFRAIN FROM CERTAIN PROCEDURES.

- (A) A LICENSEE WHO KNOWS HE IS INFECTED WITH HIV OR HBV SHALL NOT PERFORM OR PARTICIPATE IN AN EXPOSURE-PRONE INVASIVE PROCEDURE, AS THAT TERM IS DEFINED IN PARAGRAPH (C) OF RULE 4731-17-01 OF THE ADMINISTRATIVE CODE, UNTIL HE HAS OBTAINED COUNSEL FROM ODH OR FROM AN INSTITUTIONAL REVIEW PANEL APPROVED BY ODH AND THEN, ONLY

---

## CHANGE OF ADDRESS NOTICE

*Please print or type all information and mail to:*

STATE MEDICAL BOARD OF OHIO/77 S. High Street, 17th Floor/Columbus, OH 43266-0315

Effective Date of Address Change \_\_\_\_\_ Ohio License # \_\_\_\_\_

Name \_\_\_\_\_

Previous Mailing Address \_\_\_\_\_

New Mailing Address \_\_\_\_\_

Telephone \_\_\_\_\_

Practice Address (if different) \_\_\_\_\_

---

UNDER THE CIRCUMSTANCES THAT THE COUNSELING PANEL OR ODH DECIDES ARE APPROPRIATE. SUCH CIRCUMSTANCES SHALL INCLUDE NOTIFYING PROSPECTIVE PATIENTS OF THE LICENSEE'S SEROPOSITIVITY BEFORE THEY UNDERGO EXPOSURE-PRONE INVASIVE PROCEDURES, AND ADHERENCE TO ALL GUIDELINES PUBLISHED BY THE CENTERS FOR DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

- (B) A LICENSEE WHO HAS REASON TO SUSPECT THAT HE MAY BE INFECTED WITH HIV OR HBV SHALL OBTAIN APPROPRIATE TESTING TO REVEAL HIS HIV STATUS AND HBV STATUS BEFORE HE PERFORMS OR PARTICIPATES IN AN EXPOSURE-PRONE INVASIVE PROCEDURE.
- (C) A LICENSEE WHO KNOWS OR SHOULD SUSPECT THAT HE IS INFECTED WITH HIV OR HBV SHALL PRACTICE RECOMMENDED SURGICAL TECHNIQUE AND SHALL ADHERE TO UNIVERSAL PRECAUTIONS, AS DELINEATED IN CHAPTER 4731-17 OF THE ADMINISTRATIVE CODE, WHEN PERFORMING INVASIVE PROCEDURES OTHER THAN EXPOSURE-PRONE INVASIVE PROCEDURES.
- (D) A VIOLATION OF ANY PROVISION OF THIS RULE SHALL ALSO CONSTITUTE "A DEPARTURE FROM, OR THE FAILURE TO CONFORM TO, MINIMAL STANDARDS OF CARE OF SIMILAR PRACTITIONERS UNDER THE SAME OR SIMILAR CIRCUMSTANCES WHETHER OR NOT ACTUAL INJURY TO A PATIENT IS ESTABLISHED," AS THAT CLAUSE IS USED IN DIVISION (B)(6) OF SECTION 4731.22 OF THE REVISED CODE.

\* \* \* \* \*

4731-17-01 Definitions

For purposes of this chapter of the Administrative Code: . . . .

- (C) "Exposure-prone invasive procedure" means an invasive procedure in which there is a significant risk of contact between the blood or body fluids of the licensee and the blood or body fluids of the patient. Some characteristics of exposure-prone invasive procedures include digital palpation of a needle tip in a body cavity or the simultaneous presence of the licensee's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site. An invasive procedure is exposure-prone if it presents a recognized risk of percutaneous injury to the licensee, and, in the event such an injury occurs, the licensee's blood is likely to contact the patient's body cavity, subcutaneous tissues, or mucous membranes. [Effective 10/1/94]

---

**STATE OF OHIO**  
**THE STATE MEDICAL BOARD**  
77 South High Street, 17th Floor  
Columbus, Ohio 43266-0315

BULK RATE U.S. POSTAGE PAID COLUMBUS, OH PERMIT NO 4317
---



# YOUR REPORT

FROM THE STATE MEDICAL BOARD OF OHIO

SPRING 1996

## The State Medical Board

### President

Charles D. Stienecker, M.D.  
Wapakoneta

### Vice President

Nora N. Noble  
Newark

### Secretary

Thomas E. Gretter, M.D.  
Cleveland

### Supervising Member

Raymond J. Albert  
Amanda

Ronald C. Agresta, M.D.  
Steubenville

Anant R. Bhati, M.D.  
Cincinnati

David S. Buchan, D.P.M.  
Columbus

Carol Lynn Egner, M.D.  
Cincinnati

Anand G. Garg, M.D., Ph.D.  
Youngstown

Robert S. Heidt, Sr., M.D.  
Cincinnati

Bradley K. Sinnott, J.D.  
Columbus

Anita M. Steinbergh, D.O.  
Westerville

Executive Director  
Ray Q. Bumgarner, J.D.



## A WORD FROM THE EDITORS

Welcome to the State Medical Board of Ohio's centennial year! In 1996, as we move into our second century, *Your Report* will look back at the Medical Board's first 100 years and beyond, to the earliest days of medical practice in Ohio. The Medical Board's first journals document, in an ornate hand, that the initial meetings of the newly created licensing body focused on such pressing issues as the design of a formal seal and the purchase of a typewriter for the office. That the latter proposal met with approval is evident from the surviving, typewritten letters of longtime Secretary Herbert M. Platter, M.D., from which much of this history has been gleaned.

According to Dr. Platter, registration of medical practitioners in Ohio began in 1811, eight years after statehood. At that time, a prospective doctor was required to study medicine with a physician and pass an examination given by the local medical society and, later, by a district medical society. Examination results were reported to and affirmed by the Ohio State Medical Association. Graduation from a medical school was not required.

A law passed in 1830 delegated authority to the Ohio Medical College in Cincinnati to appoint examiners for novice practitioners, most of whom were not graduates of medical schools. But this arrangement was

See 100 YEARS on page 6

## Inside YOUR REPORT

A Word From the Editors .....	1
Editorial: Closing Your Practice .....	2
Legislative Update .....	4
Position Paper: Laparoscopic Training - Surgery .....	7
Disciplinary Actions/Court Action Update .....	8
Credentials Verification Service .....	15
Illegal Processing of Drug Documents .....	16
Pain Management Revisited .....	19
Prescription Format Rule Revised .....	21
FSMB President Visits Ohio .....	22
Letters from the Board Secretary .....	23

---

*Editorial*

## **Closing Your Practice**

by Charles D. Stienecker, M.D., President

Rarely does the State Medical Board receive a call from a physician who states, "I'm closing my practice. What do I need to do?" More frequently, it's a call from an irate patient who says, "My doctor quit and I can't get my records!" or "The office just closed and I can't find a doctor!" raising the specter of abandonment. Many times, doctors simply don't know the legal requirements for closing a practice in order to avoid charges of abandonment, nor do they know the legal and ethical considerations surrounding medical records, how to avoid controlled drug disposal problems, or what is prudent—or even advantageous—to have done before walking out that last day.

There are lists of steps and helpful hints on the subject. Most notable are the booklet "Closing Your Practice," available from the American Medical Association Department of Practice Development Resources for \$26.00, and the pamphlet "Retirement," a free publication from the Ohio State Medical Association Division of Legal Affairs. (The latter has been plagiarized extensively for purposes of this article, with the kind permission of Katrina English, Director of Legal Services for the OSMA, to whom I express my thanks.) I would suggest that anyone planning to close, move or retire a practice send for this information to map out a trouble-free transition.

### **Terminating the Physician-Patient Relationship**

Retiring physicians should terminate all physician-patient relationships. At a minimum, physicians should notify all active patients by

registered letter. Usually, active patients are those seen within the past two years. If a question exists as to whether someone is an active patient, the physician should treat that person as an active patient for notification purposes. For the benefit of inactive patients and others, physicians may choose to run an advertisement in the local paper to announce their retirement.

### **Notifying the Medical Board**

Physicians are not required by law to notify the State Medical Board of their anticipated retirement. Physicians who want to maintain their medical license even after retirement must continue to complete 100 hours of continuing medical education every two years (ORC 4731.281), and should keep all CME records for one biennial registration period following renewal. Physicians who surrender or allow their licenses to expire cannot provide medical services, although those who wish to provide free care in nonprofit shelters and health care facilities may be eligible to do so if they qualify for a "volunteer's certificate," for which they must still maintain their CME records.

ORC 4731.281 requires licensees to give written notice to the Board of any change of principal practice address or residence address within thirty days of the change. The federal Drug Enforcement Administration (DEA) must likewise be informed of your new location, as your DEA registration is site specific.

### **DEA and the Disposal of Drugs**

The DEA must be notified when a physician dies or discontinues professional practice (21 CFR 1301.62). If physicians do not intend to maintain their medical license or actively practice, they must terminate their DEA registration. Based

---

on federal law (21 CFR 1307.14 and 1305.14), physicians should return their DEA certificate for cancellation of registration and any unexecuted order forms to:

**Drug Enforcement Administration**  
**431 Howard Street**  
**Detroit, MI 48226**  
**Attn: Registration**

Physicians closing an office but maintaining a license should use their home address.

Upon retirement, any controlled substances on hand should be returned, transferred, or disposed. Physicians can return any controlled substances to the supplier (21 CFR 1307.13). With DEA notification and permission, physicians can transfer controlled substances to another DEA registrant (21 CFR 1307.14). Physicians can dispose of controlled substances by sending a list specifying the name and quantity of controlled substances to be disposed. This list (three copies of form 41 from the DEA) must be sent to either the Ohio Board of Pharmacy (OAC 4729-9-06) or the DEA district office that serves the physician's area (21 CFR Section 1307.21). Upon receipt of the list, the executive director of the Ohio Board of Pharmacy or the special agent in charge of the DEA shall authorize and instruct the physician how to dispose of the controlled substances. Non-controlled drugs may be returned, transferred, sold or disposed of in the same manner as other medical supplies.

For at least two years after retirement, physicians should also keep the final inventory of all controlled substances and any copies of DEA order forms (21 CFR 1304.04 and 1305.13, and 21 USC 827). Additionally, physicians should not issue any controlled substance prescriptions that may be refilled after they terminate their DEA registration, and should completely destroy any extra prescription pads.

## **Retention of Medical Records**

Ohio law does not address a physician's responsibility regarding the retention of medical records or the procedures for the transfer of those records. To assist physicians or their estates in defending malpractice claims, medical records should be retained at least until the statute of limitations for any potential malpractice claim has expired.

In Ohio, the one year statute of limitations (for adult patients) for filing malpractice claims begins to run when the later of the following events occurs: (1) the physician-patient relationship for the particular illness or injury ends; or (2) the patient becomes aware, or should have been aware, that a condition was related to a specific professional medical service previously rendered (ORC Section 2305.11). In the latter case, the patient should have been aware of a problem if the condition was such that a reasonable person would be put on notice of the need for further inquiry into the cause of the condition.

Pediatricians, obstetricians, family practitioners or other physicians who have treated children should be aware that the statute of limitations for minors does not begin to run until they reach the age of majority (ORC 2305.16), which in Ohio is 18 years old. This is a good time to consider your need for "tail" insurance, depending on your malpractice policy.

Because the statute of limitations for malpractice claims is very broad, the OSMA recommends that physicians maintain their original medical records for an indefinite period of time. This indefinite period of time can usually end at least two years after the death of a patient (based on the wrongful death statute, ORC 2125.02) or death of the physician (based on the presentation of claims against the estate statute, ORC 2117.06). A successful medical claim against a

See **CLOSING** on next page

---

**CLOSING** (cont.)

physician is unlikely more than two years after the death of the patient or the physician. Nevertheless, the AMA Council on Ethical and Judicial Affairs states in its Opinion 7.04 that it is better to transfer the patient records of a deceased physician to another physician rather than destroy them.

According to Principle IV of the AMA Principles of Medical Ethics, "[a] physician . . . shall safeguard patient confidences within the constraints of the law." The physician-patient privilege is protected by Ohio law. Ohio law specifically protects any privileged communications, including the patient's medical record [ORC 2317.02(B)]. Only the patient, who is the holder of the privilege, may invoke or waive the privilege. However, a physician may be sued for breach of confidentiality if privileged information has been disclosed without a waiver of the privilege. Therefore, neither the custodian nor any other person can have access to the contents of a patient's medical record without

either the patient's or court-ordered authorization, and so a signed request for transfer or release of records should be solicited from patients and placed on the record.

Physicians may charge a reasonable fee to cover the cost of copying records (AMA Council on Ethical and Judicial Affairs Opinion 7.04). The amount charged should be based on the cost to the physician to photocopy the records or otherwise provide the information through a dictation or summary. Physician's contracts with a third party payor may also control whether or not they can bill the patient for the cost of supplying a copy of the record. Medical records should not be withheld because the patient has an outstanding bill (AMA Council on Ethical and Judicial Affairs Opinion 7.01).

If you plan to retire, tell your staff early. It's amazing how much they know about your practice that you don't. And try to give your practice management consultants, attorney and tax accountant six months head start before you pull the shingle.

---



---

## LEGISLATIVE UPDATE

The following summary of legislation is provided to assist licensees in being aware of changes in the law that may affect their practices. The summary does not purport to be all-inclusive. Licensees are encouraged to periodically review relevant portions of the Ohio Revised Code (statutes) and Ohio Administrative Code (rules) to remain current in their knowledge and understanding of the legal parameters impacting their medical practice. You may also wish to consult your state and local professional association for further information.

The summary in this newsletter utilizes language taken directly from the Final Analysis of each bill as prepared by the Legislative Service Commission of the State of Ohio.

\* \* \* \*

---

**Substitute House Bill Number 167** was passed by the 121st General Assembly, signed by the Governor, and became effective on November 15, 1995. However, the portion of the bill which permits child support enforcement agencies to take action resulting in suspension or denial of certain professional licenses becomes effective on November 15, 1996. \*Please see Sections 2301.373, 4730.10, 4731.20, and 4731.76 of the Ohio Revised Code.

Sponsors: Reps. Lawrence, Thompson, Johnson, Jones, Tiberi, Bateman, Schuring, O'Brien, Winkler, Thomas, Carey, Perz, Amstutz, Padgett, Buchy, Haines, Roman, Reid, Van Vyven, Myers, Brading, Gardner, Mead, Vesper, Harris, White, Colonna, Garcia, Olman, Sines, Schuler, Wise, Corbin, Jacobson, Krebs, Schuck, Core, Jordan, Hodges, Watchman, Hood, Grendell, Kasputis, Fox, Mason.

Sens. Kearns, Drake, Howard, J. Johnson, McLin, Oeslager, Snyder, Cupp, Ray, Latell, Boggs, Kucinich, B. Johnson, Suhadolnik, Burch, Dix, Watts, Gillmor, Carnes, Gaeth, Furney, Horn, Finan, Herington, Vukovich.

Revises laws governing Aid to Dependent Children, Disability Assistance, the Job Opportunities and Basic Skills Training Program, paternity establishment, recovery of incorrectly paid Medicaid payments, food stamps, and counties' share of public assistance expenditures; establishes the Adult Emergency Assistance Program, the Directory of New Hires, an employment assistance program, and requirements for receipt of state funds for providing adult education services; and permits child support enforcement agencies to take action resulting in suspension or denial of certain occupational or professional licenses and motor vehicle license of persons in default under support orders.

A licensing board, on receipt of a notice from a Child Support Enforcement Agency (CSEA), must determine whether the individual named in the notice holds or has applied for a license. If the board determines the individual holds or has applied for a license, determines that the individual is the individual named in the notice, and has not received a further notice from the CSEA stating that the individual is no longer in default, the board may not issue or renew a license for the individual and is required to suspend the license it has issued to the individual. The act prohibits the board from holding any hearing in connection with an order refusing to issue a license for, or suspending the license of, an individual in default.

The Board is required to maintain a file containing the notices it receives from CSEAs naming individuals in default under child support orders who are not licensed by the board. If such an individual later applies for a license, the board must follow the procedures described in the foregoing paragraph.

Not later than seven days after receiving a notice from a CSEA indicating that an individual named in the previous notice is no longer in default, the board is required, if the individual is otherwise eligible for the license and wants the license, to issue or renew the license for the individual or end a suspension previously imposed. The board may charge a fee of not more than \$50 to issue or renew, or end the suspension of, the license.

\* \* \* \*

**Substitute Senate Bill Number 143** was passed by the 121st General Assembly, signed by the Governor, and became effective on March 5, 1996. \*Please see Chapter 4730. and Sections 4731.051, 4731.142, 4731.22, 4731.224, 4731.24, and 4731.25 of the Ohio Revised Code.

See **BILLS** on next page

---

## **BILLS (cont.)**

Sponsors: Sens. Drake, Suhadolnik, Kearns, Gillmor, Zalenski, Burch, Long, Gaeth. Rep. Van Vyven.

The bill revises the laws pertaining to physician assistants. Changes the title “physician’s assistant” to “physician assistant.” Requires that a physician seeking to supervise a physician assistant receive the Board’s approval of a physician assistant utilization plan and a supervision agreement. Eliminates the requirement that physician, physicians, or group practice employ a physician assistant. Establishes supervision requirements for a supervising physician. Expands the circumstances under which sanctions may be imposed on a physician assistant. Renames the Physician’s Assistant Advisory Committee the Physician Assistant Policy Committee, gives the Committee additional duties, and changes the make-up of the Committee members. The bill also revises the minimum score needed to demonstrate proficiency in English to the Board.

---



## **100 YEARS (cont.)**

considered unacceptable by Homeopathic and Eclectic practitioners and, eventually, physicians and students of medicine were required to study medicine with a preceptor and graduate from a medical school in order to be eligible for registration. There were no standards established for medical education, however, and many diplomas were awarded during that period by programs that Dr. Platter described as “schools of medicine only in name.”

From 1868 to 1896, graduates of any medical school, regardless of its quality, could practice after recording their diplomas with the probate court in their county of residence. In a January 1954 letter, Dr. Platter speculated that the lack of any registration beyond the recording of a diploma was attributable to “fierce fights then raging between the different schools of medicine. There were at least four groups—the allopathic (or regular), the Homeopathic, the Eclectic and Physio-medical schools.”

“It is significant to recall,” Dr. Platter wrote, “that the State Department of Health was established in 1882, while the Medical Practice Act was not enacted until 1896. This was due to the fierce rivalry between the different schools of medicine. It is also significant that the original Board gave

recognition to the four schools mentioned above although one year later, the Physio-medical school passed out of existence. Along about 1921, all schools of Homeopathy dropped out of the picture except two. . . . One Eclectic school persisted until 1928 when it closed its doors and opened again three years later for a period of four years and then passed out of the picture.”

The State Medical Board, the body now responsible for licensing and regulating Ohio physicians, was created by enactment of the Medical Practice Act on February 27, 1896. The Act has changed significantly since that time, expanding along the way to cover medical doctors (MDs), osteopathic physicians (DOs), podiatric physicians (DPMs), physician’s assistants (PAs), and practitioners of a number of limited branches of medicine such as massage and cosmetic therapy.

In upcoming centennial issues of *Your Report*, you’ll find more about the first 100 years of medical licensing and regulation in Ohio. We encourage interested readers to share any historical information they may have as well. Submissions will be published in future editions of the newsletter as space permits.

Charles D. Stienecker, M.D., President &  
Lauren Lubow, J.D., co-editors

---

**STATE MEDICAL BOARD OF OHIO - POSITION PAPER**

**Laparoscopic Training - Surgery**

Adopted February 14, 1996

The Medical Board takes the position that the rapid promotion of laparoscopic surgical techniques has raised the question of patient safety when these techniques, which have a recognized technical learning curve, are undertaken by surgeons whose training may be inadequate.

Numerous legal actions have been initiated on the part of patients who have incurred adverse outcomes from these procedures. While some may be classified as unrealistic expectations of patients, many resulted from undeveloped expertise or inadequate training.

Therefore, the State Medical Board of Ohio promotes as minimum guidelines for:

A. Credentialing Surgical Laparoscopy:

1. residency level training in general surgery and/or gynecological surgery for abdominal procedures completed in 1992 or later, or
2.
  - a) residency level training in general surgery and/or gynecological surgery completed prior to 1992,
  - b) and a minimum of 10 hours of didactic training sponsored by a recognized training institution related to evidence based recommendations or indications criteria and contraindications to surgery as well as discussion of instrumentation technology and use, with
  - c) a minimum of four (4) hours of individual, hands-on animal model experience in technique.
3. documented and demonstrated expertise and experience.

B. Privileging should be based on:

1. having basic credentials above, and
2. monitoring by another surgeon with privileges for a minimum of three cases, or until deemed capable of independent action, whichever is less.
3. If no monitoring surgeon with established expertise is available, then two laparoscopists shall collaborate on three cases before independent privileges are granted.
4. Each new or advanced procedure should be monitored for a minimum of three cases, and the surgeon's ability evaluated and documented by the monitoring surgeon.

It is assumed that new surgical techniques involving indirect, transmitted, and telemonitored technology will continue to evolve. Those that are quantum leaps in expertise requirement to perform will continue to be a source of concern where public safety might be placed in jeopardy in the rush to apply new technology.

---

# STATE MEDICAL BOARD OF OHIO DISCIPLINARY ACTIONS

*November 1995 - February 1996*

---

**ALLEN, William H., Jr. (MD #16996) - Athens**  
**Board Order** - Permanent revocation of medical license stayed subject to indefinite suspension of at least one year; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established. Based on doctor's improper utilization of controlled substances for weight reduction and failure to comply with Medical Board rules concerning utilization of controlled substances for weight reduction. Effective 3/24/96, except doctor immediately to cease prescribing controlled substance anorectics and ineligible to treat new patients.

**BATTAGLINO, John Joseph, Jr. (MD #29768)**  
Wheeling, WV  
**Consent Agreement** - Doctor reprimanded based on prior action by West Virginia Board of Medicine following a complaint involving his care and treatment of a single patient and his conduct in regard to his record keeping of that care and treatment; and prior action by Florida's medical board based on West Virginia's action and doctor's failure to report that action to Florida's medical board within thirty days. Effective 12/7/95.

**BHASKAR, Padmini (MD applicant)**  
Renton, WA  
**Board Order** - Application for medical licensure denied based on applicant's failure to list four FLEX exams she had previously taken on licensure application; prior action by Washington's medical board based on billing practices, showing a patient's medical records to another patient, and performing surgery that was not medically indicated; and applicant's lack of the full, unlimited license required for endorsement. Effective 12/11/95.

**BEYER, Carolyn T. (DO #1366) - Chesterton, IN**  
**Board Order** - Permanent revocation of medical license stayed subject to indefinite suspension of at least one year; conditions for reinstatement established; upon reinstatement, doctor's license permanently limited to restrict doctor from prescribing any form of chemical phototherapy. Based on prior action against doctor's Indiana osteopathic medical license by that state's board due to its finding that doctor's conduct constituted professional incompetence. Effective 3/5/96.  
**Court Action** - Notice of Appeal to Franklin County Court of Common Pleas filed with Medical Board by doctor on 3/11/96.

**BROWN, David H. (DO #2256) - North Lima**  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his having pled guilty to and been found guilty of one (1) felony count of Conspiracy to Distribute Controlled Substances. Notice mailed 2/15/96.

**COOPER, L. Jean (MD #69638) - Cincinnati**  
**Consent Agreement** - Application for medical licensure granted subject to probationary terms, conditions and limitations for a minimum of two years. Based on history of alcohol dependence and depression. Agreement effective 11/8/95.

**FIGEL, John Nicholas (MD #57016) - Steubenville**  
**Pre-Hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., medical license suspended effective 12/7/95 based on doctor having been found guilty of 26 felony counts of Deception to Obtain Dangerous Drugs, and 26 felony counts of Illegal Processing of Drug Documents, for which doctor was found eligible for treatment in lieu of conviction. Notice mailed 12/7/95.

**GARDINER, John Brenneman (DO #775)**  
Columbus

**Board Order** - License to practice osteopathic medicine and surgery permanently revoked based on excessive and inappropriate prescribing of controlled substances and dangerous drugs, despite documentation in doctor's records of drug-seeking behavior, including drug selling and drug abuse. Effective 3/22/96, but restrictions on utilization of controlled substances and prohibition against taking new patients effective immediately.

**Court Action** - Notice of appeal to Franklin County Court of Common Pleas filed with Medical Board by doctor on 3/1/96.

**GILREATH, Stephen Wayne (MD #59795)**  
Gahanna

**Board Order** - Probationary terms, conditions and limitations imposed for at least five years based on the permanent revocation of doctor's clinical privileges at Brooke Army Medical Center, Ft. Sam Houston, Texas, for a pattern of unprofessional conduct resulting from doctor's "recognized personality disorder," which impaired his ability to treat patients in an appropriate manner. Effective 2/20/96.

**GRAOR, Robert Alan (MD #44093) - Cleveland**  
**Board Order** - Permanent revocation, stayed; indefinite suspension, minimum five years; subsequent five year probation. Based on doctor's plea of guilty to five felony counts of Grand Theft and five felony counts of Aggravated Grand Theft, the acts underlying which established that doctor knowingly obtained or exerted control over money in excess of one million dollars, with deception, with the purpose to deprive the owner, the Cleveland Clinic Foundation, of said property or services. Effective 12/28/95.

**GREENE, Patrick Joseph (MD #56475)**  
Stamford, CT/Decorah, IA

**Board Order** - Medical license permanently revoked based on prior action by Massachusetts Board of Registration in Medicine following that board's determination that doctor had misrepresented his specialty certification status as

"board eligible," when, in fact, he was not, and upon minimal standards of care issues raised by at least two hospitals. (Journal Entry - no hearing requested) Effective 2/14/96.

**GUIDI, John Charles (MT applicant) - Cincinnati**  
**Board Order** - Application for certificate to practice massage denied based on applicant's failure to submit complete and accurate information pertaining to convictions for driving under the influence, attempted drug abuse, and failure to pay local income taxes. Effective 12/11/95.

**Court Action** - Notice of appeal of Board's 12/6/95 Order filed by massage therapy applicant with Franklin County Court of Common Pleas on 12/20/95. By notice filed on or about 1/26/96, massage therapy applicant voluntarily dismissed appeal.

**HAN, Sum K. (MD #35338) - Pittsburgh, PA**  
**Board Order** - Medical license permanently revoked based on doctor having been found guilty in federal district court in Pennsylvania of four felony counts of Knowingly and Willfully Dispensing a Schedule III Controlled Substance (codeine and hydrocodone); automatic suspension of doctor's Pennsylvania medical license on the basis of that conviction. (Journal Entry - no hearing requested) Effective 12/6/95.

**HANNA, Maged Fouad (MD #59057) - Hilliard**  
**Board Order** - Medical license permanently revoked based on doctor's commission of an act that constitutes a felony, to wit: Illegal Processing of Drug Documents; and impairment of ability to practice according to acceptable and prevailing standards of care. Effective 12/11/95.

**Court Action** - Notice of appeal of Board's 12/6/95 permanent revocation Order filed by doctor with Franklin County Court of Common Pleas on 12/27/95. Doctor's voluntary dismissal of appeal filed in Franklin County Court of Common Pleas on 1/11/96. By Order and Entry of Medical Board dated 1/18/96, 11/8/95 citation dismissed without prejudice to future action in view of doctor's voluntary dismissal of his appeal of Board's 12/6/95 permanent revocation order.

**HARPER**, Charles Richard (MD #22046)  
Atlanta, GA

**Board Order** - Medical license permanently revoked based on prior action against Georgia medical license by that state's medical board due to alcoholism/chemical dependency. (Journal Entry - no hearing requested) Effective 12/6/95.

**HASSARD**, Alexander Daniel (MD #50422)  
Lexington, KY

**Board Order** - Medical license permanently revoked based on doctor's plea of guilty to Possession With Intent to Distribute a Schedule III Controlled Substance (Vicodin), which plea was based on doctor having prescribed 14,060 tablets of Vicodin to a patient over a twenty month period, despite the doctor's awareness that the patient was addicted to the medication. Effective 2/20/96.

**HIGGINS**, Thomas Leo (MD #43709) - Cleveland  
**Consent Agreement** - Medical license indefinitely suspended based on doctor's admission that he relapsed on Fentanyl in 9/95. Conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Effective 2/14/96.

**HOLLERAN**, Neal Evan (MD #43325)  
Newport, RI

**Board Order** - Thirty day suspension stayed subject to probationary terms, conditions and limitations for at least three years. Based on revocation of doctor's appointment as staff internist at a U.S. naval hospital due to significant deficit in doctor's clinical knowledge, inadequate follow-up of patient care problems, serious lapses in clinical judgment and inadequate or cursory documentation. Effective 3/4/96.

**KIRSCHNER**, Rick Lowell (MT #3809)  
Columbus

**Voluntary Surrender** - Permanent revocation authorized by massage therapist in lieu of formal proceedings based on inappropriate sexual contact with a client and massage therapist's plea of guilty to disorderly conduct, a minor misdemeanor. Effective 11/7/95.

**KRAIN**, Lawrence Stirling (MD #30640)  
Chicago, IL

**Board Order** - Indefinite suspension, minimum six months; subsequent probation for at least five years. Based on doctor's failure to advise Ohio Medical Board on license renewal application that he had been convicted of a felony; and doctor's failure to advise Ohio Medical Board on renewal application that disciplinary action had been initiated against him by the Illinois Department of Professional Regulation. Effective 12/28/95.

**Court Action** - Notice of appeal of Board's 12/6/95 indefinite suspension Order filed by doctor with Board on 1/12/96. By Entry and Order filed 1/24/96, Franklin County Court of Common Pleas granted doctor's request for stay of Board's 12/5/95 indefinite suspension Order, pending determination of doctor's appeal.

**KEGLER**, James L. (MD #39513) - Cincinnati  
**Board Order** - Permanent revocation of medical license stayed subject to indefinite suspension for at least one year; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least two years established. Based on doctor's plea of guilty to one felony count of Illegal Processing of Drug Documents. Effective 3/4/96.

**LANGE**, Robert John Gustav (MD #42074)  
Cincinnati

**Board Order** - Applicant's request for restoration of Ohio medical license denied based on the following: (1) doctor having been found guilty of Unlawful Transaction with a Minor based upon his inducement of a 15-year-old boy to engage in deviate sexual intercourse; (2) doctor's submission of an affidavit to the Kentucky court whereby he agreed that he would never seek medical licensure in Kentucky or any other state; (3) revocation of Kentucky medical license based on findings by that state's board that doctor had engaged in illegal sexual contact and activity with two minor male children, and that he had written a prescription for a schedule II controlled substance in the name of one of the children knowing that it would be used for other than therapeutic purposes; (4) subsequent action by the Kentucky Medical Board whereby

doctor's license was reinstated and later surrendered in lieu of further disciplinary action; (5) failure to provide complete information on application for restoration of Ohio medical license concerning the Kentucky board's actions and status of Kentucky medical license and exclusion from Medicare; and (6) failure to provide required recommendation in conjunction with restoration application. (Journal Entry - hearing request withdrawn) Effective 2/14/96.

**LEVITAS, John R. (MD #16705) - Cincinnati**  
**Voluntary Retirement** - Permanent voluntary retirement accepted by Board in lieu of formal disciplinary proceedings pursuant to Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code. Effective 2/22/96.

**MAHER, William Patrick (DO #4405) - Westerville**  
**Consent Agreement** - License to practice osteopathic medicine indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on impairment of ability to practice due to misuse or abuse of drugs or alcohol. Effective 12/7/95.

**MAYER, Perry V. (MD training certificate #38374/expired) - Kingston, Ontario, Canada**  
**Board Order** - Doctor's request for release from terms of 11/11/92 consent agreement denied based on violations of conditions of limitation imposed on training certificate by that consent agreement, due to doctor's prescribing of controlled substances to patients without prior Board approval, positive urine screen result, and submitting declarations of compliance under penalty of perjury on three occasions when he was not, in fact, in compliance. Effective 11/20/95.

**MELES, Salomon (MD #33934) - Miami, FL**  
**Board Order** - Medical license permanently revoked based on doctor having been convicted in Florida of one felony count of conspiracy to

defraud the federal Medicare program; prior action against Florida medical license by that state's medical board based on that conviction; ten year exclusion from participation in Medicare and Medicaid programs by the U.S. Dept. of Health and Human Services; and failure to advise Ohio Medical Board of conspiracy conviction and initiation of disciplinary action by Florida's medical board on application for renewal of Ohio medical license. (Journal Entry - hearing request withdrawn) Effective 2/14/96.

**MILES, William Douglas (DO #4296)**  
**Miamisburg**  
**Consent Agreement** - License reinstated subject to probationary terms, conditions and limitations for a minimum of five years. Based on history of chemical dependency and depression, for which doctor subsequently received treatment from an approved provider; and failure to advise Board of impairment on application for licensure. Agreement effective 11/8/95; Agreement to remain in effect for a minimum of five years.

**MILLER, John Joseph (MD #60453)**  
**Deer Lodge, MT**  
**Board Order** - Medical license permanently revoked based on prior action by Montana medical board, which was itself based on doctor's admissions that he had engaged in excessive use of alcohol to the extent that he was mentally and physically impaired and that, while impaired, he had been involved in a motor vehicle accident that caused the death of two people; and doctor's subsequent conviction of two felony counts of Negligent Homicide. (Journal Entry - no hearing requested) Effective 2/14/96.

**MILLER, Ronald Lee (MD #44451) - Columbus**  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his pleas of guilty to four felony counts of Illegal Processing of Drug Documents and one felony count of Tampering with Evidence, for which he was granted treatment in lieu of conviction. Notice mailed 2/15/96.

**MYNKO**, Gregory Spencer (MD #69952)  
Avon Lake

**Consent Agreement** - Medical license granted subject to probationary terms, conditions and limitations for at least two years based on history of opiate dependence and alcohol dependence, for which doctor received treatment and aftercare through a board-approved provider. Agreement effective 2/14/96.

**NAVARRO-JULIAN**, Venus F. (MD #44949)  
Granada Hills, CA

**Board Order** - Medical license permanently revoked, but revocation stayed subject to minimum one year suspension; conditions for reinstatement and subsequent probationary terms, conditions and limitations established for at least five years. Based on prior action against doctor's California medical license by that state's medical board due to acts of gross negligence that contributed to death of a patient. Effective 2/20/96.

**OLYNYK**, Maryanne S. (MD #60217)  
Cleveland

**Board Order** - Medical license suspended for at least six months; reinstatement conditions and subsequent probationary terms, conditions and limitations established for a minimum of one year, with period between 4/11/95 and 12/11/95 to be counted toward required probationary term. Based on doctor's violation of conditions of limitation imposed on license by 2/12/92 consent agreement due to her failure to submit to ordered number of urine screens, failure to submit proper documentation of compliance, and filing a statement of compliance, when she was not, in fact, in compliance; publication of a false, fraudulent, deceptive or misleading statement. Effective 12/11/95.

**Court Action** - Notice of appeal of Board's 12/6/95 indefinite suspension Order filed by doctor with Franklin County Court of Common Pleas on 12/21/95.

**PAVLATOS**, Nicholas Basil (MD #13096)  
Springfield

**Voluntary Surrender** - Medical license permanently surrendered by doctor in accordance

with terms of a 11/23/92 settlement agreement with various federal and state agencies. Effective 1/16/96.

**RAM**, Moorthy S. (MD #65431) - New Jersey  
**Board Order** - Medical license permanently revoked based on doctor having been found guilty in federal district court in New York of five felony counts of Fraud, one felony count of Arson, and two felony counts of Witness Tampering. Effective 2/20/96.

**REED**, Guy Dean (DO #426) - Tulsa, OK  
**Board Order** - License to practice osteopathic medicine in Ohio permanently revoked based on revocation of Oklahoma osteopathic license for reasons including, but not limited to, failure to keep accurate controlled substance records, failure to account for administration and/or dispensing of controlled substances, and excessive and/or inappropriate prescribing; as well as revocation of doctor's Missouri license by that state's osteopathic medical board on the basis of Oklahoma board's action. (Journal Entry - no hearing requested) Effective 11/8/95.

**REINHART**, Robert Louis (MD #19578)  
Columbus

**Consent Agreement** - Probationary terms, conditions and limitations established for three biennial registration periods based on doctor's violation of conditions of limitation imposed by 10/26/89 consent agreement due to his failure to submit satisfactory documentation of completion of sufficient Category I Continuing Medical Education hours. Effective 12/8/95.

**RICHTER**, Ronald Joseph (MD #63175)  
Cincinnati

**Board Order** - Medical license permanently revoked based on doctor's plea of guilty to one felony count of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction; violation of conditions of limitation imposed on doctor's medical license by 9/14/94 consent agreement; commission of an act that constitutes a felony, to wit: Illegal Processing of Drug Documents. Effective 3/4/96.

**RISSEVER**, Jay Elliott (MD #53312) - Cincinnati  
**Consent Agreement** - Probationary terms, conditions and limitations established for at least two years based on doctor's admissions that the medical records reflecting his examination, evaluation and treatment of three patients indicate or suggest that he treated minor medical illnesses and/or conditions by prescribing controlled substances and other abusable drugs, and that the medical records reflecting his examination, evaluation and treatment of two patients indicate or suggest that he continued to use controlled substance anorectics regardless of whether those patients had lost weight. Effective 12/7/95.

**SEKHON**, Rajinder S. (MD #69635)  
Toronto, Ontario, Canada  
**Consent Agreement** - Application for medical licensure granted subject to probationary terms, conditions and limitations for a minimum of two years. Based on history of opiate and cocaine dependence, for which doctor received treatment from an approved provider. Effective 11/8/95.

**SIMSEN**, Donald A. (MD #69959) - Manteo, NC  
**Consent Agreement** - Medical license granted subject to probationary terms, conditions and limitations for at least two years following doctor's commencement of practice in Ohio. Based on history of alcohol dependence. Agreement effective 2/14/96.

**SINGER**, Otmer Richard, Jr. (DO #3441)  
Osprey, FL  
**Board Order** - License to practice osteopathic medicine permanently revoked based on doctor having withdrawn from the care of specified patients upon closing his practice in Ohio without making records available to patients and/or without appropriate notice to patients. (Journal Entry - no hearing requested) Effective 2/14/96.

**SMITH**, Jeffrey Alan (MD #46170)  
Charlotte, NC  
**Board Order** - Ohio medical license permanently revoked based on prior action against North Carolina medical license by that state's medical

board following doctor's surrender of his North Carolina license due to chemical dependency relapse. (Journal Entry - hearing not requested in a timely manner) Effective 11/8/95.

**STREETER**, George Allen (MD #16840)  
Cleveland Heights  
**Voluntary Surrender** - Permanent revocation authorized by doctor in lieu of formal proceedings pursuant to Section 4731.22(B)(6) and (B)(18), O.R.C. Effective 10/19/95.

**TALATI**, Arvind M. (MD #37297) - Chicago, IL  
**Board Order** - Indefinite suspension of at least one year stayed subject to probationary terms, conditions and limitations for at least three years. Based on prior action against doctor's Maryland medical license by that state's medical board based upon its conclusion that doctor failed to meet standards of care in the field of weight loss management. Effective 3/4/96.

**TAYLOR**, Stanley Douglas (MD applicant)  
Youngstown  
**Board Order** - Application for medical licensure denied based on prior actions by the California and North Carolina medical boards; applicant's failure to provide complete information about those actions on application for Ohio licensure; failure to provide evidence of good moral character. Effective 11/21/95.

**Court Action** - Notice of appeal of Board's 11/8/95 Order filed by applicant in Franklin County Court of Common Pleas on 12/4/95.

**WEISS**, Stephen Joel (MD #37217) - Houston, TX  
**Board Order** - Sixty day suspension stayed, subject to probationary terms, conditions and limitations for at least five years. Based on prior action against doctor's Texas medical license by that state's medical board due to doctor's failure to accurately interpret and record diagnostic findings; failure to formulate treatment plans or testing; recommendations of surgical intervention on poor surgical candidates; and ordering of unnecessary treatment, consultations and studies. Effective 2/20/96.

**Continuing Medical Education Actions**

**BROWN, Morris Lamar (MD #38418)** - Dayton  
**Court Action** - By decision filed 10/18/95 and documented by Entry filed 10/31/95, Franklin County Court of Common Pleas reversed Board's 7/13/94 Order and remanded matter back to Board for further proceedings. Board appealed to Tenth District Court of Appeals on 11/24/95; doctor cross-appealed on 12/4/95. Board's appeal and doctor's cross-appeal of the 10/18/95 Court of Common Pleas decision to be dismissed and vacated based on 3/13/96 **Consent Agreement** whereby doctor agreed to be reprimanded for failing to timely submit documentation of CME hours in response to Board audit, although required hours had been timely completed.

**CHOLAK, Emmy Lou (MD #26147)**  
Canton, NY

**Voluntary Retirement** - Doctor's permanent voluntary retirement accepted by Board in lieu of formal disciplinary action following Continuing Medical Education audit. Effective 12/7/95.

**DESLEY, Christopher Reed (MD #50939)**  
Vacaville, CA

**Board Order** - Medical license revoked based on doctor's violation of conditions of limitation imposed by 11/9/88 consent agreement due to his failure to submit satisfactory documentation of completion of required Category I CME hours; and his failure to complete required Category I CME for 1/1/91 - 9/30/92 registration period, despite his having certified on his license renewal application that the requisite hours had been completed. (Journal Entry - hearing request withdrawn) Effective 2/14/96.

**GRAPER, Eugenia Budack (MD #20772)**  
St. Petersburg, FL

**Voluntary Retirement** - Doctor's permanent voluntary retirement accepted by Board in lieu of formal disciplinary action following Continuing Medical Education audit. Effective 11/13/95.

**CHANGE OF ADDRESS  
NOTICE**

**Do we know where you are? State law requires that you notify the Medical Board in writing of your new address within thirty days.**

**COURT APPEAL UPDATE**

**DAVIDSON, J. Philip (DPM #1210)**  
Youngstown

**Court Action** - Notice of appeal and request for stay filed 11/3/95 by doctor in Franklin County Court of Common Pleas. By entry filed 11/14/95, Franklin County Court of Common Pleas granted conditional stay of Board's 10/11/95 revocation Order for sixty (60) days. By Entry filed 1/10/96, Franklin County Court of Common Pleas granted doctor's motion for continuation of 11/14/95 stay Order until determination of appeal or until 5/14/96, whichever occurs first. Entry specifies that no further extension shall be granted.

**EASTWAY, Robert J., Jr. (DO #2367)** - London  
**Court Action** - By Decision rendered 12/8/95 and documented by Entry filed 12/29/95, Franklin County Court of Common Pleas affirmed Board's remand Order, but stayed Board's Order pending further appeal. Doctor prohibited from prescribing for himself or members of his family. Notice of appeal to Tenth District Court of Appeals filed by doctor on 12/29/95.

**KOLLI, Suresh (MD #44837)** - Rocky River  
**Court Action** - By decision filed on 10/31/95, doctor's motion for a stay of Board's 8/9/95 permanent revocation Order overruled by Franklin County Court of Common Pleas.

**RAJAN, Semur P. G. (MD #33496) - Mansfield**  
**Court Action** - Board's 9/13/95 suspension Order stayed by Franklin County Court of Common Pleas on 10/5/95.

**SCHUTTE, Harry Anthony (DO #4128)**  
Columbus  
**Court Action** - Notice of appeal to Franklin County Court of Common Pleas of Board's 10/11/95 permanent revocation Orders filed by doctor on 10/30/95.

**VAN BOLDEN, Vernon II (MD #55923)**  
New Orleans, LA  
**Court Action** - By decision filed on 8/7/95, Franklin County Court of Common Pleas reversed and vacated Board's 1/11/95 revocation Order. In its 9/1/95 Entry, Court directed Board to correct its records to state that, as of 7/31/91, Board had

accepted surrender of doctor's license and that any action taken thereafter against doctor's license was taken without jurisdiction.

**VAUGHN, Mattie Lou (MD #41503) - Columbus**  
**Court Action** - By Opinion rendered on 11/30/95, Tenth District Court of Appeals affirmed the 5/24/95 decision of the Franklin County Court of Common Pleas, which had upheld Board's 8/13/93 permanent revocation Order. Stay pending appeal to Ohio Supreme Court granted 12/7/95. Notice of appeal to the Supreme Court filed by doctor on 1/16/96.

**WILLIAMS, Oliver K., III (MD #32625)**  
Columbus  
**Court Action** - By Entry dated 12/13/95, Ohio Supreme Court declined to accept jurisdiction of doctor's appeal.



## **CORE PHYSICIAN CREDENTIALS: SINGLE SOURCE FINALLY A REALITY**

Ever since the advent of physician licensure, the cry has been, "Why do I have to have the same credentials sent to you that I just had sent to Iowa?" But that's been standard operating procedure for licensing boards, hospitals, accrediting bodies and insurers across the country. For medical boards, at least, that pernicious repetition is about to come to an end, if the Federation of State Medical Boards has anything to do with it.

The Federation of State Medical Boards, the national organization representing state medical and osteopathic boards across the country, has chosen Ohio as one of seven states, and by far the largest, to pilot its Credentials Verification Service (FCVS) program. Once established, the FCVS will maintain a physician's core licensing credentials that are used repeatedly in applying for licensure in different states. Core credentials are the documents that remain stable once they are obtained, such as documentation of medical education and postgraduate training (including fifth pathway), pertinent licensure examination history and identification information. Documents maintained by the FCVS will be collected from, or verified by, their original, primary source. The service will be funded by a one-time fee collected at the time the documents are initially gathered by the FCVS. Thereafter, a small verification fee will be assessed for forwarding the information to future users.

It is anticipated that Ohio will begin exclusive, prospective use of the Federation's service for all of its licensure applicants beginning this summer or fall. As all states come on board, it will bring a welcome end to the traditional scavenger hunt for original source credentials documents every time a physician moves from one practice location to another.

## Illegal Processing of Drug Documents

A review of the disciplinary actions taken by the Medical Board demonstrates that a significant number are taken against practitioners who have been found guilty of Illegal Processing of Drug Documents, a felony. The Board has received numerous inquiries from readers wanting to know what activities may result in such criminal charges.

*While the Board hopes the following information will assist physicians in understanding the law, it is in no way intended to be a complete explanation of the Illegal Processing statute or to substitute for competent legal advice. If you are considering engaging in an activity that might violate the Illegal Processing statute, you should consult with your attorney before proceeding.*

**Which of the following scenarios do you think might support charges of Illegal Processing of Drug Documents?**

### I

A physician who is a solo practitioner is going on vacation. He writes out various prescriptions for controlled substances for patients, but dates them for the time period during which he will be gone. The patients may then come to the office and pick up their prescriptions from the office staff during the physician's absence.

### II

A very busy physician signs a pad

of prescription blanks and gives them to an office assistant whom he believes is sufficiently well-trained to see follow-up patients or patients with minor illnesses. The office assistant uses the pre-signed prescriptions to issue medically appropriate controlled substance prescriptions to patients.

### III

A physician has a patient who is quite concerned that, if the prescriptions are issued in the patient's own name, word will get out through the community concerning his condition, because the controlled substance being

prescribed is generally used for one condition. He asks the physician to issue the prescription in a false name to protect his privacy.

### IV

A physician wants a small amount of a controlled substance to dispense from his office, so he writes a prescription in his own name and has it filled at the local pharmacy. He dispenses the drugs so obtained to legitimate patients through his office.

### V

A patient visits her physician and tells him about her spouse, who

(cont.)

## DISCIPLINARY TERMS DEFINED

**REVOCAATION** - Permanent loss of Ohio license to practice medicine or one of its branches

**SUSPENSION** - Licensee may not practice for a specific period of time and/or until specific conditions imposed by the Medical Board are met

**PROBATION** - Licensee's practice is monitored by the Medical Board

**CONSENT AGREEMENT** - Conditions and limitations placed on licensee's practice by mutual agreement with the Medical Board

**VOLUNTARY SURRENDER** - Practitioner surrenders his or her license to practice in lieu of further disciplinary proceedings; may authorize the Board to revoke the practitioner's license

**LIMITATION** - License to practice medicine is restricted in some way; e.g., doctor is prohibited from practicing a certain specialty

**REPRIMAND** - A public admonishment

**COURT-ORDERED STAY** - An order by a court which delays the implementation of the Board's action against a practitioner's license while the practitioner's case is under appeal

injured his back at work. She requests a prescription for pain medication for her husband, who has never been to see the physician. He writes a prescription for a controlled substance in the name of the spouse.

**VI**

Or he writes it in the name of the patient, intending the medication for the spouse.

**VII**

A friend, co-worker or close relative complains to the physician of bad headaches and requests a prescription for pain medication. As a personal favor, he writes a prescription for a controlled substance. He does not examine the person, take a history or keep medical records concerning this, because the person is not really a "patient."

**VIII**

A physician believes that it is illegal to write a controlled substance prescription for his spouse, but believes that she needs a controlled substance. He writes the prescription, using a fictitious name or the name of a legitimate patient, and gives it to his spouse, who then has it filled at the pharmacy.

**IX**

A physician wants a controlled substance for his personal use, but believes that if he writes it to himself and signs it, the pharmacy will question it. He writes the prescription, using a fictitious name, or the name of a legitimate patient, and signs his own name.

He then takes it to the pharmacy to have it filled.

**X**

A physician is drug impaired. In an effort to get the controlled substances he needs, he writes prescriptions in fictitious names. Or he signs another physician's name to the prescription. Or he writes the prescription in the name of a legitimate patient, signs his own name, and tells the pharmacist that he is picking the medication up to take to the patient. Or he writes the prescription in the name of a family member, staff member, or legitimate patient, signs it with his own name, and has the person named on the prescription get the controlled substances and bring them back to him--or split them with him.

**The correct answer is "All of the above."**

A common misconception is that the only physicians charged with Illegal Processing of Drug Documents are those with bad motives who are practically drug dealers on the street corner. Although there are some physicians who do abuse their licenses intentionally in an effort to make money by selling either drugs or prescriptions, practitioners charged with Illegal Processing of Drug Documents do not start with such evil motivation. Many of those lose sight of what the law requires of them; they think that their good intentions should excuse their conduct. The legal profession calls this the

"pure heart, empty head" defense --and it is not a very good defense against charges of Illegal Processing of Drug Documents. Others start down the slippery slope of prescribing controlled substances for themselves or close family members and end up supporting an addiction with prescriptions--and defending themselves against charges of Illegal Processing of Drug Documents.

Section 2925.23, Ohio Revised Code, as currently in effect, sets forth the elements of Illegal Processing of Drug Documents. The provisions that are most often used with licensed practitioners are:

- (A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719. of the Revised Code.
- (B) No person shall intentionally make, utter, or sell, or knowingly possess a false or forged:
  - (1) Prescription;
  - (2) Uncompleted pre-printed prescription blank used for writing a prescription;
- (D) No person shall knowingly make or affix any false or forged label to a package or receptacle containing any dangerous drugs.

See **ILLEGAL** on page 18

---

**ILLEGAL** (cont.)

(E) Divisions (A) and (D) of this section do not apply to practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4725., 4729., 4731., and 4741. of the Revised Code or section 4723.56 of the Revised Code.

Chapter 3719., Ohio Revised Code, pertains to controlled substances. Key among its provisions is Section 3719.06, "Prescribing, dispensing and administering by dentist, physician, veterinarian or advanced practice nurse." The provision most often violated is found in division (A) and says that, "(e)ach written prescription shall be dated and signed by the dentist or physician prescribing on the day when issued and shall bear the full name and address of the person for whom the controlled substance is prescribed and the full name, address, and registry number under the federal drug abuse control laws of the person prescribing."

Based on this provision, it is easy to see that the physician in scenarios **III**, **VI**, **VIII** and **IX** has issued prescriptions in violation of Section 2925.23(A), in that Section 3719.06 requires the name of the person for whom the drugs are intended to appear on the prescription. Knowingly using any other name, regardless of the intent, is making a false statement in a prescription.

Although it is unlikely that the physician in **IV** would be criminally prosecuted initially, the violation is technically the same--the drugs are not intended to be used by the person named on the prescription, but are to be dispensed. 21 Code of Federal Regulations Section 1306.04(b) specifically prohibits the use of a prescription for this purpose. The proper method to obtain controlled substances for dispensing from the office is to use the appropriate order form, even if it is only for a small amount that is to be purchased from a local pharmacy.

The physician in **I** has also violated Section 3719.06, which requires that the prescription be signed by the physician and dated on the day when issued. Similar requirements are set forth in 21 CFR 1306.05(a).

The prescription now contains a false statement, in that it is made to appear to have been written on the date of issuance, when in fact it was not.

The physician in **V** and **VII** is also potentially facing charges of Illegal Processing of Drug Documents. A "prescription", by statutory definition [Section 3719.01(B)], is a written or oral order for a controlled substance given by a practitioner in the course of professional practice. The exemption from criminal liability granted to practitioners in Section 2925.23(E) is conditioned on the physician's conduct being in accordance with Chapter 4731., the Medical Practices Act. Writing "prescriptions" for controlled substances to persons not the patients of the physician would be construed to be either making a false statement in a prescription (i.e., the person is identified falsely as a patient) or as making or uttering a false or forged prescription (i.e., the "prescription" was not written in the course of professional practice, or not in accordance with Chapter 4731., and so is not a real prescription, it only purports to be one). Clearly, the physician in **V** has written a prescription to a person who is not a patient. The situation in **VII** is less clear and may therefore reduce the likelihood of criminal prosecution, at least if the prescriptions are few in number. However, Rule 4731-11-02(D), Ohio Administrative Code, requires physicians to complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his patients. These records must also accurately reflect the use of controlled substances in the treatment of the patient. Failure to abide by these rules would result in a physician's conduct not being in accordance with Chapter 4731., and could therefore render his controlled substance prescriptions open to challenge.

The physician in **X** is obviously in violation of a number of provisions. Although the schemes employed in attempts to obtain controlled substances to support an addiction are many and varied, none of them are legal. This physician might, however, be eligible for treatment in lieu of conviction, if the court is convinced that the physician would not have engaged in the illegal activity but for his addiction, the physician is willing to undergo treatment and monitoring, and certain other conditions are met.

The physician in II could be charged with Illegal Processing of Drug Documents under 2925.23(A). A "prescription", by statutory definition [Section 3719.01(B)], is a written or oral order for a controlled substance given by a practitioner in the course of professional practice. In this case, the order was not given by a practitioner. A similar result potentially could be achieved under 2925.23(B)(1), which mandates that "no person shall intentionally make, utter, or sell, or knowingly possess a false or forged: prescription." Although everyone thinks of "forged" in the classic sense of signing someone else's name to a document, the legal definition of "forged" also includes "to make, execute, . . . or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that conduct." (Section 2913.01(G), ORC) The prescription blank was signed by the practitioner in an attempt to authenticate the writing later placed there by his office staff, even though the ultimate document is not an order for drugs from a physician, and thus is not a prescription.

On July 1, 1996, a new version of 2925.23, O.R.C. goes into effect. The new version requires under division (A) that no person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719 or 4729 of the Revised Code. Chapter 4729 pertains to the regulation of pharmacists and to dangerous drugs (all prescription medications that are not controlled substances). Current Section 4729.61(C), in effect since 1976, prohibits the making or uttering a false or forged prescription for a dangerous drug, and makes violation of this section a felony. It appears that the amendment merely serves to move the felony offense from Section 4729.61(C) to Section 2925.23(A), so that Illegal Processing of Drug Document charges, at least under division (A), can be brought based on prescriptions for non-controlled substances as well as controlled. Ultimately, the courts will decide the full scope of the amendment.



## PAIN MANAGEMENT REVISITED

by Thomas E. Gretter, M.D., Secretary

In the Summer 1995 issue of *Your Report*, the State Medical Board of Ohio published a Position Paper entitled "Scheduled Drug Therapy Including Narcotics for Chronic Benign Pain." This paper, as with other policy statements and guidelines developed by state regulatory boards, was intended to amplify awareness of the Board's stance on important subject matter. Position papers do not have the same force as laws or formally adopted rules, but do serve as an official statement of the Board regarding standards of care. They explain the Board's view on the boundaries of professional practice and give practitioners guidelines on achieving appropriate care. The purpose of this article is to revisit the topic of pain management from the federal and state regulatory perspectives.

Currently, some states and the federal government have laws and regulations governing intractable pain. These include federal regulations involving intractable pain from 1974; and more recent state laws enacted in California, Florida, Washington, Colorado, Virginia, Texas and New Jersey. Generally speaking, the regulations are for treatment of intractable pain, whether the pain is due to cancer or chronic illness, and allow the use of opiate analgesics. Some laws temper scrutiny by the state medical board or other regulatory agency with respect to individuals prescribing these substances for those specified purposes.

There are no state or federal laws explicitly prohibiting the use of opiate treatment for pain. In 1974, Congress did adopt a law to prohibit physicians from prescribing opiates to detoxify or maintain opiate addiction in patients unless the physicians are operating as part of a separately registered narcotic treatment program. However, the intent of that regulation was not to discourage physicians from using opiates to treat pain, and the Drug Enforcement Administration issued a statement supporting that posture.

See PAIN on page 20

---

**PAIN (cont.)**

In Ohio, the General Assembly enacted Substitute House Bill 343, effective July 22, 1994, to clarify the ability of attending physicians to provide the full range of comfort care procedures, treatments, interventions, and other measures to patients in a terminal condition or in a permanently unconscious state. The intent of that legislation was to provide physicians with immunity from criminal prosecution or professional disciplinary action when treating terminal patients in good faith for purposes of diminishing the patient's pain or discomfort and not for the purpose of postponing or causing death, even though the treatment may appear to increase that risk.

The Ohio Medical Board recognizes that some physicians may choose not to treat pain because of misperceptions about the laws regulating such treatment. Some practitioners are afraid of Medical Board discipline, and this fear may hinder medically appropriate pain management. Proper pain management may, in fact, require using scheduled drugs, including opiates, and may involve multiple care entities and specialty groups. To help guide Ohio physicians through this sensitive area, the Medical Board adopted its position paper entitled "Scheduled Drug Therapy Including Narcotics for Chronic Benign Pain" on June 14, 1995. This paper is intended to encourage effective pain management in Ohio, and to clarify the practice principles endorsed by the Board for long-standing, intractable pain management. The position paper should be read in conjunction with state and federal laws regarding the administration, dispensing, and prescribing of all forms of medication. Ohio Medical Board rules governing the prescribing of controlled substances can be found in Chapter 4731-11 of the Ohio Administrative Code.

Inappropriate prescribing of controlled substances, including opiates, can lead to drug abuse and diversion. Improper prescribing can lead to poor pain control, unnecessary suffering and increased health care costs. The Ohio Medical Board has almost 31,000 licensees, received over 2,500 new complaints in 1995 and has taken action against more than 100

physicians' licenses annually for the last few years. Of these, approximately 15% involve drug and prescribing issues. The cause for Ohio actions for prescribing include prescribing inappropriate amounts of medication, prescribing without appropriately evaluating patients, using multiple drugs without indication, pre-signing prescription blanks, exchanging prescriptions for favors, self-prescribing, and prescribing without maintaining adequate medical records. **Never has there been action against an Ohio licensee for the appropriate use of medications, including the treatment of intractable pain, cancer pain, acute pain or benign chronic pain with opiates or other scheduled substances.**

The Ohio Medical Board's position paper and rules on controlled substances allow for appropriate prescribing and pain management when certain recognized principles of standard medical treatment and standard care are applied. These principles include documenting physician-patient interaction or visits, including a history and appropriate physical examination, establishing the diagnosis and excluding other diagnoses, developing a treatment plan, and following up. There must be documentation that methods other than drug therapy have been tried and the appropriate drug or drugs have been selected. The drug therapy must be monitored periodically for its effectiveness and to assure that the goals of treatment are accomplished. There is no prescribed number or frequency of visits required to prove continuing care. The number of visits should be reasonable.

The principles of prescribing for pain include adequate documentation to tell the story of the patient and the problem. Documentation is the key: if it is not written, it has not been done. The basic charting format includes a clear history and an adequate physical examination, impression, a treatment plan and objectives, informed patient consent, periodic review of the patient, consultations when necessary, and maintained medical records that are readable and orderly. The physician should have a knowledge of pharmacology and should comply with state and federal regulation of how these medications are to be prescribed.

## PRESCRIPTION FORMAT RULE REVISED

The Ohio State Board of Pharmacy recently mailed its Compliance Bulletin 96-002 to all Ohio prescribers to notify them of revisions to the state's Prescription Format rule, 4729-5-13, Ohio Administrative Code. The revised rule, which became effective on January 10, 1996, appears below.

### 4729-5-13 Prescription format

- (A) No pharmacist shall dispense dangerous drugs pursuant to a written outpatient prescription unless the following conditions are met:
- (1) The prescription is issued in compliance with rule 4729-5-30 of the Administrative Code.
  - (2) If preprinted with multiple drug name and strength combinations:
    - (a) There are not controlled substances among the choices;
    - (b) There is only one prescription order selected per form.
- (B) No practitioner shall write and no pharmacist shall dispense controlled substances pursuant to a written outpatient prescription unless the following conditions are met:
- (1) The prescription has been issued in compliance with rule 4729-05-30 of the Administrative Code.
  - (2) The prescription contains only one prescription order per prescription form, whether handwritten or preprinted.
  - (3) The quantity has been written both numerically and alphabetically.
  - (4) If pre-printed, there is only one drug and strength combination printed on the form.
- (C) A prescription issued by a medical intern, resident, or fellow as defined in paragraph (B) of rule 4729-5-15 of the Administrative Code may not be dispensed unless the prescription is used in compliance with this rule and rule 4729-17-13 of the Administrative Code and unless it bears the identification number issued

See **FORMAT** on page 22

## PRESIDENT'S VISIT RECOGNIZES OHIO'S LEADERSHIP

Robert Porter, M.D., President of the Federation of State Medical Boards of the United States, along with I. Kathryn Hill, Assistant Vice President, visited the State Medical Board of Ohio on December 5-7, 1995. Ohio was one of a handful of states selected for visit by the President during his term of office. The goal was to exchange information on pertinent national issues, including telemedicine, credentials verification, computerization of licensure examinations, and regional competency assessment centers. The Federation dignitaries were also interested in learning about the structure and operation of the Ohio Medical Board, and in observing the Medical Board in action during its monthly meeting.

Besides leaving with Ohio's commitment to serve as a pilot state for the FCVS (see related article on page 15), Dr. Porter and Ms. Hill were able to share in the Board's centennial year kickoff celebration, sponsored by Anand Garg, M.D., 1995 Ohio Medical Board President.

### FORMAT (cont.)

by the employing hospital or institution pursuant to rule 4729-17-13 of the Administrative Code.

- (D) A prescription issued by a staff practitioner of a hospital may not be dispensed unless the prescription is issued in compliance with this rule and rule 4729-17-13 of the Administrative Code and unless it bears the identification number issued by the employing hospital or institution pursuant to rule 4729-17-13 of the Administrative Code.

Due to many requests from physicians and pharmacists alike, the prescription format rule was changed to allow preprinted prescription forms to contain multiple choices for **NON-CONTROLLED SUBSTANCES ONLY**, as long as the prescriber chooses only one item for each form. In addition, as with the previous version of the rule, a handwritten prescription for non-controlled substances may contain more than one prescription per form (e.g., an antibiotic and a decongestant on one prescription blank). **It is the pre-printed forms containing only non-controlled substances that are limited to one choice per form.**

**For controlled substances, the rule is one prescription order per form, whether handwritten or preprinted. No multiple choice forms are permitted for controlled substances. The combining of controlled substances and non-controlled substances on the same prescription form, whether handwritten or preprinted, is not permitted.** The quantity on a controlled substance prescription must still be entered both alphabetically and numerically.

If you have questions about this rule change or need additional information, please contact the Ohio Board of Pharmacy office at 614/466-4143.

---

# LETTERS FROM THE BOARD SECRETARY

by Thomas E. Gretter, M.D., Secretary

You are going through the day's mail and spot a letter from the State Medical Board of Ohio signed by the Secretary, and it is not a notice to renew your license. Why the letter, and what to do?

The Secretary of the State Medical Board is a physician board member, elected to that office by the Board as a whole. Along with the Supervising Member, who is another elected Board officer, the Secretary is responsible for enforcing Ohio's Medical Practices Act and overseeing the Board's investigations. It is as part of the investigative process that the Secretary will send several types of letters to Board licensees.

The Medical Board receives about 210 complaints a month and each must be evaluated. The Secretary and the Supervising Member review each complaint to decide what kind of action is required. Although many complaints are closed after an initial review, additional information may be needed for resolution in some instances. Letters are an important tool for obtaining that information.

The "letter" that comes across your desk may be a subpoena for patient records. When a complaint filed with the Medical Board suggests that a practitioner may have failed to meet minimal standards of care,

the patient's record is routinely requested for review. The Secretary and Supervising Member may be looking at the care you rendered, or they may be evaluating another practitioner's care and simply need your records in order to put that care into perspective. This use of the Medical Board's statutorily authorized subpoena power has resulted in early complaint closure in the physician's favor most of the time, without necessitating an investigator visit. Original patient records received in response to investigative subpoenas are returned to the physician within a short time. Often, this will be the only contact a practitioner may have with the Board on a specific complaint.

The letter may be a request for specific information following the Secretary and Supervising Member's review of malpractice complaints or reports from the National Practitioner Data Bank. If so, a confidential form will be enclosed for you to complete and return. This offers physicians and other licensees the opportunity to respond early with information needed for resolution that is specific to the noted events. The Board's random audit to document completion of Continuing Medical Education requirements is another kind of "investigation on paper." Ohio law requires not only that you complete the necessary

See **LETTERS** on next page

---

## CHANGE OF ADDRESS NOTICE

*Please print or type all information and mail to:*

STATE MEDICAL BOARD OF OHIO/77 S. High Street, 17th Floor/Columbus, OH 43266-0315

Effective Date of Address Change \_\_\_\_\_ Ohio License # \_\_\_\_\_

Name \_\_\_\_\_

Previous Mailing Address \_\_\_\_\_

New Mailing Address \_\_\_\_\_

Telephone \_\_\_\_\_

Practice Address (if different) \_\_\_\_\_

---

**LETTERS (cont.)**

CME hours in a timely manner, but also that you respond to the audit when requested to do so.

Sometimes a letter will be sent as an informational note that there are some concerns about specific aspects of a licensee's practice that don't rise to the level necessary to support formal disciplinary action. This cautionary letter puts the practitioner on notice that failure to remedy the identified problem areas may lead to formal proceedings.

The Board Secretary also signs official documents for the Board, including the notices of opportunity for hearing that initiate the formal disciplinary process, final Board Orders, meeting minutes and license certificates.

There are instances when letters from the Board's Secretary are not responded to, even when they are sent by certified mail. Inquiry letters do specify the amount of time allowed for response, and it is important to be prompt. If there is no response to an inquiry, the Board has to follow up. The Board tries to be fair to the doctor; ultimately, however, the Board must do its job as mandated by statute. Failure to respond within the specified time will thus initiate an appropriate follow up step. (Please note that the time period for responding to a notice of opportunity for hearing issued by the Board—thirty days from the date the letter is mailed to the practitioner—is established by statute and cannot legally be extended by the Board.)

All letters you receive from the Medical Board are important and must be responded to if the Board requests. In most instances, the inquiry will be a routine request for information that is necessary for the Board to effectively conduct its business, and your response will resolve the issue at hand. The Board looks on no response as an action. Responding to the Board's request timely is important and may well save time and trouble in the long run.

---

**STATE OF OHIO**  
**THE STATE MEDICAL BOARD**  
77 South High Street, 17th Floor  
Columbus, Ohio 43266-0315

BULK RATE U.S. POSTAGE PAID COLUMBUS, OH PERMIT NO 4317
---