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CLERK OF COURTS

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

KARYL ANDOSCA, Appellant,	]	
	]	CASE NO. 97CVF-04-4456
vs.	]	JUDGE JOHNSON
STATE MEDICAL BOARD OF OHIO, Appellee.	]	

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DECISION ON THE MERITS ON AN ADMINISTRATIVE APPEAL
Rendered this 6th day of July, 1998

JOHNSON, J.

This case is before the Court on an R.C § 119.12 appeal from a decision of the Appellee State Medical Board revoking Appellant Karyl Andosca's license to practice massage therapy. The matter is submitted on the record below, the briefs of counsel, and additional evidence admitted by this Court. This Court takes judicial notice of the decision of another branch of this Court in a related matter, Frank Andosca, D.C. vs. State of Ohio, Board of Chiropractic Examiners, (case number 97CVF-04-4363, decided January 6, 1998, Judge David E. Cain).

In making a decision on any administrative appeal, the Court recognizes as a fundamental principle of administrative law that a review at this level is not a trial de novo, but is instead an application of the two part test of R.C. §119.12. As to the facts, the Court must apply the substantial evidence test as recently set out in Our Place, Inc. vs. Ohio Liquor Control Commission, (1992), 63 O. St. 3d 570.

> (1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value.

However, the reviewing court is not required to accept without question factual findings that are based on legally unreliable or untrustworthy testimony, or are reached by improper inferences. University of Cincinnati vs. Conrad, (1980) 63 O. St. 2d 108. The Court also notes that the State Medical Board as an institution composed in large part of doctors is entitled to deference from the reviewing court on medical issues. Pons vs. Ohio State Medical Board, (1993), 66 O. St. 3d 619, Arlen vs. State Medical Board of Ohio, (1980), 61 O. St. 2d 168. The second prong of the test of R. C. §119.12 ("The court may affirm...if it finds...the order...is in accordance with law.") is a legal one, in which the court has the requisite expertise and the statutory authority to make legal determinations. As held in Ohio Historical Society vs. State Employment Relations Board, (19930, 66 O. St. 3d 466, at 471:

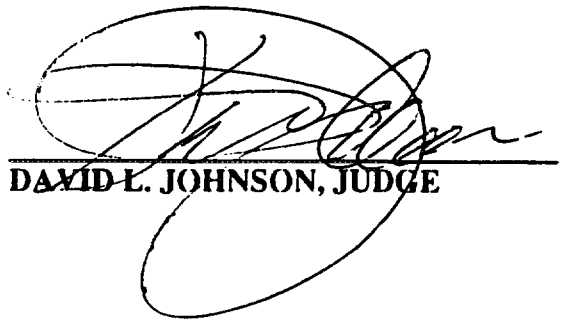
> "An agency adjudication is like a trial, and while the reviewing court must defer to the lower tribunal's findings of fact, it must construe the law on its own. To the extent that an agency's decision is based on construction of the state or federal Constitution, a statute, or case law, the common pleas court must undertake its R.C. 119.12 reviewing task completely independently."

Turning to the merits, the Court finds that the Medical Board properly found, based on her guilty plea and the evidence before its Hearing examiner, that Appellant was culpable in defrauding the Bureau of Workers Compensation through a phony billing scheme. Procedural errors, if any, were harmless as Appellant did plead guilty to a first degree misdemeanor in the Common Pleas Court, Criminal Division, thereby conclusively establishing her criminal conduct. The relaxed rules of evidence before administrative bodies permit the use of records in a fashion that might constitute hearsay in a criminal trial. Regardless of any possible hearsay problem, there was solid evidence of Appellant's direct involvement in the phony billing practices of the office.

Concerning the extent of any punishment, and the possible effects of early termination of her criminal probation, the Court is constrained by the time honored holding of Henry's Cafe vs. Board of Liquor Control, (1959), 170 Ohio St. 233 to uphold

the Board's imposition of a sanction once the underlying violation has been established by substantial evidence.

Therefore, the Court finds that the decision below is supported by reliable, probative, and substantial evidence, and is in accordance with law. The decision of the Appellee State Medical Board is AFFIRMED. Counsel for Appellee shall prepare and submit an appropriate judgment entry within 14 days A copy of this decision shall accompany the proposed entry when presented to the Court for signature.



DAVID L. JOHNSON, JUDGE

Appearances:

Douglas E. Spiker, Esq.
Counsel for Appellant

Jonathan M. Bowman, Esq.
Counsel for Defendant

THE STATE MEDICAL BOARD OF OHIO

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

KARYL ANDOSCA, M.T. 1546 Oakwood Drive Cleveland Heights, Ohio 44121 Appellant, v. **STATE MEDICAL BOARD OF OHIO** 77 South High Street, 17th Floor Columbus, Ohio 43266 Appellee.	: : : : : : : : : : :	Case No. 97CVF04 4456

NOTICE OF APPEAL

Now comes Appellant, Karyl Andosca, by and through her attorneys, Overly Spiker Chappano & Wood, A Legal Professional Association, pursuant to Section 119.12 of the Ohio Revised Code, and hereby files her Notice of Appeal from the Order of The State Medical Board of Ohio, dated March 13, 1997 and mailed March 28, 1997.

Further, Appellant, Karyl Andosca states that the grounds of her appeal include, but are not limited to, the following:

1. The Order of the State Medical Board of Ohio is in error in that the State Medical Board of Ohio failed to provide Appellant with an opportunity to present testimony, oral arguments or evidence on the proposed Findings of Fact and Conclusions of Law of the hearing examiner pursuant to section 4731.23 of the Ohio Revised Code.

2. The Order of the State Medical Board of Ohio is in error in that the board's failure to provide Appellant with an opportunity to address the board and/or to present evidence, testimony and/or oral argument to the board prejudiced Appellant's ability to have a fair hearing and violated Appellant's Constitutional Rights to Due Process.

3. The Order of the State Medical Board of Ohio is in error for failure to comply with all of the requirements and procedures of Chapter 4734, et seq. of the Ohio Revised Code, Chapter 119, et seq. of the Ohio Revised Code and Chapter 4734, et seq. of the Rules of the State Board of Chiropractic Examiners.

4. The Findings of Fact and Conclusions of Law of the hearing examiner and the Order of the State Medical Board of Ohio are in error as a result of its reliance upon evidence obtained in a manner violative of Appellant's Fourth Amendment Right to be free from unreasonable searches and seizure.

5. The Order of the State Medical Board of Ohio is in error since the hearing examiner permitted evidence beyond the actual charge to which Appellant plead guilty.

6. The Order of the State Medical Board of Ohio is in error in that the hearing examiner and the State Medical Board of Ohio permitted hearsay testimony and evidence into the record thereby prejudicing Appellant's ability to defend this action and violating her constitutional rights.

7. The Findings of Fact and Conclusions of the hearing examiner and the Order of the State Medical Board of Ohio is not supported by reliable, probative and substantial evidence.

8. The Findings of Fact and Conclusions of Law of the Hearing Examiner and the hearing before the State Medical Board of Ohio Order are replete with evidentiary and procedural errors that were prejudicial to the Appellant.

9. The Order of the State Medical Board is in error as a result of the evidentiary and procedural errors allowed to become part of the record of the proceedings by the hearing examiner in the record of his hearing on January 23, 1997.

10. Other errors are contained in this record, prejudicial to the Appellant which are apparent in the record and set forth in said record as made before the State of Ohio Board of Chiropractic Examiners

Respectfully submitted,

Overly Spiker Chappano & Wood
A Legal Professional Association

Douglas E. Spiker (0034509)
John A. Zervas (0043611)
555 Metro Place North, Suite 560
Dublin, Ohio 43017
Tel. (614) 791-3232
Fax. (614) 792-0296
Attorneys for Appellant Karyl Andosca

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

March 13, 1997

Karyl Andosca, M.T.
1546 Oakwood Drive
Cleveland Heights, OH 44121

Dear Ms. Andosca:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 12, 1997, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. P 152 984 391
RETURN RECEIPT REQUESTED

cc: Thomas M. Tyack, Esq.
CERTIFIED MAIL RECEIPT NO. P 152 984 392
RETURN RECEIPT REQUESTED

mailed 3/28/97

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 12, 1997, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Karyl Andosca, M.T., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

3/13/97
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

KARYL ANDOSCA, M.T. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 12, 1997.

Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that the certificate of Karyl Andosca, M.T., to practice massage therapy in the State of Ohio be and is hereby PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

3/13/97

Date

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OF OHIO

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REPORT AND RECOMMENDATION
IN THE MATTER OF KARYL ANDOSCA, M.T.

The Matter of Karyl Andosca, M.T., was heard by R. Gregory Porter, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on January 23, 1997.

INTRODUCTION

I. Basis for Hearing

A. By letter dated December 4, 1996 (State's Exhibit 1), the State Medical Board notified Karyl Andosca, M.T., that it proposed to take disciplinary action against or to refuse to register or reinstate her certificate to practice massage therapy in Ohio. The Board alleged that:

> On or about August 14, 1996, in the Court of Common Pleas of Franklin County, [Ms. Andosca] pleaded guilty to one count of workers' compensation fraud, a misdemeanor of the first degree. On or about November 8, 1996, [Ms. Andosca was] sentenced on the aforementioned count.

The Board alleged that Ms. Andosca's acts, conduct, and/or omissions, individually and/or collectively, constituted: "'(t)he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice,' as that clause is used in Section 4731.22(B)(8), Ohio Revised Code;" and/or "'(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2913.48, Ohio Revised Code."

Ms. Andosca was advised of her right to request a hearing in this Matter.

B. By letter received by the State Medical Board on December 16, 1996 (State's Exhibit 2), Thomas M. Tyack, Esq., requested a hearing on behalf of Ms. Andosca.

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Elizabeth Y. Collis, Assistant Attorney General.

B. On behalf of the Respondent: Thomas M. Tyack, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

Shane Dawson

B. Presented by the Respondent

No witnesses were presented

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

A. Presented by the State

1. State's Exhibit 3: Collection of documents, consisting of: copy of a December 19, 1996, letter to Attorney Tyack from the Board, scheduling the hearing for January 23, 1997; copies of certified mail receipts; and a copy of a December 18, 1996, letter to Attorney Tyack from the Board, advising that a hearing had been set for December 30, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code. (3 pp.)

2. State's Exhibit 4: Collection of certified copies of documents from the Franklin County Court of Common Pleas concerning the case captioned *State of Ohio vs. Karyl Andosca,* and consisting of: August 14, 1996, Entry of Guilty plea; November 12, 1996, sentencing entry; and December 15, 1995, Indictment. (7 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of a November 12, 1996, sentencing entry of the Franklin County Court of Common Pleas concerning the case captioned *State of Ohio vs. Frank Andosca* (2 pp.)

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SUMMARY OF THE EVIDENCE

All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. On or about August 14, 1996, in the Franklin County Court of Common Pleas, Karyl Andosca, M.T., pled guilty to one count of violation of Section 2913.48(A)(2), Ohio Revised Code, workers' compensations fraud, a misdemeanor of the first degree. The criminal action against Ms. Andosca had commenced when an indictment was filed on December 15, 1995, charging her with theft, receiving stolen property, and workers' compensation fraud. Ms. Andosca pled guilty to a lesser included offense of Count Three of the indictment. Counts One and Two were dismissed at the request of the State at the time of sentencing. (State's Exhibit [St. Ex.] 4)

   On or about November 8, 1996, Ms. Andosca was sentenced to six months of incarceration. The execution of the sentence was suspended, and Ms. Andosca was placed on reporting probation for two years, subject to certain terms and conditions. (St. Ex. 4)

2. Shane Dawson, who was formerly an investigator in the Fraud Investigations Department of the Bureau of Workers' Compensation [BWC], testified at the present hearing. Mr. Dawson testified that BWC first became aware of a problem concerning Ms. Andosca, a licensed massage therapist, and her husband, Frank Andosca, a chiropractor, after a telephone call from an insurance company. The insurance company was curious why patients were being treated by two health care providers with the same last name. This call led BWC to take a look at the Andoscas' practice. The investigation revealed that Ms. Andosca was being reimbursed by BWC at a level that exceeded what was typical for massage therapists. Mr. Dawson said that in 1995 the largest annual reimbursement for a massage therapist was between $24,000 and $25,000, Ms. Andosca's reimbursement in 1993 was over $300,000. (Transcript [Tr.] pp. 13–17)

   In January 1994, Mr. Dawson started visiting the Andosca Clinic in an undercover capacity. Mr. Dawson complained of "a sprain or contusion to the left knee," which is a condition allowed in a workers' compensation claim. Mr. Dawson testified that he did not request any particular type of treatment.

He made approximately 26 visits to the clinic between January and September 1994. (Tr. 19)

Mr. Dawson testified that, during the time that he was treated at the Andosca Clinic he was treated by Karyl Andosca on only one occasion—she provided Mr. Dawson with a hot pack prior to his being seen by Dr. Andosca. Nevertheless, BWC was billed for treatments by Karyl Andosca for other occasions using three CPT codes: 97110, therapeutic exercises; 97122, manual traction; and 97124, massage therapy. Mr. Dawson testified that he did not receive manual traction from anyone at the Andosca Clinic. Further, Mr. Dawson stated that he never did any type of exercise there. Moreover, BWC was billed for dates that Mr. Dawson did not go to the Andosca Clinic. (Tr. 19–22)

Mr. Dawson testified that the reimbursement checks from BWC for treatments ostensibly performed by Ms. Andosca were made out to Karyl Andosca, and were endorsed by her. These checks were then usually deposited in the accounts of the Andosca Clinic. (Tr. 23–24, 26)

3. Mr. Dawson acknowledged that there were other employees at the Andosca Clinic that performed massage procedures on him. Such procedures could have been billed under either the chiropractic CPT codes or the massage therapy CPT codes. Nevertheless, such procedures must be performed by a licensed chiropractor or licensed massage therapist in order to be reimbursable by BWC. Such procedures are not reimbursable if performed by non-licensed individuals, even if the non-licensed individuals are supervised by a licensed professional. (Tr. 24–25, 27, 29–32)

   Mr. Dawson also acknowledged that Frank Andosca, rather than Karyl Andosca, actually prepared the billings and transmitted them electronically to BWC. (Tr. 25–26)

4. Dr. Frank Andosca was also prosecuted, and pled guilty to one count of worker's compensation fraud, a felony of the third degree. All restitution concerning the Andosca Clinic, which amounted to $179,568, was applied to Dr. Andosca's sentence. (Respondent's Exhibit A; Tr. 26–27)

FINDINGS OF FACT

The evidence presented in this Matter is sufficient to support the Board's allegation that "[o]n or about August 14, 1996, in the Court of Common Pleas

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of Franklin County, [Karyl Andosca, M.T.] pleaded guilty to one count of workers' compensation fraud, a misdemeanor of the first degree. On or about November 8, 1996, [Ms. Andosca was] sentenced on the aforementioned count."

CONCLUSIONS OF LAW

The acts, conduct, and/or omissions of Karyl Andosca, M.T., as set forth in the Findings of Fact, above, constituted: "'(t)he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice,' as that clause is used in Section 4731.22(B)(8), Ohio Revised Code;" and/or "'(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2913.48, Ohio Revised Code."

PROPOSED ORDER

It is hereby ORDERED that:

1 The certificate of Karyl Andosca, M.T. to practice massage therapy in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than eighteen (18) months.

2. The State Medical Board shall not consider reinstatement of Ms. Andosca's certificate to practice unless all of the following minimum requirements have been met:

   a. Ms. Andosca shall submit an application for reinstatement, accompanied by appropriate fees. Ms. Andosca shall not make such application for at least eighteen (18) months from the effective date of this Order.

   b. Ms. Andosca shall provide documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee.

   c. In the event that Ms. Andosca has not been engaged in the active practice of massage therapy for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Ms. Andosca's fitness to resume practice.

3. Upon reinstatement, Ms. Andosca's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five (5) years:

   a. Ms. Andosca shall not request modification of the terms, conditions, or limitations of probation for at least one (1) year after imposition of these probationary terms, conditions, and limitations.

   b. Ms. Andosca shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in Ohio.

   c. Ms. Andosca shall obey all terms of probation as imposed by the Franklin County Court of Common Pleas in Case Number 95CR-12-7251 for as long as said terms are in effect.

   d. Ms. Andosca shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

   e. Ms. Andosca shall appear in person for interviews before the full Board or its designated representative within three months of the reinstatement of her certificate and at three (3) month intervals thereafter, or as otherwise requested by the Board.

      If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give her written notification of scheduled appearances, it is Ms. Andosca's responsibility to know when personal appearances will occur. If she does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Ms. Andosca shall immediately submit to the Board a written request to be notified of her next scheduled appearance.

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f. Within thirty (30) days of the reinstatement of her certificate, Ms. Andosca shall submit for the Board's prior approval the name of a licensed massage therapist who shall review Ms. Andosca's patient charts for evidence of billing irregularities and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Ms. Andosca's responsibility to ensure that the massage therapist's quarterly reports are submitted to the Board on a timely basis.

In the event that the approved massage therapist becomes unable or unwilling to so serve, Ms. Andosca shall immediately so notify the Board in writing and shall make arrangements for another licensed massage therapist as soon as practicable. Ms. Andosca shall further ensure that the previously designated massage therapist also notifies the Board directly of the inability to continue to serve and the reasons therefor.

All of the massage therapist's reports required under this paragraph must be received in the Board's offices no later than the due date for Ms. Andosca's quarterly declaration. It is Ms. Andosca's responsibility to ensure that the reports are timely submitted.

4. If Ms. Andosca violates probation in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Ms. Andosca's certificate.

5. Upon successful completion of probation, as evidenced by a written release from the Board, Ms. Andosca's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

R. Gregory Porter
Attorney Hearing Examiner

EXCERPT FROM THE DRAFT MINUTES OF MARCH 12, 1997

REPORTS AND RECOMMENDATIONS

Ms. Noble announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Ms. Noble asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Karyl Andosca, M.T.; and Larry C. Kaye, D.P.M; and the hearing record and report of *Goldman* hearing and recommendations in the matter of Dennis L. Farr, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Ms. Noble	- aye

Ms. Noble asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Ms. Noble	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Ms. Noble stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

REPORT AND RECOMMENDATION IN THE MATTER OF KARYL ANDOSCA, M.T.

Ms. Noble directed the Board's attention to the matter of Karyl Andosca, M.T. She advised that there were no objections filed to Hearing Examiner Porter's Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF KARYL ANDOSCA, M.T. DR. AGRESTA SECONDED THE MOTION.

Ms. Noble asked whether there were any questions or comments concerning the proposed findings of fact, conclusions and order in the above matter.

DR. STEINBERGH MOVED TO AMEND PARAGRAPH 1 OF THE PROPOSED ORDER IN THE MATTER OF KARYL ANDOSCA, M.T., BY SUBSTITUTING THE FOLLOWING:

> The certificate of Karyl Andosca, M.T., to practice massage therapy in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Ms. Andosca's certificate is SUSPENDED for an indefinite period of time, but not less than eighteen (18) months.

DR. BUCHAN SECONDED THE MOTION.

Dr. Steinbergh stated that this is a case of defrauding the Bureau of Workers' Compensation. The Board needs to stress the seriousness of this crime.

Dr. Buchan stated that he felt that the originally Proposed Order was lenient. He had considered suggesting a longer suspension, or even permanent revocation. Dr. Buchan stated that this case involved a horrible abuse of the system.

Dr. Bhati agreed with Dr. Buchan, noting that Ms. Andosca received payments amounting to over $300,000 from the Bureau of Workers' compensation. The Board isn't talking about pennies here. An 18-month suspension is very minimal.

Dr. Agresta agreed, stating that this case has "revocation" written all over it.

A vote was taken on Dr. Steinbergh's motion to amend:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- nay
	Dr. Gretter	- abstain
	Dr. Egner	- nay
	Mr. Sinnott	- nay
	Dr. Buchan	- nay
	Dr. Stienecker	- nay
	Dr. Agresta	- nay
	Dr. Steinbergh	- nay

The motion failed.

Dr. Stienecker stated that this problem is collateral to a problem that involved an individual over whom this Board has no jurisdiction. The Board can only look at the whole situation. He spoke in favor of revocation.

DR. BUCHAN MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF KARYL ANDOSCA, M.T., BY SUBSTITUTING THE FOLLOWING:

> It is hereby ORDERED that the certificate of Karyl Andosca, M.T., to practice massage therapy in the State of Ohio be and is hereby PERMANENTLY REVOKED.
>
> This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

DR. AGRESTA SECONDED THE MOTION. A vote was taken:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye

Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF KARYL ANDOSCA, M.T. DR. BHATI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

STATE MEDICAL BOARD OF OHIO

1896 – 1996 Celebrating One Hundred Years

Charles D. Stienecker, M.D.
President
Wapakoneta, Ohio

Nora M. Noble
Vice-President
Newark, Ohio

Thomas E. Gretter, M.D.
Secretary
Cleveland, Ohio

Raymond J. Albert
Supervising Member
Amanda, Ohio

Ronald C. Agresta, M.D.
Board Member
Steubenville, Ohio

Anant R. Bhati, M.D.
Board Member
Cincinnati, Ohio

David S. Buchan, D.P.M.
Board Member
Westerville, Ohio

Carol L. Egner, M.D.
Board Member
Cincinnati, Ohio

Anand G. Garg, M.D., Ph.D.
Board Member
Boardman, Ohio

Robert S. Heidt, Sr., M.D.
Board Member
Cincinnati, Ohio

Bradley K. Sinnott, Esq.
Board Member
Columbus, Ohio

Anita M. Steinbergh, D.O.
Board Member
Westerville, Ohio

December 4, 1996

Karyl Andosca, M.T.
1546 Oakwood Drive
Cleveland Hts., OH 44121

Dear Ms. Andosca:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about August 14, 1996, in the Court of Common Pleas of Franklin County, you pleaded guilty to one count of workers' compensation fraud, a misdemeanor of the first degree. On or about November 8, 1996, you were sentenced on the aforementioned count.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(t)he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2913.48, Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

Mailed 12/5/96

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

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In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Thomas E. Gretter, M.D.
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 152 982 997
RETURN RECEIPT REQUESTED