State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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April 9, 2008

David G. Petras, M.T.
11681 Township Road 166
Bloomingdale, OH 43910

Dear Mr. Petras:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on April 9, 2008.

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

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

Very truly yours,

Lance A. Talmage, M.D.

Lance A. Talmage, M.D.
Secretary

LAT:baj
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3931 8317 9476
RETURN RECEIPT REQUESTED

Mailed 4-10-08

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on April 9, 2008, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of David G. Petras, M.T., as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

April 9, 2008
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	:
	:
DAVID G. PETRAS, M.T.	:

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration before the State Medical Board of Ohio on April 9, 2008, pursuant to a Notice of Opportunity for Hearing issued to David G. Petras, M.T., on September 12, 2007. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Patricia A. Davidson, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Davidson's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the September 12, 2007, Notice of Opportunity for Hearing.

Accordingly, it is hereby ORDERED that:

> The certificate of David G. Petras, M.T., to practice massage therapy in the State of Ohio is hereby REVOKED.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

April 9, 2008
Date

STATE MEDICAL BOARD

2008 MAR 14 P 3: 23

PROPOSED FINDINGS AND PROPOSED ORDER IN THE MATTER OF DAVID G. PETRAS, M.T.

The Matter of David G. Petras, M.T., was reviewed by Patricia Davidson, Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION

Basis for the Review

A. By letter dated September 12, 2007, the State Medical Board of Ohio [Board] issued a notice of opportunity for hearing [Notice] to David G. Petras, M.T., notifying him that the Board proposed to take disciplinary action against his certificate to practice massage therapy in Ohio. The Board alleged that Mr. Petras had two convictions for operating a motor vehicle under the influence of alcohol, and further alleged that Mr. Petras, after a three-day evaluation for chemical dependency, was found to be impaired and in need of inpatient treatment, but had not entered inpatient treatment. (Exhibit [Ex.] 1)

   The Board alleged that the facts showed an "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," as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(26). Accordingly, the Board notified Mr. Petras that he would be entitled to a hearing if requested in writing within 30 days of the Notice's mailing. (Ex. 1)

B. The Board mailed the Notice to Mr. Petras on September 13, 2007, via certified mail, return receipt requested, to his most recent address of record. A signed certified-mail receipt was returned to the Board documenting receipt of the Notice on September 17, 2007. The Board's Public Services Administrator attested in an affidavit signed December 26, 2007, that, as of that date, the Board had not received a hearing request from Mr. Petras. (Exs. 1-3)

C. In a memorandum dated December 26, 2007, the Board's Public Services Administrator requested that the Hearing Unit review the evidence in the *Matter of David G. Petras, M.T.*, and prepare proposed findings and a proposed order for the Board. (Ex. 5)

EVIDENCE EXAMINED

Exhibit 1: Certified copy of the Notice and return receipt.

Exhibit 2: Affidavit of Kay L. Rieve, Administrative Officer and licensure records custodian.

Exhibit 3: Affidavit of Barbara Jacobs, Public Services Administrator.

Exhibit 4: Affidavit of Daniel S. Zinsmaster, Enforcement Attorney, with certified copies of the following documents attached:

Exhibit 4-1: August 2004 Entry of the Jefferson County Court in Toronto, Ohio, in *State v. David G. Petras*, Case No. 04-TRC-01555, finding Mr. Petras guilty of driving under the influence of alcohol, with a copy of the police citation, police summary of the incident, and a record of participation in a driver intervention program. [Social Security numbers redacted]

Exhibit 4-2: Entry of the Jefferson County Court in Wintersville, Ohio, in *State v. David G. Petras,* Case No. 04-TRC-1396, finding Mr. Petras guilty of violating R.C. 4511.19(A)(1), with a copy of the police citation, police summary, and a form indicating Mr. Petras' refusal to take a blood-alcohol breath test. [Social Security number redacted]

Exhibit 4-3: March 2006 letter from the Board to Mr. Petras, ordering him to report for a 72-hour inpatient examination.

* Exhibit 4-4: May 2006 letter to the Board from Claudia Moye at the Center for Chemical Addictions Treatment [CCAT], enclosing records regarding Mr. Petras' examination.

* Exhibit 4-5: March 2007 letter to the Board from Jeffrey Merling, M.D., Acting Medical Director at CCAT, and a June 2007 letter from David Williams, M.D., the Medical Director at CCAT.

Exhibit 5: Memorandum dated December 26, 2007, from the Board's Public Services Administrator to Patricia Davidson, Chief Hearing Examiner, requesting that a Hearing Examiner review the documents provided and prepare Proposed Findings and a Proposed Order.

Exhibit 6: Supplemental affidavit of Mr. Zinsmaster dated March 13, 2008.

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Proposed Findings and Proposed Order.

1. David G. Petras, M.T., was born in 1959 in Steubenville, Ohio. According to information provided by the Ohio eLicense Center, Mr. Petras graduated in 1997 from the National Institute of Massotherapy in Akron, Ohio, and was initially licensed to practice massage therapy in Ohio in 1998. His certificate expired in August 2007 and is currently inactive. (Exs. 4-1, 4-2; Ohio eLicense Center *<https://license.ohio.gov/lookup/ default.asp>*, 29 Feb. 2008) (The Hearing Examiner took administrative notice of the public information available at the eLicense Center.)

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* Documents marked with an asterisk were placed under seal due to a federal law relating to confidentiality of certain treatment records.

First Conviction for Driving Under the Influence of Alcohol

2. Mr. Petras' first conviction resulted from an arrest in Toronto, Ohio, on June 6, 2004. The arresting officer, after stopping Mr. Petras' vehicle due to erratic driving, noted that he had to knock on the window to get Mr. Petras' attention. The officer smelled a strong odor of alcohol and observed that Mr. Petras appeared disoriented and that his eyes were glassy and bloodshot. The officer reported that Mr. Petras was unsteady on his feet as he exited the vehicle and that Mr. Petras attempted the one-leg stand during the field sobriety test but was unable to do it. The horizontal gaze nystagmus (HGN) test showed six clues. Mr. Petras asked the officer several times "to follow him to his business and to give him a break." At one point, Mr. Petras admitted that he knew he had had too much to drink. He was taken to a police station, where a test of his breath yielded a blood-alcohol level of 0.182. The officer cited Mr. Petras, among other things, for operating a motor vehicle under the influence of alcohol and/or drugs [OMVI] in violation of R.C. 4511.19. (Ex. 4-1)

3. On July 20, 2004, Mr. Petras appeared in the Jefferson County Court in Toronto, Ohio, and entered a plea of no contest to OMVI as charged in Case No. 04-TRC-01555. In an entry filed August 10, 2004, the court found him guilty of driving under the influence of alcohol, "Low Tier." The court suspended Mr. Petras' driver's license for six months, fined him $200 plus court costs, and ordered him to complete a driver intervention program within ninety days. (Ex. 4-1)

4. According to a report from the Jefferson Behavioral Health System in Steubenville, filed with the court on October 1, 2004, Mr. Petras attended the intervention program from September 23 through September 26, 2004, displaying a "[g]ood level of participation." The program coordinator reported that Mr. Petras had "borderline indicators of a drinking problem, but he seems to have learned from this experience" and "verbalizes a desire to change behaviors." The coordinator did not recommend additional assessment at that time but recommended that Mr. Petras seek counseling if he had additional alcohol-related problems. (Ex. 4-1)

Second Conviction

5. On December 5, 2004, Mr. Petras was again stopped for erratic driving. The arresting officer detected a strong smell of alcohol, noted that Mr. Petras' eyes were glassy, observed six clues on the HGN test, and recorded a result of .14 on a "pre-arrest breath test." When asked to perform field sobriety tests, Mr. Petras said he could not perform them because he was tired and had a sore back. The officer cited Mr. Petras for operating a motor vehicle under the influence of alcohol in violation of R.C. 4511.19 and for other violations. Mr. Petras stated that he did not have his driver's license with him due to a previous suspension, but he asserted that the suspension had ended. The officer took Mr. Petras to a highway patrol post where he refused to take the breath test. Mr. Petras was given the opportunity to call someone to take him home, but he declined. He was transported to the Jefferson County Jail to await his court appearance on December 6, 2004. (Ex. 4-2)

6. In the Jefferson County Court in Wintersville, Ohio, Mr. Petras, through counsel, entered a plea of no contest and was found guilty of "the amended offense of first offense 'high end' OVI" in violation of R.C. 4511.19; he also pleaded guilty to and was found guilty of driving left of center. The court's entry shows that Mr. Petras was sentenced to three days in jail with credit for one day served, fined $350 plus costs, and required to attend a three-day driver intervention program.[1] His driver's license was suspended for six months, although the court provided that he could have occupational driving privileges after 15 days upon proof of valid automobile insurance. With respect to whether Mr. Petras had been driving without a valid driver's license, the court found that Mr. Petras' driver's license had become valid again on December 4, 2004, the day before the arrest. (Ex. 4-2)

Board-Ordered Examination

7. By letter dated March 16, 2006, the Board advised Mr. Petras that, based on his two convictions for driving under the influence of alcohol in 2004, the Board had reason to believe that he was in violation of R.C. 4731.22(B)(26) due to "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." Pursuant to its authority under R.C. 4731.22(B)(26), the Board ordered Mr. Petras to submit to a three-day inpatient evaluation at the Center for Chemical Addictions Treatment [CCAT], in Cincinnati, Ohio, beginning on April 24, 2006. (Ex. 4-3)

8. Mr. Petras submitted to the examination as ordered. During the three-day evaluation, a clinical assessment was performed by Leah Menninger, LICDC, who reported that Mr. Petras had symptoms including "increased tolerance (based on his BAC at the time of the DUI arrest of .182), legal problems, relief use, using for the effect, blackouts, defensiveness, family concerns, attempts to control use, [and] continued use despite negative consequences." Ms. Menninger concluded that, although Mr. Petras was currently controlling his drinking, the potential for relapse was high for several reasons: his recovery environment was poor, in that he worked in bars; he stated that he did not intend to stop drinking; and he refused to submit to treatment because he did not think he had a drinking problem. In her clinical notes, Ms. Menninger reported that she had encouraged Mr. Petras "to attend meetings of Alcoholics Anonymous and enter treatment, but he stated he 'would have to give up his license.'" He explained to her: "How can I go to treatment for something that I don't think is a problem?" (Ex. 4-4)

9. During his evaluation at CCAT, Mr. Petras was also examined by David S. Williams, M.D., who provided a report of Mr. Petras' medical history and physical examination. Dr. Williams stated

[1] The copy of this Entry does not include a date stamp indicating when it was journalized. However, the order is signed by the presiding judge as well as the attorneys for the State and the Defendant; further, the copy provided for review is a certified copy on which the Chief Deputy Clerk of the Jefferson County Court in Wintersville, Ohio, has certified that the copy is "a true and correct copy of the original on file in this office." (Ex. 4-2) Considering all the indicia of trustworthiness, the Hearing Examiner concludes that the certified copy of the entry constitutes reliable proof of the plea and sentencing.

his final impression as follows: "Chemical Dependency, alcohol 303.9 by history." His treatment plan was to initiate "appropriate protocol(s)" and to refer Mr. Petras for additional and ongoing care "as indicated." Dr. Williams noted, however, that Mr. Petras planned to return home after he completed the three-day evaluation. (Ex. 4-4)

10. In her report, Ms. Menninger set forth the following conclusion regarding impairment and made a specific recommendation for treatment:

> Mr. Petras demonstrates an impairment in his ability to practice massage therapy at this time as he is Alcohol Dependent 303.90, and without monitoring and supervision he would continue his consumption and compromise his work, although he states he does not drink on the job. * * *
>
> Based on the regulations that govern persons under the State of Ohio's Medical Board, it is recommended that Mr. Petras enter Level 2.5 Short term Rehabilitation (28 days of inpatient treatment). * * *

(Ex. 4-4)

11. The reports of Dr. Williams and Ms. Menninger, along with other records, were provided to the Board with a letter from the program manager at CCAT, Claudia Moye, LICDC, LSW. In her letter, dated May 3, 2006, Ms. Moye summarized the results of the examination, stating that the assessment of alcohol dependency together with the Board's regulations had resulted in a recommendation for inpatient treatment. Ms. Moye advised that, in a final interview with Mr. Petras, Ms. Menninger had presented this assessment and recommendation to him, and had discussed them with him in detail. Ms. Moye further stated that Mr. Petras "demonstrates impairment in his ability to practice massage therapy at this time due to his resistance, denial, lack of chemical dependency education, sober support and trying to control his use." (Ex. 4-4)

12. An Enforcement Attorney for the Board contacted CCAT, stating that its report had not been signed by a licensed physician, and asking for clarification and a licensed physician's signature. (Ex. 4) In response, on March 14, 2007, Jeffrey Merling, M.D., the Acting Medical Director at CCAT, reported that Dr. Williams, the Medical Director, was in Iraq fulfilling his military obligation and would not return for several months. Dr. Merling confirmed that Mr. Petras had attended the three-day evaluation in April 2004, but he stated that he (Dr. Merling) had "no additional findings and/or comments to append." (Ex. 4-5)

13. On June 26, 2007, Dr. Williams at CCAT provided two items to the Board by facsimile transmission. First, on a copy of Dr. Merling's March 2007 letter, Dr. Williams wrote as follows: "I concur." He signed and dated that note. Second, Dr. Williams placed his name and signature on a copy of Claudia Moye's May 2006 letter and also wrote the date, June 26, 2007. (Exs. 4, 4-5)

14. Thereafter, the Board's Enforcement Attorney provided a questionnaire to Dr. Williams, seeking further clarification. In the introductory statement on the questionnaire, the Enforcement Attorney explained that Ms. Menninger had given a recommendation and signed off on the clinical assessment, and that her report had been supplemented by Dr. Merling's

March 2007 letter and by Dr. Williams' facsimile transmission on June 26, 2007. The Enforcement Attorney then asked Dr. Williams to provide a medical conclusion as to whether Mr. Petras "is or is not impaired" based on whether he suffers from "an 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 impairment ability to practice," as that language is used in R.C. 4731.22(B)(26). On the questionnaire, Dr. Williams responded by placing an *x* next to the answer "is impaired." He signed the form and dated it "7/3/07." (Ex. 4-5)

15. The Board's Enforcement Attorney averred in a sworn statement on March 13, 2008, that, as of that date, "the Board has received no information to indicate that Mr. Petras has entered into or completed 28 days of in-patient chemical dependency treatment." (St. Ex. 6)

PROPOSED FINDINGS

1. David G. Petras, M.T., received his certificate to practice massage therapy in Ohio in 1998. On June 6, 2004, Mr. Petras was arrested in Jefferson County, Ohio, and charged with operating a motor vehicle under the influence of alcohol. Testing revealed that his blood alcohol content was 0.182%. On July 20, 2004, in the Jefferson County Court in Toronto, Ohio, Mr. Petras entered a plea of no contest, and the court found him guilty of driving under the influence of alcohol, "low tier," in violation of Ohio Revised Code Section [R.C.] 4511.19.

2. On December 5, 2004, Mr. Petras was again arrested in Jefferson County, Ohio, for operating a motor vehicle under the influence of alcohol. He refused to submit to testing to determine his blood alcohol content. He thereafter pleaded no contest to, and was found guilty of, the "amended offense of first offense 'high end' OVI" in violation of R.C. 4511.19.

3. By letter dated March 16, 2006, the Board notified Mr. Petras of its determination that it had reason to believe that he was in violation of R.C. 4731.22(B)(26), and ordered him to undergo a three-day inpatient examination to determine whether he was impaired as defined in that statutory provision. In its letter, the Board stated that its determination was based on one or more reasons including the convictions set forth in Proposed Findings 1 and 2 above.

4. Mr. Petras participated in the Board-ordered examination at the Center for Chemical Addictions Treatment [CCAT], a Board-approved treatment provider. After the evaluation, CCAT notified the Board of its determination that Mr. Petras was impaired in his ability to practice massage therapy according to acceptable and prevailing standards of care and that he required inpatient treatment. CCAT communicated this determination to the Board in writings dated or signed on March 14, 2007 (Jeffrey Merling, M.D.), June 26, 2007 (David S. Williams, M.D.), and July 3, 2007 (David S. Williams, M.D.).

5. The Board has received no information that Mr. Petras has entered into or completed 28 days of inpatient treatment as required.

6. The Board issued a notice of opportunity for hearing [Notice] dated September 12, 2007, and served the Notice on Mr. Petras. He did not request a hearing within 30 days of the mailing of the Notice. The Board may consider the evidence and determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice massage therapy or to reprimand him or place him on probation.

7. R.C. 4731.22(B) provides as follows, in pertinent part:

> The board * * * shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:
>
> * * *
>
> (26) 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.

8. The evidence as set forth above in Proposed Findings 1 through 5, individually and/or collectively, establishes "[i]mpairment 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," as that language is used in R.C. 4731.22(B)(26).

* * * * *

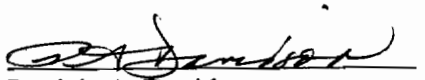
The evidence amply demonstrates that Mr. Petras is impaired. Therefore, a revocation of his certificate is warranted. However, a permanent revocation does not appear appropriate or necessary at this time. The circumstances in this matter do not include aggravating factors such as a violation of a Board order or consent agreement, or relapses following treatment. Further, Mr. Petras' stated lack of interest in treatment may be a symptom of his chemical dependency, and his views may change in the future.

PROPOSED ORDER

It is hereby ORDERED that:

> The certificate of David G. Petras, M.T., to practice massage therapy in the State of Ohio is hereby REVOKED.

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



Patricia A. Davidson
Hearing Examiner

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

September 12, 2007

David G. Petras, L.M.T.
11681 Township Road 166
Bloomingdale, Ohio 43910

Dear Mr. Petras:

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

(1) By letter dated March 16, 2006, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to undergo a three-day inpatient examination to determine if you are in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's determination was based upon one or more of the reasons outlined in said notice, which included that on or about June 6, 2004, you were arrested in Jefferson County, Ohio, and charged with Operating a Motor Vehicle Impaired. Testing revealed that you had a Blood Alcohol Content of 0.182. On or about July 20, 2004, in the Jefferson County Court, District 1, you pled no contest to and were found guilty of Driving under the Influence of Alcohol, Low Tier, in violation of Section 4511.19, Ohio Revised Code. Further, on or about December 5, 2004, you were again arrested in Jefferson County, Ohio, and charged with Operating a Vehicle Impaired. You refused to submit to testing to determine your Blood Alcohol Content. On or about April 25, 2005, in the Jefferson County Court, District 2, you pled no contest to and were found guilty of the amended offense of first offense "high end" operating a vehicle impaired, in violation of Section 4511.19, Ohio Revised Code.

(2) Following a Board-ordered evaluation at the Center for Chemical Addictions Treatment [CCAT], a Board-approved treatment provider, the Board was notified by letters dated or signed on or about March 14, 2007, on or about June 26, 2007, and on or about July 3, 2007, from Jeffrey Merling, M.D., and David Williams, M.D., of CCAT, that you were determined to be impaired in your ability to practice massage therapy according to acceptable and prevailing standards of care and to require inpatient treatment. Further, the Board has not received information that you have entered inpatient treatment.

Mailed 9-13-07

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[i]mpairment 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," as that clause is used in Section 4731.22(B)(26), 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 days of the time of mailing this notice.

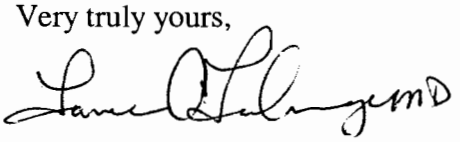
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

In the event that there is no request for such hearing received within thirty 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 you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/DSZ/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8317 1029
RETURN RECEIPT REQUESTED