

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 1006
180 East Broad Street
Columbus, Ohio 43215

February 22, 1979

Edmund F. Volk, D.O.
754 Lafollette Avenue
Akron, OH 44306

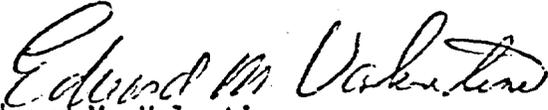
Dear Doctor Volk:

Please find enclosed a certified copy of the Findings and Order as they have been entered in the Journal of the Ohio State Medical Board; and a certified copy of the Motion approved by the State Medical Board, meeting in regular session on February 15, 1979, approving and confirming the Findings and Order.

You are hereby notified that you may appeal this order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as aforesaid, you must file a notice of appeal with the Board setting forth the order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the court. Such notices of appeal shall be filed within fifteen days after the date of mailing of this letter, and in accordance with the requirements of Section 119.12, Revised Code.

The State Medical Board


Edward M. Valentine
Administrative Assistant

Encl.

cc: Jerry Montgomery, Esq.

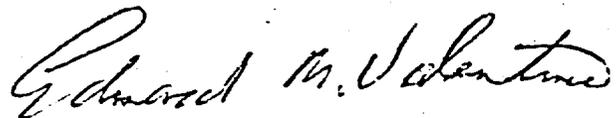
CERTIFIED MAIL NO. 024995
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 1006
180 East Broad Street
Columbus, Ohio 43215

CERTIFICATION

DATE: February 22, 1979

I hereby certify that the attached copy of the Findings and Order of the Ohio State Medical Board, in the matter of Edmund F. Volk, D.O., is a true and complete copy of the Findings and Order as they appear in the Journal of the State Medical Board; and that the attached copy of the Motion approved by the State Medical Board, meeting in regular session on February 15, 1979, is a true and complete copy as it appears in the Journal of the State Medical Board.



Edward M. Valentine
Administrative Assistant

STATE OF OHIO
THE STATE MEDICAL BOARD

FINDINGS AND ORDER
IN THE MATTER OF EDMUND VOLK, D.O.

The matter of Edmund Volk, D.O., came on for hearing before me, Henry G. Cramblett, M.D., Member of the State Medical Board of Ohio, on October 13, 1978.

After consideration of all testimony and evidence presented at the hearing, and after having read and considered the transcript of the hearing and all exhibits introduced, I make the following Findings:

Findings of Fact

1. On June 13, 1978, Dr. Edmund Volk, D.O., was forwarded a letter of citation by the State Medical Board alleging certain violations of Section 4731.22, Ohio Revised Code, and advising Dr. Volk of his right to a hearing. Exhibit 1.
2. On October 13, 1978, Dr. Edmund Volk appeared and testified at an adjudicative hearing, represented by counsel, Mr. Jerry Montgomery.
3. One Mrs. Effie Zell Toney was a patient of Dr. Edmund Volk for approximately seven (7) years. Transcript at 82.
4. During the time period from at least 1973 to September of 1976, Mrs. Toney made numerous complaints to Dr. Edmund Volk concerning constipation, abdominal cramps, and rectal bleeding. Transcript at 41-42, 48, 56; Exhibit 11 at 27-28.
5. At no time during the course of his treatment of Mrs. Toney did Dr. Edmund Volk perform a digital or rectal examination on the patient. Transcript at 86; Exhibit 11 at 28.
6. Kenneth Harris, D.O., a Board certified specialist in surgery and current President of the Summit County Osteopathic Association, served as expert witness for the State. Dr. Harris testified on direct examination that a digital examination of the rectum or anus is part of a complete physical examination and is routinely given for complaints of rectal bleeding and abdominal cramps such as Mrs. Toney had. Further, Dr. Harris testified that, under the circumstances, the failure to give a digital examination was a "failure to conform to reasonable standards of care" and departure from minimal standards of care for similar practitioners. Transcript at 12, 13-14, 21. On cross-examination, Dr. Harris testified that it is an accepted standard of treatment for a physician to physically perform a rectal examination when a patient complains of rectal bleeding. Transcript at 22. No evidence was offered to successfully rebut the testimony of Dr. Harris.
7. Dr. Harris also testified under direct examination that the failure to physically examine and perform a digital examination of the rectum upon a patient complaining of the symptoms exhibited by Mrs. Toney "would constitute unprofessional conduct or grossly unprofessional conduct." Transcript at 20-21. This testimony was not successfully rebutted by any other evidence.

8. On November 29, 1976, Mrs. Toney went to Dr. Harris for treatment of her rectal bleeding, associated with abdominal cramping and constipation. Transcript at 11. Dr. Harris attempted to perform a digital examination of the anus which proved impossible due to the presence of a hard edematous mass. Transcript at 11-12.
9. Mrs. Toney was promptly admitted to Green Cross Hospital for further testing. After a sigmoidoscopy was unsuccessfully attempted, a biopsy revealed an undifferentiated mucous-producing carcinoma of the rectum. Transcript at 12-13.
10. A barium enema confirmed the diagnosis and was suggestive of a carcinoma of the rectum, ten (10) centimeters in length. Transcript at 13.
11. Dr. Harris testified that, based upon a biopsy performed in December of 1976, the carcinoma was present in the area of Mrs. Toney's rectum for a minimum of two (2) years. Transcript at 14, 25. This testimony was not contradicted by other evidence.
12. Dr. Edmund Volk testified under cross-examination by the State that he did not perform a digital examination of the rectum due to Mrs. Toney's preference. Transcript at 85, 86, 96, 103. On direct examination by his attorney, Dr. Volk testified that the patient would always defer a digital examination. Transcript at 108-109. Dr. Volk also testified that when he saw Mrs. Toney on August 30, 1976, he stressed upon her the necessity of seeking further medical consultation. Transcript at 110.

This testimony, however, was successfully rebutted by the testimony of two State witnesses. Dr. Harris testified that when he saw Mrs. Toney for the first time on November 29, 1976, she had no hesitation about his performing a rectal examination. Transcript at 39-40. Mr. Everett Toney, husband of Mrs. Effie Toney, testified that his wife would follow the medical advice of her physician and that he had never known her to refuse a physical examination by a physician. Transcript at 43-44. In addition to the State's witnesses, Mrs. Toney herself testified in a prior proceeding that Dr. Volk never desired to perform a digital examination of her rectum and did not refer her to another physician. Exhibit 11 at 28.

13. Subsequent to the close of the hearing, the Medical Board received a letter from an attorney in Akron, Ohio, indicating that he had been told by a client of his that Mrs. Toney chose not to have a rectal examination performed. This letter was immediately forwarded to Dr. Volk's attorney, Mr. Jerry Montgomery, and counsel for both Dr. Volk and the State then stipulated, in lieu of reopening the hearing, to the admission of this letter as an exhibit. This letter, however, does not successfully rebut the State's evidence as discussed in Paragraph 12, above.

- 14. Mrs. Elizabeth Gubash, Daughter of Mrs. Effie Toney and herself a former patient of Dr. Edmund Volk, testified that in 1976 she requested Dr. Volk's opinion as to whether her mother might be suffering from cancer and Dr. Volk's response was in the negative. Transcript at 56-57, 58. This testimony was not successfully rebutted by any other evidence.
- 15. On or about January 13, 1978, in the Court of Common Pleas, Summit County, State of Ohio, in Case Number 77-7-1673, judgment in default was entered against Dr. Edmund Volk for the sum of \$500,000 plus costs in a civil action brought by Everette and Effie Toney for the negligent treatment of Mrs. Toney. Exhibit 10; Transcript at 83.
- 16. On or about February 25, 1978, Mrs. Effie Zell Toney died of cancer.

Conclusions of Law

The failure to perform a digital examination of the rectum of Mrs. Effie Zell Toney prior to July 28, 1975, constitutes "grossly unprofessional and dishonest conduct" as that term is defined in Section 4731.22(F), Ohio Revised Code (effective prior to July 28, 1975), as this failure is a violation of the American Osteopathic Association Code of Ethics: Section 6.

The failure to perform a digital examination of Mrs. Effie Zell Toney on or after July 28, 1975, constitutes "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code (effective July 28, 1975).

ORDER

In consideration of the foregoing Findings and Conclusions, I make the following Order:

That the certificate of Edmund Volk, D.O., be suspended indefinitely. All but six (6) months of said suspension shall be vacated only upon the condition that Edmund Volk, D.O., obtain a passing score of 75.00 or higher on the Clinical Competence portion of the Federation Licensing Examination (FLEX).

This Order will be effective on a date to be determined by the State Medical Board.


 Henry G. Cramblett, M.D.
 Member
 State Medical Board of Ohio

OHIO STATE
MEDICAL BOARD

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STATE OF OHIO
THE STATE MEDICAL BOARD

February 15, 1979

THE MOTION REGARDING THE FINDINGS AND ORDER IN THE MATTER OF EDMUND VOLK, D.O.

Dr. Cover moved that the Findings and Order in the Matter of Edmund Volk, D.O. as presented by Dr. Cramblett be approved and confirmed. Dr. Ruppertsberg seconded the motion. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cover	- aye
	Dr. Gandy	- aye
	Dr. Clarke	- abstain
	Dr. Yut	- abstain
	Dr. Lovshin	- aye
	Dr. Lancione	- aye
	Mr. Paulo	- aye
	Dr. Ferritto	- aye
	Dr. Ruppertsberg	- aye

The motion carried.

Dr. Lancione moved that the effective date of the Order be set as July 1, 1979. Dr. Gandy seconded the motion. All members voted aye. The motion carried.

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Suite 1006
180 East Broad Street
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Ex. 1

June 13, 1978

Edmund Volk, D.O.
754 Lafollette Avenue
Akron, OH 44306

Dear Doctor Volk:

In accordance with Chapter 119, Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine, under the provisions of Section 4731.22, Ohio Revised Code, whether or not to limit, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate your certificate to practice osteopathic medicine and surgery for one or more of the following reasons:

1. For approximately twelve (12) years prior to September of 1976, you were the physician for a patient named Effie Zell Toney. During the time period from 1971 to September of 1976, Effie Zell Toney made numerous complaints to you concerning her constipation, abdominal cramps, and rectal bleeding. At no time during this time period did you conduct an adequate physical examination of Mrs. Toney, a digital examination of Mrs. Toney, or recognize the significance of the symptoms of Mrs. Toney.

On or about November 29, 1976, said Effie Zell Toney was examined by Kenneth A. Harris, D.O. Dr. Harris attempted to perform a digital examination on Mrs. Toney, but was unable to insert his finger into her rectum due to a hard edematous mass. On or about November 30, 1976, Dr. Harris admitted Effie Zell Toney to Green Cross Hospital for tests, the results of which indicated cancer. The tumor was present a minimum of two years prior to November 29, 1976. On or about February 25, 1978, this cancer caused the death of Effie Zell Toney.

On or about January 13, 1978, in the Court of Common Pleas, Summit County, State of Ohio, in Case Number 77-7-1673, judgment in default was entered against you for the sum of \$500,000 plus costs in an action brought by Everette and Effie Toney for negligent treatment of Mrs. Toney.

Such acts committed before July 28, 1975, individually and/or collectively, constitute "grossly unprofessional and dishonest conduct" as that term is defined in Section 4731.22(F), Revised Code (effective prior to July 28, 1975), as such acts are a violation of the American Osteopathic Association Code of Ethics: Section 6.

Further, such acts committed on or after July 28, 1975, individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances", as that clause is used in Section 4731.22(B)(6), Revised Code (effective July 28, 1975).

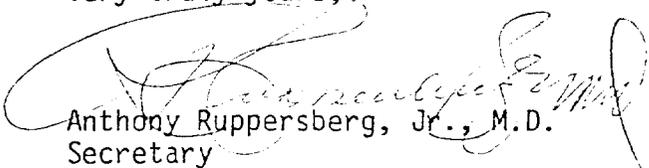
You are hereby advised that you are entitled to a hearing on this matter if you request such hearing within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, 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 made 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, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate your certificate to practice osteopathic medicine and surgery.

A copy of the Medical Practice Act and the American Osteopathic Association Code of Ethics is enclosed for your examination. Also enclosed is a copy of Section 4731.22, Revised Code, as effective prior to July 28, 1975.

Very truly yours,



Anthony Ruppertsberg, Jr., M.D.
Secretary

AR:sp

Enclosure

CERTIFIED MAIL # 024903
RETURN RECEIPT REQUESTED