

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Larry Lee Smith, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-234
State Medical Board of Ohio,	:	(C.P.C. No. 11CVF-05-6436)
Appellee-Appellee.	:	(ACCELERATED CALENDAR)
Larry Lee Smith, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-235
State Medical Board of Ohio,	:	(C.P.C. No. 11CVF-08-9849)
Appellee-Appellee.	:	(ACCELERATED CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on September 27, 2012, appellant's assignments of error are overruled and it is the judgment and order of this court that the judgments of the Franklin County Court of Common Pleas are affirmed.

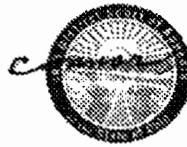
CONNOR, J., BRYANT and TYACK, JJ.

/s/ \_\_\_\_\_  
Judge John A. Connor

No. 97APD12-1579

**Date:** 09-28-2012  
**Case Title:** LARRY LEE SMITH DO -VS- OHIO STATE MEDICAL BOARD  
**Case Number:** 12AP000234  
**Type:** JEJ TRIAL COURT JUDGMENT AFFIRMED

So Ordered



/s/ Judge John A. Connor

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Larry Lee Smith, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-234
State Medical Board of Ohio,	:	(C.P.C. No. 11CVF-05-6436)
Appellee-Appellee.	:	(ACCELERATED CALENDAR)
Larry Lee Smith, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-235
State Medical Board of Ohio,	:	(C.P.C. No. 11CVF-08-9849)
Appellee-Appellee.	:	(ACCELERATED CALENDAR)

---

D E C I S I O N

Rendered on September 27, 2012

---

*Graff & McGovern, LPA, Douglas E. Graff and Levi J. Tkach,*  
for appellant.

*Michael DeWine, Attorney General, and Katherine J.*  
*Bockbrader,* for appellee.

---

APPEALS from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Appellant, Larry Lee Smith, D.O., appeals from a judgment entry of the Franklin County Court of Common Pleas affirming two orders issued by appellee, State

Medical Board of Ohio ("the Board"), permanently revoking appellant's license to practice medicine in Ohio.

{¶ 2} The Board initiated proceedings against appellant by issuing a notice of opportunity for hearing based upon appellant's criminal conviction in Mahoning County Court of Common Pleas of a violation of R.C. 3719.08(D), which governs labeling and packaging requirements of controlled substances. The Board issued a second notice in April 2010, alleging that appellant engaged in sexual misconduct with two of his patients.

{¶ 3} The Board consolidated the two matters and set a hearing date of February 2, 2011. On the first day of the hearing, appellant failed to appear. Counsel for appellant did appear on his behalf and requested a continuance, citing inclement weather that prevented appellant from travelling. The Board opposed a continuance on the grounds that three other witnesses had travelled without difficulty from the same location to testify. One witness testified that he had been on the roads that morning and that driving conditions were acceptable. The hearing officer denied the motion for a continuance on the basis that it would present unwarranted inconvenience to the witnesses who had travelled long distances to attend the hearing and that there was no indication that inclement weather would actually prevent appellant from appearing. The hearing officer then suggested that appellant could participate in the hearing via telephone, but appellant did not respond to his counsel's telephone calls to arrange this.

{¶ 4} At the second day of the hearing, February 24, 2011, appellant again did not appear. Appellant's counsel stated that appellant had not contacted counsel during the intervening period, and had not responded to counsel's repeated attempts to communicate via telephone, fax, or mailings. Counsel nonetheless again requested a continuance which again the hearing officer denied.

{¶ 5} Two female patients testified at the hearing regarding appellant's sexual misconduct. Both testified that they had sought treatment from appellant for their drug addictions, and that he had prescribed Suboxone for treatment of opiate addiction. Both patients described a pattern which appellant abused his professional sway over the patients and administered drugs for them to render them vulnerable to his sexual advances. One patient testified that she eventually reported the incidents to police, who equipped her with a hidden camera for the next visits to appellant's office. This equipment

recorded, over the course of three visits, inappropriate sexual comments by appellant that strongly suggested appellant had engaged in sexual conduct with this patient.

{¶ 6} The hearing officer rendered a report and recommendation finding both patients to be credible and that their testimony was buttressed by appellant's recorded comments during medical visits. The hearing officer also found that court records substantiated appellant's conviction on the separate drug-labeling charge. The hearing officer recommended permanent revocation and the Board accepted the hearing officer's findings of fact and conclusions of law, permanently revoking appellant's license by order dated May 11, 2011.

{¶ 7} During the course of the above proceedings, the Board advised appellant by letter on December 21, 2010 that it would order him to submit to a mental examination. Appellant did not appear for the scheduled examination, and did not contact the examining specialist or the Board to reschedule the exam. Pursuant to R.C. 4731.22(B)(19), the Board may find that failure to submit to a mental evaluation ordered by the Board may constitute an admission of the allegations of unfitness brought against a medical provider. The Board accordingly issued a notice of summary suspension and a further notice of opportunity for hearing based upon appellant's failure to submit to the mental examination.

{¶ 8} This second notice was heard separately from the other charges against appellant. Appellant did appear for the hearing on this issue, and testified that he did not attend the Board-ordered mental examination because he could not afford it and he believed that previous mental examinations confirmed his fitness. The hearing officer determined that appellant's reasons for not attending the mental examination were due to circumstances within appellant's control and that appellant had failed to contact the Board to explain his concerns and submit the results of his prior mental examinations. The hearing officer recommended that appellant's license be revoked on this basis. The Board adopted this second report and recommendation and again revoked appellant's license to practice medicine in Ohio by order issued July 13, 2011.

{¶ 9} Appellant appealed both orders of the Board to the Franklin County Court of Common Pleas, pursuant to R.C. 119.12, and the court consolidated the two appeals. Final determination in this matter issued by the common pleas court is a nunc pro tunc

decision and entry dated February 16, 2012. The court found that the Board's orders were supported by reliable, probative, and substantial evidence and in accordance with law, that the Board had not violated appellant's due process rights during the course of the hearings, and that the Board's order requiring appellant to undergo a mental evaluation was reasonable and based on sufficient evidence. The court of common pleas therefore affirmed the Board's orders in all respects.

{¶ 10} Appellant has timely appealed and brings the following assignments of error:

First Assignment of Error: The lower Court erred in affirming the State Medical Board of Ohio's Order because the Order was not in accordance with law as the Board violated Dr. Smith's due process rights by relying on inadmissible evidence, over Dr. Smith's objections.

Second Assignment of Error: The lower Court erred in affirming the State Medical Board of Ohio's demand for a [mental] health evaluation that was unreasonable and not based on sufficient good faith evidence.

{¶ 11} In an administrative appeal, pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980).

{¶ 12} The Ohio Supreme Court has defined reliable, probative, and substantial evidence as follows:

(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a 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.

*Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992). (Footnotes omitted.)

{¶ 13} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence.

*Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.*, 63 Ohio St.3d 705, 707 (1992). In reviewing the court of common pleas' determination that the board's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.*, 80 Ohio App.3d 675, 680 (10th Dist.1992). The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). However, on the question whether the board's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343 (1992).

{¶ 14} We are handicapped in addressing appellant's first assignment of error because appellant's brief on appeal does not specifically set forth the alleged objectionable evidence upon which the Board relied, nor articulated the basis upon which the Board should have excluded the evidence. Pursuant to our examination of the administrative and judicial record in this matter, we can discern that appellant primarily objected in the common pleas court to the Board's reliance on electronically recorded conversations obtained by means of the hidden camera supplied by police and carried by one of the complaining patients on medical visits to appellant's office. As did the common pleas court, we find that these recordings were sufficiently authenticated and could be considered by the hearing officer, particularly at an administrative proceeding in which the rules of evidence do not strictly apply. *See, e.g., Haley v. Ohio St. Dental Bd.*, 7 Ohio App.3d 1, 6, (2d Dist.1982); *Beach v. Ohio Bd. of Nursing*, 10th Dist. No. 10AP-940, 2011-Ohio-3451 ¶ 37.

{¶ 15} We further find that appellant was not denied due process during these proceedings in any other respect. Appellant's counsel did appear, albeit without the assistance of his client at the first hearing, and was allowed wide latitude in cross-examining the witnesses. The hearing officer's decision at the first hearing not to continue the proceedings was reasonable under the circumstances, particularly since appellant was given the opportunity to participate by telephone. Appellant cannot establish deprivation of due process based upon his own failure to communicate with counsel and make himself

available despite counsel's repeated attempts to contact him. Appellant's first assignment of error is accordingly overruled.

{¶ 16} Appellant's second assignment of error is also not well-taken. The Board indisputably has statutory authority to order a mental examination. The Board may take this action against licensee based upon a showing of a "possible violation," or "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness[.]" R.C. 4731.22(B)(19). In this case, the Board has both a good-faith basis for concern regarding appellant's mental health and fitness to practice, and had before it clear indications of a "possible violation." Moreover, the common pleas court did not abuse its discretion in upholding the Board's finding that appellant had not established that circumstances beyond his control excused his attendance at the scheduled examination. Appellant asserts that a new examination was not necessary because he had undergone previous mental examinations that could be relied upon in assessing his current fitness to practice. Appellant's prior mental examinations, which were conducted well before the current allegations arose, would not preclude the Board from ordering a current examination in light of the allegations against appellant.

{¶ 17} Finally, we address appellant's vaguely-articulated arguments that the order to submit to a mental examination somehow violates his Fourth Amendment right to be free from unreasonable searches and seizures. Initially, we note that this argument was not raised before the Board and is therefore waived for purposes of subsequent appeal. *Derakhshan v. State Med. Bd.*, 10th Dist. No. 07AP-261, 2007-Ohio-5802, ¶ 29. We are unable to discern from appellant's argument before this court whether the alleged "seizure" is the taking of his license or some form of restraint arising from the order to submit to a mental evaluation. Assuming either, Ohio law provides that physicians hold a medical license in Ohio pursuant to the appropriate medical oversight of the Board, and are deemed to have given consent to the statutory constraints attendant thereto as long as due process is afforded. *Smith v. Med. Bd. of Ohio*, 10th Dist. No. 11AP-1005, 2012-Ohio-2472. This includes the obligation to submit to an examination when directed to do so in writing by the Board. R.C. 4731.22(B)(19); *Alexander v. Press*, 10th Dist. No. 77AP-233 (Aug. 9, 1977) (examining and upholding constitutionality of equivalent predecessor subsection R.C. 4731.22(B)(16)).

Nos. 12AP-234 and 12AP-235

7

{¶ 18} We find that the court of common pleas did not abuse its discretion in finding that the Board correctly concluded that appellant must submit to a mental evaluation, and could see his license revoked for refusal to do so. Appellant's second assignment of error is overruled.

{¶ 19} In summary, appellant's first and second assignments of error are overruled, and the judgments of the Franklin County Court of Common Pleas upholding the orders of the State Medical Board of Ohio are affirmed.

*Judgments affirmed.*

BRYANT and TYACK, JJ., concur.

---

12APE03 • • 235

2

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO  
TENTH APPELLATE DISTRICT

LARRY LEE SMITH, D.O. )  
 )  
 Appellant, )  
 vs. )  
 )  
 STATE MEDICAL BOARD OF OHIO, )  
 )  
 Appellee. )

CASE NO. \_\_\_\_\_

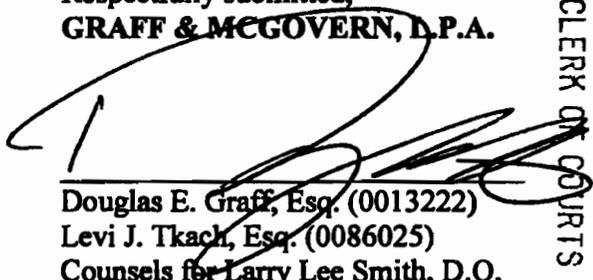
2012 MAR 16 PM 1: 8  
CLERK OF COURTS

FILED  
COURT OF APPEALS  
FRANKLIN CO OHIO

NOTICE OF APPEAL

Notice is hereby given that Larry Lee Smith, D.O., ("Dr. Smith"), hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District from the attached *Decision & Entry* (filed February 15, 2012) affirming the State Medical Board of Ohio's Orders permanently revoking Dr. Smith's certificate to practice medicine and surgery in the State of Ohio. The Medical Board's Orders are not supported by reliable, probative and substantial evidence and is not in accordance with law. Thus, the lower court erred in affirming the Medical Board's Orders.

Respectfully submitted,  
GRAFF & MCGOVERN, D.P.A.



Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counselors for Larry Lee Smith, D.O.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800 - Phone  
(614) 228-8811 - Fax  
doug@grafflaw.com - Email

2012 MAR 16 PM 1:04  
CLERK OF COURTS

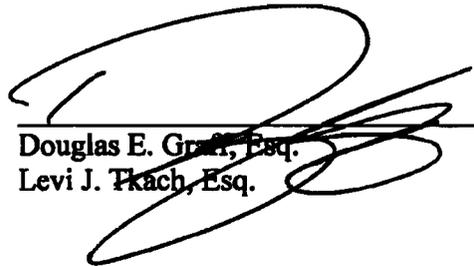
FILED  
COURT OF APPEALS  
FRANKLIN CO OHIO

---

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was sent via Regular U.S. Mail this 16 day of March 2012, to the following:

Katherine J. Bockbrader, Esq.  
Assistant Attorney General,  
Health & Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor,  
Columbus, Ohio 43215  
614-466-8600 Phone  
866-441-4738 Fax  
katherine.bockbrader@OhioAttorneyGeneral.gov

  
Douglas E. Graft, Esq.  
Levi J. Tkach, Esq.

0A232 - A11

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

Larry Lee Smith, D.O., :  
Appellant, : CASE NO. 11CVF-05-6436/  
 : 11CVF-08-9849  
-vs- : **JUDGE SERROTT**  
Ohio Medical Board of Ohio :  
Appellee. :

**DECISION & ENTRY**

Rendered this 15<sup>th</sup> day of February, 2012.

**SERROTT, J.**

**I. Procedural History and Facts**

This matter is before the Court upon the consolidated administrative appeals of Dr. Smith, Appellant, from the Medical Board's decision permanently revoking the Appellant's medical license for two separate violations. The first revocation was based upon Dr. Smith's sexual misconduct with two patients and for a criminal misdemeanor conviction. The second case was based upon Dr. Smith's failure to submit to a mental examination. The Board referred both cases to a hearing Examiner and the hearing Examiner conducted a due process hearing. The Appellant failed to appear at the initial two day hearing (02/02/11 and 02/04/2011) for the allegations involving his misdemeanor conviction for R.C. §3719.08(D)<sup>1</sup> and for the sexual misconduct.

The morning of February 2, 2011, the first day of the two day hearing, Appellant's counsel requested a continuance claiming Appellant could not attend because of inclement weather. (Feb. TR. 7.) Counsel for the Board objected because three other witness had travelled from the same location as Appellant's residence without any problems. (Feb. TR. 17.) One witness (Bodzak), who lives near Appellant,

---

<sup>1</sup> This code section requires a physician who personally gives patient a controlled substance to ensure that the substance is properly labeled and packaged. Appellant was convicted for his violation of this statute.

0A232 - A12

testified there was no snow in the area, only rain, and that the driving conditions were good enough to permit travel (Feb. TR. 10-11.) Based upon the above, the hearing Examiner denied the motion and proceeded with the hearing. Appellant's counsel participated in the hearing and vigorously cross-examined the witnesses.

On February 4, 2011, the second day for the hearing, Appellant again failed to appear and had not even contacted his counsel in the interim – from February 2, 2011 to February 4, 2011. Appellant's counsel again asked for a continuance, which was denied. Appellant's counsel again participated in the hearing and cross-examined the witnesses and vigorously defended Appellant. The Board presented witnesses, exhibits, and the testimony of two patients who claimed while they were patients, Dr. Smith had drugged them and had sex with them. The Board also introduced some audio and video tapes that Patient One surreptitiously took while she was in Dr. Smith's office.<sup>2</sup> At the conclusion of all the evidence, the Examiner found the patients credible and found that Appellant had pled guilty to the misdemeanor conviction. The Examiner recommended that Appellant's license be revoked. (May 2011 R&R p. 14.) The full Board met and reviewed the report and recommendation and ordered a permanent revocation of Appellant's license. (July 2011 Order.) Appellant appealed this order to this Court and is the subject of this appeal.

The Board also charged the Appellant with failing to submit to a psychological examination pursuant to O.R.C. §4743.22 (B)(19).<sup>3</sup> The Board scheduled the examination for January 26, 2011, and Appellant not only failed to appear for the exam, he did not offer any excuse until February 4, 2011. His excuse then was that the price of the examination was "foolish". (May 2011 Exhibit 3 at p. 3) The Examiner conducted a hearing on May 3, 2011 for the allegation that Appellant violated the Board's order to appear for the examination and that as a consequence his failure "constituted an admission of the allegations" i.e. that Appellant was unable to practice

---

<sup>2</sup> Despite Appellant's contentions to the contrary, the witnesses authenticated the tapes and established a chain of custody for the tapes. (See Feb. TR. 22, 28, 133, 162, and 187-188.)

<sup>3</sup> This section authorizes such an order when the Board has evidence of a "possible" violation of a licensee's inability to practice according to acceptable prevailing standards." The Board had ample evidence of a "possible violation" based on the criminal conviction and the allegations of sexual misconduct.

0A232 - A13

according to acceptable standards.<sup>4</sup> The Appellant and his counsel did appear for that hearing. The Appellant testified and offered three “reports” allegedly attesting to this mental fitness. None of the reports dealt with Appellant’s fitness and ability to practice medicine within acceptable standards (May 2011 Exhibits 3, F, and R& R pp. 2 and 13-14.) Two of the reports, or exams, pre-dated the sexual allegations and were performed by social workers, not a licensed physician expert as required by the Board. (May 2011 Ex. 3, F and R& R, pp. 13-14.) The exams were also not approved by the Board as required by statute. The exams require Board approval so that the specific issue of a physician’s ability “to practice according to acceptable standards” can be determined by a physician familiar with the required standards.

At the conclusion of the May 3, 2011 hearing, the Examiner determined that Appellant did not rebut the legal presumption that he was unable to practice within acceptable standards and recommended revocation. (May R&R p. 13.) Appellant appealed the decision to the Board, and the Board affirmed the findings and permanently revoked Appellant’s medical license based upon the above.

Appellant timely perfected both appeals to this Court and the cases have been consolidated for this Court’s decision. The Court has reviewed the transcripts, exhibits, and the record, the reports, and the briefs of Counsel. For the reasons set forth below, the Court **DENIES** the Appellant’s appeal and **AFFIRMS** the Board’s orders in both cases in all aspects. The Court finds that the record is replete with substantial, reliable, and probative evidence supporting the Board’s order.

## **II. LEGAL ANALYSIS**

### **A. Standards of Review**

This Court must affirm the orders of an administrative agency if the orders are supported by substantial, reliable, and probative evidence. (R.C. §119.12 and Our Place Inc. v. Ohio Liquor Comm. 63 Ohio St.3d 570 (1992).) This Court is not permitted to

---

<sup>4</sup> See O.R.C. §4731.22 (B)(19) which establishes a legal presumption of the inability to practice within the standards of care when a physician fails to appear for exam unless the failure is “due to circumstances beyond the individuals’ control.”

0A232 - A14

substitute its judgment for that of the Board and is not permitted to substitute a different penalty than that imposed by the Board. (See Henry's Café v. Bd. Of Liquor Control 170 Ohio St. 233 (1959).) Evidence is substantial, reliable, and probative if the evidence has weight, is dependable, and if it tends to prove the issue in question. (See Our Place, Id. at p. 571) The Court must defer to the Examiner and the Board on issues of credibility of witnesses and on issues of evidentiary conflicts. (See University of Cincinnati v. Conrad 63 Ohio St.2d 108, 111.)

Applying these standards of review to the evidence and issues in these cases establish that the Board's orders must be affirmed.

**B. The Board did not violate Appellant's due process rights in admitting the testimony and exhibits.**

The Appellant seems to claim the Examiner erred procedurally by failing to continue the first hearing. A tribunal is afforded considerable discretion when granting or denying a request for a continuance. (See Ham v. Ham Third. Dist. No. 16-09-24, 2010-Ohio-1262, citing State v. Jones 91 Ohio St.3d 335 (2001).) A reviewing Court will not reverse the denial of a continuance absent an abuse of discretion. (Id.) Abuse of discretion implies the tribunal's denial of the continuance was unreasonable, arbitrary, or unconscionable. (Blakemore v. Blakemore 5 Ohio St. 3d 217, 219 (1983)). However, a tribunal must afford a litigant his or her due process rights, which include a reasonable opportunity to be heard at a meaningful time and in a meaningful manner. (Ohio Valley v. Ohio Valley Hosp. Assn. 28 Ohio St. 3d, 118,125(1986)).

In the case at bar, the Appellant had ample notice of the hearing, he had plenty of time to prepare for the hearing, and his counsel did appear and vigorously defend Appellant in his absence. Other witnesses were able to travel from the same location where Appellant lived, and the weather did not prevent them from attending. The Appellant did not even attend the second day of the hearing two days after the start of the hearing. The Examiner properly weighed the factors against granting a continuance which included the appearance of three witnesses who travelled from outside Columbus to attend. Therefore, the tribunal did not abuse its discretion in refusing to continue the case. Counsel for Appellant was afforded every opportunity to cross-examine witnesses and challenge the evidence.

0A232 - A15

Therefore, Appellant's due process rights were not violated when the Examiner refused to continue his case.

Next, the Appellant contends that the Examiner erred in numerous evidentiary rulings. (Brief p. 10.) Appellant claims that the cumulative effect of the ruling deprived him of a fair hearing. Appellant complains that the surreptitious videos and audio tapes should not have been admitted because they were not authenticated. (Brief pp. 2-4.) Appellant also claims writings were improperly used to refresh a witness's memory that were not provided in discovery. This Court has reviewed the transcript and record carefully.

The Court notes that the Rules of Evidence do not apply at administrative hearings. The evidence submitted at administrative proceedings need only be reliable and trustworthy. (Haley v. Ohio State Dental Board 7 Ohio App.3d 1, 6 (1982).) Moreover, a tribunal is granted wide latitude and discretion in making evidentiary rulings especially because the evidence rules do not apply. (Beach v. Ohio Board of Nursing Tenth Dist. No. 10AP-940, 2011-Ohio-3451, ¶37.)

In the case at bar, the evidence submitted was properly authenticated and the evidentiary rulings were not arbitrary or capricious. The Examiner conducted a fair due process hearing. Appellant's counsel was granted wide latitude in cross-examining the witnesses. Also, the Appellant's complaints that "audio" CD's were improperly admitted is unavailing because Appellant failed to object to their admission at the hearing. (2791 Inc. v. Liquor Control Commission Tenth Dist. No. 04AP-1188, 2005-Ohio-3372, ¶16.) The Appellant had a fair due process hearing and none of the evidentiary rulings deprived the Appellant of any of his rights.

Moreover, the evidence against the Appellant was overwhelming. The Examiner, in exercising his duty to evaluate the two patients' credibility, determined the patients were credible. (See University of Cincinnati v. Conrad, supra.) The audio and video evidence corroborated the patient's testimony. The Appellant admitted that he had engaged in sex with patient one when he was recorded making the following statement:

**"I could taste nicotine in your pussy."**

(See March 2011 R&R p. 8 and 18 and State's Ex. 6A track 3 at 14:34 to 14:35 35.)

0A232 - A16

This Court cannot “re-determine” issues of credibility and cannot substitute its judgment for that of the Board or the hearing Examiner. The Appellant chose not to attend the hearing, and thus, the testimony of the two patients was un-refuted. Appellant also does not contest that he was convicted of a misdemeanor offense involving moral turpitude in providing the patients drugs that were unlabelled in an effort to impair their motor functions while he had sex with them.

Appellant’s just assignment of error is overruled in its entirety. The Board’s order is fully and overwhelming supporting by substantial, reliable, and probative evidence. The Board afforded Appellant a fair due process hearing and the evidentiary rulings were proper and did not in any way prejudice Appellant.

**C. The Board’s order requesting a mental examination of Appellant was based upon reasonable good faith grounds given that Appellant had been indicted for sex offenses and had been accused of having sex with his patients.**

The Appellant next claims the Board did not have the authority to require him to submit to a mental examination. As noted supra p. 2 of this decision the Board has the authority to order a mental examination if it believes a “possible violation” of R.C. §4731.22 has occurred. (R.C. §4731.22(B)(19)). The Appellant’s indictment for having sex with the patients, his misdemeanor conviction, and the sex allegations all establish evidence of a “possible violation.” A “possible violation” standard is a low threshold and only requires some evidence that a violation may exist or that is “capable of existing.” (See Black Law Dictionary, definition of “possible.”) A “possible violation” does not require a “probability,” nor does it require a preponderance. A possibility exists if there is some evidence to suggest it may be true.

The Appellant’s indictment alone provided legal probable cause<sup>5</sup> to support the sex allegations, and thus, satisfied the minimal lower “possible” standard. Appellant had ample notice of the examination date and simply failed to appear and offered no explanation until after the scheduled date of the examination.

The Board was completely justified in ordering the examination based upon all of the above. Furthermore, Appellant did not offer a credible excuse as to why “circumstances beyond his control” excused his attendance of the exam. Finally, the Court,

---

<sup>5</sup> Pierson v. Aaron’s Rental, Tenth Dist. No. 10AP-245, 2010-Ohio-5443.

0A232 - A17

at p. 3 of this decision, has already explained why Appellant's "reports" and "exams" did not satisfy his statutory requirement to appear before a Board physician. The Appellant's "evidence" did not overcome the statutory presumption of unfitness. Further, the Appellant's "exams" did not justify or excuse his failure to attend the Board's exam.

The Appellant also raises a Fourth Amendment argument, which this Court finds meritless. The Appellant waived any such argument by not raising it below. (Derakhshan v. State Medical Bd. Tenth Dist. No. 07AP-261, 2007-Ohio-5802, at ¶29.) Moreover, as a physician, the Appellant "consented" to the examination pursuant to R.C. §4731.22(B)(19) when he accepted his medical license in Ohio.

For all the reasons set forth herein, the Court overrules Appellant's second assignment of error. The Board's order is support by substantial, reliable and probative evidence. The Court **AFFIRMS** the orders of the Board in both cases. Costs to Appellant.

COPIES TO:

Levi J. Tkach, Esq.  
Douglas E. Graff, Esq.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
Counsel for Appellant

Michael Dewine, Esq.  
Katherine J. Bockbrader, Esq.  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Counsel for Appellee

0A232 - A18

0A232 - A19

Franklin County Court of Common Pleas

**Date:** 02-15-2012  
**Case Title:** LARRY LEE SMITH DO -VS- OHIO STATE MEDICAL BOARD  
**Case Number:** 11CV009849  
**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "Mark Serrott". The signature is written over a circular, embossed seal. The seal contains text around its perimeter, including "FRANKLIN COUNTY OHIO" and "CLERK OF COURTS OF THE COMMON PLEAS". The center of the seal is partially obscured by the signature.

/s/ Judge Mark Serrott

0A232 - A20

Court Disposition

Case Number: 11CV009849

Case Style: LARRY LEE SMITH DO -VS- OHIO STATE MEDICAL BOARD

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

**IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO  
AND  
BEFORE THE STATE MEDICAL BOARD OF OHIO**

**LARRY LEE SMITH, D.O.** )  
**5 Court Street** )  
**Canfield, OH 44406** )  
  
**Appellant,** )  
**vs.** )  
  
**STATE MEDICAL BOARD OF OHIO,** )  
**30 East Broad Street, 3<sup>rd</sup> Floor** )  
**Columbus, OH 43215** )  
  
**Appellee.** )

**CASE NO. ~~1 CVF 08 9849~~**  
**Category F**

**JUDGE \_\_\_\_\_**

**NOTICE OF APPEAL**

**FILED**  
**COMMON PLEAS COURT**  
**FRANKLIN COUNTY, OHIO**  
**2011 AUG -8 PM 3:29**  
**CLERK OF COURTS**

Larry Lee Smith, D.O., (“Dr. Smith”), Appellant, hereby gives Notice of Appeal on questions of law and fact to the Court of Common Pleas, Franklin County, Ohio, pursuant to Chapter 119 of the Ohio Revised Code from the Decision of the Ohio State Medical Board (“Board”) dated July 13, 2011, (mailed July 29, 2011) against Dr. Smith. A copy of the Board Order is attached hereto as Exhibit A.

The grounds for the appeal and the errors complained of known as of this time are as follows:

- I. The Decision of the Ohio State Medical Board should be reversed on the basis that the Decision is not supported by reliable, probative and substantial evidence and is not otherwise in accordance with law;
- II. Appellant was denied substantive due process in violations of the Ohio and United States Constitutions when the State knowingly presented evidence to the Board that included information outside of the charges set forth in the citation issued against the Appellant;

**STATE MEDICAL BOARD**  
**OF OHIO**  
**2011 AUG 15 AM 11:59**

III. The Appellant was denied substantive due process under both the Ohio and the United State Constitutions when the citation of claims against Appellant deliberately included information for which there was no claim of wrongdoing, but was done solely for the purpose of improperly influencing the Board;

IV. Appellant was denied substantive due process rights under Ohio and the United States Constitutions when the Board considered factors beyond the Notice of Opportunity of Hearing sent to Appellant, and outside of the hearing record, during the Board's deliberation of the Report and Recommendation of the Hearing Examiner;

V. Appellant was denied substantive due process rights and equal protection under the Ohio and United States Constitutions when the Board failed to consider the Motions of Appellant, and the Rulings of the Hearing Examiner, as required by Board's own Administrative Rules and the Ohio Revised Code, prior to consideration of the Report and Recommendation of the Hearing Examiner.

Appellant reserves the right to add additional assignments of error and grounds for appeal once the transcript of proceedings has been completed and counsel has an opportunity to review the record.

Respectfully submitted,

**GRAFF & MCGOVERN, L.P.A.**



Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsels for Larry Lee Smith, D.O.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800 – Phone

6S:11WY 91 0011102  
OHIO  
OSVOS T/010211021102

(614) 228-8811 – Fax  
doug@grafflaw.com - Email

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing NOTICE OF APPEAL was hand delivered to the State Medical Board of Ohio, 30 East Broad Street, 3<sup>rd</sup> Floor, Columbus, Ohio 43215 and sent via Regular U.S. Mail this 6 day of August, 2011, to the following:

Katherine J, Bockbrader, Esq.  
Assistant Attorney General,  
Health & Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor,  
Columbus, Ohio 43215



---

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

2011 AUG 16 AM 11:59  
STATE MEDICAL BOARD  
OF OHIO

# 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

July 13, 2011

Larry Lee Smith, D.O.  
11105 Springfield Road  
North Lima, OH 44452

RE: Case No. 11-CRF-015

Dear Doctor Smith:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2011, 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 must be taken to the Franklin County Court of Common Pleas.

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3019 7969  
RETURN RECEIPT REQUESTED

Cc: Douglas E. Graff and Levi J. Tkach, Esqs.  
CERTIFIED MAIL NO. 91 7108 2133 3938 3019 7976  
RETURN RECEIPT REQUESTED

*Mailed 7-29-11*

**CERTIFICATION**

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on July 13, 2011, 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 Larry Lee Smith, D.O., Case No. 11-CRF-015, 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.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

July 13, 2011

\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NO. 11-CRF-015

LARRY LEE SMITH, D.O.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on July 13, 2011.

Upon the Report and Recommendation of Danielle R. Blue, Esq., State Medical Board 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 within, 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.

**Rationale for Amendment:** The record in the matter at hand coupled with the recent permanent revocation of doctor's Ohio medical license renders permanent revocation appropriate in this matter.

It is hereby ORDERED that:

The certificate of Larry Lee Smith, D.O., to practice osteopathic medicine and surgery in the State of Ohio is hereby PERMANENTLY 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)

July 13, 2011

Date

STATE MEDICAL BOARD  
OF OHIO

2011 MAY 31 PM 2: 01

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**In the Matter of**

\*

**Case No. 11-CRF-015**

**Larry Lee Smith, D.O.,**

\*

**Hearing Examiner Blue**

**Respondent.**

\*

**REPORT AND RECOMMENDATION**

**Basis for Hearing:**

In a Notice of Summary Suspension and Opportunity for Hearing [Notice] dated February 9, 2011, the State Medical Board of Ohio [Board] notified Larry Lee Smith, D.O., that pursuant to Ohio Revised Code Section [R.C.] 4731.22(G), the Board had adopted an Entry of Order summarily suspending his certificate to practice osteopathic medicine and surgery in the State of Ohio. In addition, the Board notified Dr. Smith that it proposed to determine whether his failure to submit to a psychiatric/psychosexual examination in January 2011 was due to circumstances beyond his control, which would rebut the legal presumption of an admission of inability to practice and merit rescheduling the examination as directed by the Board, or whether his failure to submit to the examination was due to circumstances within his control, which would render the legal presumption of an admission of inability to practice conclusive and result in the Board taking other disciplinary action against him.

The Board alleged that Dr. Smith's acts, conduct, and/or omissions, individually and/or collectively, constitute, "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as set forth in R.C. 4731.22(B)(19). (State's Exhibits [St. Exs.] 1A, 2 at 3-5)

Finally, the Board advised Dr. Smith of his right to request a hearing in this matter, and the Board received Dr. Smith's request for a hearing on February 23, 2011. (St. Ex. 1 at 4-8, 17)

**Appearances:**

Mike DeWine, Attorney General of Ohio, and Katherine Bockbrader, Assistant Attorney General, for the State of Ohio. Douglas E. Graff and Levi Tkach, Esqs., for Dr. Smith.

**Hearing Date:** May 3, 2011

## PROCEDURAL MATTERS

The hearing record was held open until May 20, 2011 in order to allow the Respondent additional time to submit a complete copy of an evaluation report that was discussed at the hearing. The Respondent moved to admit the evaluation report, which was marked as Exhibit G. The Assistant Attorney General objected to Exhibit G because she stated it did not appear to be a complete copy of the report. The Hearing Examiner overruled the objection and admitted Exhibit G as originally proposed under seal. The hearing record closed on May 20, 2011.

## SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, including the testimony, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

### Background Information

1. Larry Lee Smith, D.O., obtained his medical degree in 1966 from the Philadelphia College of Osteopathic Medicine. Before the Board's summary suspension, Dr. Smith had practiced general osteopathic medicine in Canfield, Ohio, for 41 years. Dr. Smith was initially licensed to practice osteopathic medicine and surgery in the State of Ohio in 1967; however, he currently holds an inactive license to practice in Ohio. He testified that he holds a current license to practice osteopathic medicine in Florida. (Ohio eLicense Center at <https://license.ohio.gov/lookup>, query on May 16, 2011; Hearing Transcript [Tr.] at 44, 47)

### Board-Ordered Examination

2. In a letter dated December 21, 2010, the Board ordered Dr. Smith to submit to a psychiatric/psychosexual examination with Stephen Noffsinger, M.D., at University Hospitals of Cleveland, Walker Building, Room 7134, 10524 Euclid Avenue, Cleveland, Ohio 44106 on January 26, 2011, at 8:30 a.m. The letter also stated that Dr. Smith was responsible for paying the cost of the examination, which was estimated to be \$1,750.00. The letter stated as follows, in pertinent part:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4731.22(B)(19), Ohio Revised Code, to wit: "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills."

This determination is based upon one or more of the following reasons:

- (1) During the time period from in or about 2008 to in or about 2010, you provided care, including Suboxone treatment, to Patients 1 and 2, in the routine course of your practice to Patients 1, 2, and 3 as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)
- (2) In or about March 2009, despite your concurrent physician-patient relationship, you engaged in sexual intercourse with Patient 1 in your office.

Further, you saw Patient 1 during a patient care visit on or about June 3, 2009. During said visit:

- a. You stated that Patient 1's boyfriend "is more interested in your pussy;"
- b. During a conversation about smoking cessation you stated, "I can taste it in your pussy;"
- c. You pointed at your crouch when Patient 1 asked, "What?" in response to your statement in paragraph (2)(b.) above;
- d. You asked "Will you share her pussy with me?" while discussing a female who had accompanied Patient 1 to your office. You then repeated the question, "Will you share her pussy with me?"
- e. You stated that Chantix "makes you a lesbian;"
- f. You engaged in sexual misconduct by attempting to fondle the breasts of Patient 1.

Further, on or about June 15, 2009, during a patient care visit with Patient 1, you engaged in sexual misconduct by attempting on two occasions to fondle the breasts of Patient 1.

- (3) In or about 2009, despite your concurrent physician-patient relationship, you engaged in sexual misconduct by performing anal and vaginal digital penetration of Patient 2 in your office during a patient visit. Further, you engaged in sexual intercourse with Patient 2 in or about 2009, subsequent to Patient 2 coming to you for Suboxone treatment. Based upon such conduct, on or about April 14, 2010, the Board issued to you a notice of opportunity for hearing regarding the

above. The administrative hearing in this matter is presently scheduled to commence on January 18, 2011.<sup>1</sup>

- (4) On or about October 4, 2010, despite your concurrent physician-patient relationship, you performed cunnilingus on Patient 3 in your office during a patient visit. In a recorded interview with law enforcement authorities on or about October 8, 2010, you stated that you licked Patient 3's clitoris for three seconds during a patient visit. You further contended that the sexual contact was consensual; however, Patient 3 disputed that contention. On or about October 28, 2010, in the Court of Common Pleas in Mahoning County, Ohio, you were indicted on one felony count of Rape in violation of Section 2907.02(A)(2)(B), and one felony count of Sexual Battery in violation of Section 2907.03(A)(6), Ohio Revised Code. The criminal trial in this matter is currently pending.

(St. Ex. 2 at 3-4)

\* \* \*

In addition, the Board stated in that letter that "failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence." (St. Ex. 2 at 5)

3. A Board investigator personally served Dr. Smith with the December 21, 2010 letter at his address of record on December 27, 2010. The address of record was "5 Court Street, Canfield, OH 44406." The Board received a signed Acknowledgement of Receipt from Dr. Smith. (St. Ex. 2)
4. In an e-mail to the Board dated January 26, 2011, Dr. Noffsinger stated that Dr. Smith did not appear for the January 26, 2011 examination at University Hospitals. Additionally, Dr. Noffsinger noted that Dr. Smith did not contact him. (St. Ex. 2 at 7-8)
5. David P. Katko, the Board's Enforcement Attorney, attested that Dr. Smith did not contact him to advise him that he was unable to attend the January 26, 2011, Board-ordered examination. (St. Ex. 2 at 1)

---

<sup>1</sup> The Hearing Examiner takes judicial notice the referenced matter went to hearing on February 2 and 4, 2011, in Case Nos. 10-CRF-023 and 10-CRF-042. On May 11, 2011, the matter was considered by the Board. The Board ordered that Dr. Smith's certificate to practice osteopathic medicine and surgery in the State of Ohio be permanently revoked. The Board's Order was effective on May 11, 2011.

**Dr. Smith's Explanation**

6. Dr. Smith testified that he received the Board's letter dated December 21, 2010. He also admitted that he did not attend the Board-ordered examination scheduled for January 26, 2011. (Tr. at 13, 15)

7. On February 4, 2011, Dr. Smith faxed a letter to the Board explaining why he did not attend the examination. The letter stated in pertinent part:

Enclosed are several of my psychiatric examinations. No evaluations in the amount of one thousand and seven hundred and fifty dollars (\$1,750.00) will change these facts. I object to these tactics. If any one were foolish enough to pay that amount again they would probably need a psychiatric evaluation. \* \* \*

(St. Ex. 3 at 3; Tr. at 16-17)

8. At hearing, Dr. Smith testified as to why he sent the above-mentioned letter:

I was protesting the amount of the examination. And the fact that I had three psychiatric examinations prior to this, I didn't think there was anything going to show that I was abnormal in any way.

\* \* \*

At that time, we did not have the finances to go through with this.

(Tr. at 17)

9. Dr. Smith testified that he did not contact anyone at the Board to tell them he was not attending the examination and his reasons for not attending. (Tr. at 17, 73)

10. In addition to the February 4, 2011 letter to the Board, Dr. Smith also attached a copy of a court-ordered Competency Evaluation dated March 6, 2008 that was performed by Thomas G. Gazley, Ph.D., a psychologist at Forensic Psychiatric Center of Northeast Ohio, Inc., in Youngstown, Ohio. (St. Ex. 3 at 5-10)

The Competency Evaluation was ordered by Judge Durkin of the Mahoning County Court of Common Pleas to determine whether Dr. Smith was competent to stand trial in another legal matter, Case No. 06-CR-28. The report states in pertinent part:

**RELEVANT BACKGROUND INFORMATION:**

\* \* \*

Dr. Smith has a history of conflict with the State Medical Board; he reports being charged with Practicing Medicine without a License in 1989, because he did not renew his license on time. His conflict with the Medical Board has been longstanding. He reports taking this case to the Court of Appeals, and he reports the decision went in his favor. He states his medical license is current. Dr. Smith reports no other criminal record. He reports no history of psychiatric illness, inpatient treatment, or outpatient treatment. There is no reported history of psychiatric illness in his family.

**MENTAL STATUS EXAM:**

\* \* \* There was no indication of excess motor movement; Dr. Smith was attentive, cooperative, polite, and remained in good behavioral control. His speech was clear, coherent, and of normal rate and volume. \* \* \* There was no evidence of thought disorder either in form or in content. His conversation was generally goal directed and relevant, however, he did have a tendency to become overly elaborate, describing extensive details of the circumstances and events. His stories regarding longstanding conflict with the Medical Board, as well as within the court system, could border on delusional, however, there was no collateral documentation to either refute or substantiate his claims. If delusional, the delusions would be considered non-bizarre. Hallucinatory activity was denied and there was no evidence of any current or historical perceptual disorder. \* \* \*

**DIAGNOSTIC IMPRESSION:**

Axis I: No Diagnosis

Axis II: Deferred

Axis III: No serious medical conditions known

\* \* \* His current and historical conflict with the Medical Board and the court system warrants some consideration of a possible Delusional Disorder, however, there was no current indication, either through collateral documentation, or through Dr. Smith's presentation that he was suffering a Delusional Disorder or any other psychosis process. He is

somewhat narcissistic in character; however, these characteristics do not rise to the level of a diagnosable Personality Disorder.

(St. Ex. 3 at 5-7)

11. In addition to the 2008 Competency Evaluation, Dr. Smith also provided to the Board a copy of a Psychiatry Assessment/Evaluation Note from George Otto, LISW, from the Veterans Administration dated February 7, 2008. Dr. Smith testified that “when the court ordered me to have a psychiatric evaluation, I had a psychiatric evaluation on my own.” (St. Ex. 3 at 11-14; Tr. at 20) The Psychiatry Assessment/Evaluation Note stated in relevant part:

A PTSD Screening test (PTSD 4Q) was positive (score=4).

1. Have you ever had any experience that was so frightening, horrible or upsetting that, IN THE PAST MONTH, you: Have you had any nightmares about it or thought about it when you did not want to? Yes.
2. Have you ever had any experience that was so frightening, horrible or upsetting that, IN THE PAST MONTH, you: Tried hard not to think about it or went out of your way to avoid situations that remind you of it? Yes.
3. Have you ever had any experience that was so frightening, horrible or upsetting that, IN THE PAST MONTH, you: Were constantly on guard, watchful, or easily startled? Yes.
4. Have you ever had any experience that was so frightening, horrible or upsetting that, IN THE PAST MONTH, you: Felt numb or detached from others, activities, or your surroundings? Yes.

\* \* \*

PRESENTING PROBLEMS: requested legal, anxiety, financial

MENTAL STATUS EXAM: anxious, angry, sleep erratic, diet good, no hallucinations, not suicidal or homicidal.

VOCATIONAL SITUATION: claims to have had charitable medical practice for many years - - both are physicians; this vet prescribes suboxon[e] - - to help people get off of opiate based drugs - - to include suboxon[e]. Gives away free medications. Claims to have done extensive research in food and aviation.

\* \* \*

MULTIAXIAL DIAGNOSES

AXIS I: Anxiety Disorder

AXIS II: Paranoid personality disorder (features of)  
Narcissistic personality disorder (features of)

AXIS III: detached retina in right eye

AXIS IV: legal difficulties

\* \* \*

ASSESSMENT: \* \* \* Self-admittedly preoccupied with religious issues; animated, angry, anxious, some sleep problems; strong sense of self-importance; defensive, presented a series of conflicts with the State of Ohio Medical Board \* \* \*

PLAN: Provide further services as requested; according to vet, he will secure further services from a staff psychologist \* \* \*.

\* \* \*

02/07/08 ADDENDUM

Will work with the Clinical director and mental health staff to provide further services to this veteran regarding his examination and appropriate tx.

(St. Ex. 3 at 11-14)

12. Additionally, Dr. Smith provided a copy of a January 19, 2011 Mental Health Note from George Otto, LISW, from the V.A.<sup>2</sup> The note stated in pertinent part:

PRESENTING PROBLEM: "LEGAL CIRCUMSTANCES"  
PRESENT ILLNESS:

---

<sup>2</sup> It appears that we do not have a complete copy of this medical record. According to the page numbers, it appears that we are missing pages 1-3. According to counsel for the Respondent, he has repeatedly tried to get a complete copy of this record from the V.A.; however, he was not able to do so.

Symptoms: RESTLESS, CONCERNED ABOUT KEEPING LEGAL  
LICENSE

Sleep: ERRATIC

Appetite/Nutritional Status: LOSING WEIGHT INTENTIONALLY

Duration of Symptoms: 15 YEARS

Current Stressors: ANXIOUS, CONCERNED, LITIGIOUS

Mental Status Examination

Level of Consciousness: Alert and Oriented to 4

Behavior: Cooperative \* \* \*

Speech: Pressured

Cognition: Grossly intact      Thought Process: Circumstantial

Thought Content:

Delusions: Absent Other

Hallucinations: Absent

Suicidal Ideations: Denied.

\* \* \*

Insight: Fair - Judgment: Fair

\* \* \*

#### DIAGNOSES

AXIS I:            ANXIETY DISORDER

AXIS II:          NONE

AXIS III:        DETACHED RETINA IN RIGHT EYE

AXIS IV:        LEGAL DIFFICULTIES

AXIS V:        73

#### ASSESSMENT:

Narrative: 71 YEAR OLD, VIETNAM THEATRE VET, ANIMATED,  
POLITE, ASSERTIVE, \* \* \* SEEKING MENTAL STATUS EXAM TO  
USE HIS MEDICAL LICENSE (PASSED PRELIMINARY MENTAL  
HEALTH EXAM), WANTS FURTHER EXAM FROM A  
PSYCHIATRIST. CAME ON THE RECOMMENDATION OF VET'S  
DEFENSE ATTORNEY, MARK HANNI.

**INITIAL PLAN:**

Veteran will see Medication Management Provider as clinically indicated. Treatment plan to be completed with veteran within 6 visits with mental health team. Veteran will contact clinic as needed.

\* \* \*

(Resp. Ex. G)

13. Dr. Smith admitted that he treated Patients 1, 2, and 3 as described in the December 21, 2010 letter. He further testified that the allegations contained within the letter “are false, violently false. Simply because someone is accused of something, that certainly does not give any substance to it.” (Tr. at 63, 71-72)
14. Dr. Smith testified that he is now willing to undergo a Board-ordered examination because he “ha[s] the finances now.” (Tr. at 17, 72)

**FINDINGS OF FACT**

1. By certified letter dated December 21, 2010, the Board notified Dr. Smith of its determination that it had reason to believe that he was in violation of R.C. 4731.22(B)(19), and the Board ordered him to undergo a psychiatric/psychosexual evaluation to determine whether he has an “inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.” The Board stated that its determination was based on one or more of reasons as set forth in the letter, which included the following:
  - In or about March 2009, despite your concurrent physician-patient relationship, you engaged in sexual intercourse with Patient 1 in your office.
  - Further, you saw Patient 1 during a patient care visit on or about June 3, 2009. During said visit:
    - a. You stated that Patient 1’s boyfriend “is more interested in your pussy;”
    - b. During a conversation about smoking cessation you stated, “I can taste it in your pussy;”

- c. You pointed at your crouch when Patient 1 asked, "What?" in response to your statement in paragraph (2)(b.) above;
    - d. You asked "Will you share her pussy with me?" while discussing a female who had accompanied Patient 1 to your office. You then repeated the question, "Will you share her pussy with me?"
    - e. You stated that Chantix "makes you a lesbian;"
    - f. You engaged in sexual misconduct by attempting to fondle the breasts of Patient 1.
  - Further, on or about June 15, 2009, during a patient care visit with Patient 1, you engaged in sexual misconduct by attempting on two occasions to fondle the breasts of Patient 1.
  - In or about 2009, despite your concurrent physician-patient relationship, you engaged in sexual misconduct by performing anal and vaginal digital penetration of Patient 2 in your office during a patient visit. Further, you engaged in sexual intercourse with Patient 2 in or about 2009, subsequent to Patient 2 coming to you for Suboxone treatment. Based upon such conduct, on or about April 14, 2010, the Board issued to you a notice of opportunity for hearing regarding the above. The administrative hearing in this matter is presently scheduled to commence on January 18, 2011.
  - On or about October 4, 2010, despite your concurrent physician-patient relationship, you performed cunnilingus on Patient 3 in your office during a patient visit. In a recorded interview with law enforcement authorities on or about October 8, 2010, you stated that you licked Patient 3's clitoris for three seconds during a patient visit. You further contended that the sexual contact was consensual; however, Patient 3 disputed that contention. On or about October 28, 2010, in the Court of Common Pleas in Mahoning County, Ohio, you were indicted on one felony count of Rape in violation of Section 2907.02(A)(2)(B), and one felony count of Sexual Battery in violation of Section 2907.03(A)(6), Ohio Revised Code. The criminal trial in this matter is currently pending.
2. In its letter of December 21, 2010, the Board ordered Dr. Smith to a psychiatric/psychosexual evaluation pursuant to R.C. 4731.22(B)(19). The Board stated that the examination was scheduled to take place with Stephen Noffsinger, M.D., a Board-approved treatment provider, on January 26, 2011, at 8:30 a.m., and that Dr. Smith was responsible for paying the cost of the examination, which was estimated to be \$1,750.00.

The Board notified Dr. Smith in its letter that failure to submit to an examination ordered by the Board constitutes an admission of the allegations against him unless the failure is due to circumstances beyond his control. Finally, the Board notified Dr. Smith that, if he failed to submit to the examination and if such failure was not due to circumstances beyond his control, the Board would be authorized to enter a default and final order without the taking of testimony or presentation of evidence.

3. Dr. Smith was personally served with the December 21, 2010 letter at his office and signed an Acknowledgement of Receipt. Dr. Smith admits that he received the December 21, 2010 letter.
4. Dr. Smith did not appear for the Board-ordered examination with Dr. Noffsinger as ordered. Dr. Smith testified that the reason he did not appear for the examination as scheduled was because he protested the cost of the examination, he was unable to afford the examination, and he had three prior examinations that did not find him "abnormal."

### CONCLUSIONS OF LAW

1. R.C. 4731.22(B) provides, in pertinent part:

The board \* \* \* shall \* \* \* 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:

\* \* \*

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit a mental examination, physical examination \* \* \*.

The expense of the examination is the responsibility of the individual compelled to be examined.

Failure to submit to a mental or physical examination \* \* \* ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

2. Based on the information set forth in the Board's letter dated December 21, 2010, the Board lawfully ordered Larry Lee Smith, D.O., to submit to a psychiatric/psychosexual evaluation to assess ability to practice according to acceptable and prevailing standards of care as set forth in R.C. 4731.22(B)(19). The Board duly notified him of the examination order and the scheduled date, time, and place of the examination.
3. Dr. Smith did not attend the examination due to circumstances within his control.
4. Pursuant to R.C. 4731.22(B)(19), Dr. Smith's failure to submit to the Board-ordered examination, for reasons within his control, constitutes an admission by Dr. Smith of the truth of the allegations in the Board's letter dated December 21, 2010.
5. Pursuant to R.C. 4731.22(B)(19), the foregoing Findings of Fact and Conclusions of Law establish that Dr. Smith has an "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills."

#### **DISCUSSION CONCERNING PROPOSED ORDER**

Dr. Smith had notice of the January 26, 2011 examination. However, he chose not to attend the scheduled examination because, according to Dr. Smith, he could not afford the cost of the examination and he didn't believe he needed another examination because he had undergone three previous examinations. However, the Hearing Examiner finds that his reasons for not attending the examination were due to circumstances *within* his control. Dr. Smith could have contacted the Board before the examination to explain his financial concerns and request other arrangements and he could have told the Board about his previous examinations.

In regard to Dr. Smith's prior examinations, the Hearing Examiner finds that the evidence presented was unreliable and therefore, it did not rebut the legal presumption of inability to practice. First, two of the three examinations took place over three years ago. In fact, the first two examinations took place more than one year before the events occurred. As such, there is no evidence that the examinations even addressed the issues pertinent to this matter. Second, there is no evidence that any of those examinations were performed at a Board-approved treatment facility or by a Board-approved physician. In fact, two of the three examinations were

performed by a licensed social worker. Finally, as for the third examination, the January 2011 note from the V.A. social worker is not a complete record and was not compelling evidence.

With regard to the appropriate discipline in this matter, two factors are particularly relevant. First, it is questionable whether Dr. Smith is worthy of regulatory efforts by the Board because there is no evidence that Dr. Smith even tried to attend the Board-ordered examination and his letter to the Board further demonstrates his unwillingness to be regulated.<sup>3</sup> Second, Dr. Smith has a prior disciplinary action in which the Board imposed the most severe sanction-permanent revocation. Accordingly, the Hearing Examiner recommends that this Board issue an order revoking Dr. Smith's certificate to practice osteopathic medicine and surgery.

**PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Larry Lee Smith, D.O., to practice osteopathic medicine and surgery 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.



Danielle R. Blue, Esq.  
Hearing Examiner

---

<sup>3</sup> Dr. Smith's testimony at the hearing that he is now willing to submit to the Board-ordered examination does not alter this conclusion because Dr. Smith made that statement shortly before the Board considered the prior disciplinary action.

# 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

## EXCERPT FROM THE DRAFT MINUTES OF JULY 13, 2011

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Suppan announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Douglas B. Karel, M.D.; Rula Nadim Al-Aouar, M.D.; Steven Francis Brezny, M.D.; Allan William Clark, M.D.; Janice Electa Green Douglas, M.D.; Martin Escobar, M.D.; Philip M. Hutchison, D.O.; Melissa J. Marker, D.O.; and Larry Lee Smith, D.O. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan 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:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert and Dr. Amato served as Supervising Member. In addition, Dr. Steinbergh served as Acting Secretary in the case of Steven Francis Brezny, M.D., and therefore she cannot vote in that matter.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....  
LARRY LEE SMITH, D.O., Case No. 10-CRF-015  
.....

**Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter Larry Lee Smith, D.O. Mr. Hairston seconded the motion.**

.....  
**Dr. Madia moved to amend the Proposed Order to a Permanent Revocation of Dr. Smith's license to practice osteopathic medicine and surgery in Ohio. Ms. Elsass seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

The motion to amend carried.

**Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter Larry Lee Smith, D.O. Mr. Hairston seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Strafford	- aye
------------	---------------	-------

Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Dr. Talmage	- abstain
Ms. Elsass	- aye
Dr. Ramprasad	- aye

The motion to approve carried.

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO  
 AND  
 BEFORE THE STATE MEDICAL BOARD OF OHIO

LARRY LEE SMITH, D.O. )  
 5 Court Street )  
 Canfield, OH 44406 )  
 )  
 Appellant, )  
 vs. )  
 )  
 STATE MEDICAL BOARD OF OHIO, )  
 30 East Broad Street, 3<sup>rd</sup> Floor )  
 Columbus, OH 43215 )  
 )  
 Appellee. )

11 CV F 05 6436  
 CASE NO. \_\_\_\_\_

Category H

JUDGE \_\_\_\_\_

NOTICE OF APPEAL

STATE MEDICAL BOARD FILED  
 OF OHIO COMMON PLEAS COURT  
 FRANKLIN CO. OHIO  
 2011 MAY 25 AM 8:53  
 2011 MAY 25 AM 9:17  
 CLERK OF COURTS-CV

Larry Lee Smith, D.O., ("Dr. Smith"), Appellant, hereby gives Notice of Appeal on questions of law and fact to the Court of Common Pleas, Franklin County, Ohio, pursuant to Chapter 119 of the Ohio Revised Code from the Decision of the Ohio State Medical Board ("Board") dated May 11, 2011, (mailed May 12, 2011) against Dr. Smith. A copy of the Board Order is attached hereto as Exhibit A. Attached as Exhibit B are Board draft minutes of May 12, 2011, and Appellant will supplement this Notice of Appeal when minutes are available.

The grounds for the appeal and the errors complained of known as of this time are as follows:

- I. The Decision of the Ohio State Medical Board should be reversed on the basis that the Decision is not supported by reliable, probative and substantial evidence and is not otherwise in accordance with law;
- II. Appellant was denied substantive due process in violations of the Ohio and United States Constitutions when the State knowingly presented evidence to the Board that included information outside of the charges set forth in the citation issued against the Appellant;

STATE MEDICAL BOARD  
 OF OHIO

2011 MAY 25 AM 2:28  
 2011 MAY 25 AM 1:51

III. The Appellant was denied substantive due process under both the Ohio and the United State Constitutions when the citation of claims against Appellant deliberately included information for which there was no claim of wrongdoing, but was done solely for the purpose of improperly influencing the Board;

IV. Appellant was denied substantive due process rights under Ohio and the United States Constitutions when the Board considered factors beyond the Notice of Opportunity of Hearing sent to Appellant, and outside of the hearing record, during the Board's deliberation of the Report and Recommendation of the Hearing Examiner;

V. Appellant was denied substantive due process rights under the Ohio and Federal Constitutions when Board's Order failed to give proper wait to the Hearing Examiner's refusal to grant a continuance that would have allowed Dr. Smith to physically participate in his hearing, and defend the allegations against him.

VI. Appellant was denied substantive due process rights under the Ohio and Federal Constitutions when Board's Order was based on video evidence improperly in the record as it was not, nor could not be identified, nor was the audio from the video's transcribed to allow Dr. Smith's counsel to formulate any meaningful cross-examination;

VII. Appellant was denied substantive due process rights and equal protection under the Ohio and United States Constitutions when the Board failed to consider the Motions of Appellant, and the Rulings of the Hearing Examiner, as required by Board's own Administrative Rules and the Ohio Revised Code, prior to consideration of the Report and Recommendation of the Hearing Examiner.

STATE MEDICAL BOARD  
OF OHIO

2011 MAR 31 PM 2:28

Appellant reserves the right to add additional assignments of error and grounds for appeal once the transcript of proceedings has been completed and counsel has an opportunity to review the record.

Respectfully submitted,

**GRAFF & MCGOVERN, L.P.A.**

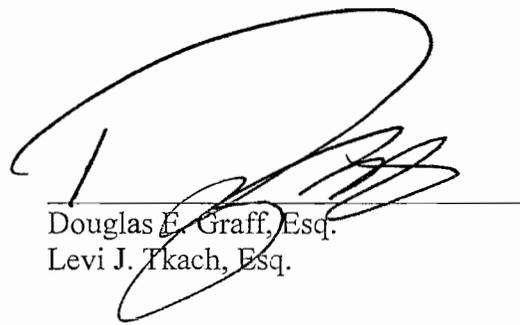


Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsels for Larry Lee Smith, D.O.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800 – Phone  
(614) 228-8811 – Fax  
doug@graflaw.com - Email

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing NOTICE OF APPEAL was hand delivered to the State Medical Board of Ohio, 20 East Broad Street, 3<sup>rd</sup> Floor, Columbus, Ohio 43215 and sent via Regular U.S. Mail this 24<sup>th</sup> day of May, 2011, to the following:

Katherine J, Bockbrader, Esq.  
Assistant Attorney General,  
Health & Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor,  
Columbus, Ohio 43215



Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

STATE MEDICAL BOARD  
OF OHIO

2011 MAY 31 PM 2:28

# 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

May 11, 2011

Larry Lee Smith, D.O.  
11105 Springfield Road  
North Lima, OH 44452

RE: Case Nos. 10-CRF-023  
10-CRF-042

Dear Doctor Smith:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 11, 2011, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3021 3874  
RETURN RECEIPT REQUESTED

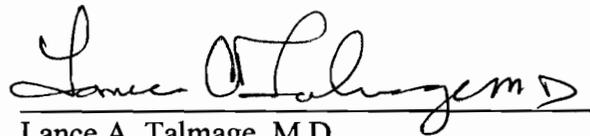
CC: Douglas E. Graff and Levi J. Tkach, Esqs.  
CERTIFIED MAIL NO. 91 7108 2133 3938 3021 3881  
RETURN RECEIPT REQUESTED

*Mailed 5-12-11*

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 May 11, 2011, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Larry Lee Smith, D.O., Case Nos. 10-CRF-023 and 10-CRF-042, 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.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

May 11, 2011

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NOS. 10-CRF-023  
10-CRF-042

LARRY LEE SMITH, D.O.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 11, 2011.

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 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 Larry Lee Smith, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY 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)

May 11, 2011

Date

2011 MAR 24 PM 9:03

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

<b>In the Consolidated Matters of</b>	*	<b>Case Nos. 10-CRF-023</b>
<b>Larry Lee Smith, D.O.,</b>	*	<b>10-CRF-042</b>
<b>Respondent.</b>	*	<b>Hearing Examiner Porter</b>

**REPORT AND RECOMMENDATION**

Basis for Hearing: Case No. 10-CRF-023

By letter dated March 10, 2010, the State Medical Board of Ohio [Board] notified Larry Lee Smith, D.O., in Case No. 10-CRF-023, that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action upon an allegation that, on or about January 25, 2010, in the Mahoning County Common Pleas Court, Dr. Smith had pleaded guilty to and been found guilty of a misdemeanor for violating Section 3719.08(D), Ohio Revised Code, Label Required. The Board further alleged that Dr. Smith's plea and conviction constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Accordingly, the Board advised Dr. Smith of his right to request a hearing in this matter, and received his written request on March 25, 2010. (State's Exhibit [St. Ex.] 1)

Basis for Hearing: Case No. 10-CRF-042

Subsequently, in a letter dated April 14, 2010, the Board notified Dr. Smith, in Case No. 10-CRF-042, that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine in Ohio based on allegations that Dr. Smith had engaged in sexual misconduct with two patients identified on a confidential Patient Key. The Board further alleged that Dr. Smith's acts, conduct, and/or omissions constitute: "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A)(1), Ohio Administrative Code, violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code." (St. Ex. 2)

Accordingly, the Board advised Dr. Smith of his right to request a hearing in this second matter, and received his written request on April 22, 2010. (St. Ex. 2)

Consolidation of Cases

By Entry filed August 9, 2010, Case Nos. 10-CRF-023 and 10-CRF-042 were consolidated for hearing.

Appearances

Richard Cordray, Attorney General, and Katherine Bockbrader, Assistant Attorney General, for the State of Ohio. Douglas E. Graff and Levi J. Tkach, Esqs., for Dr. Smith.

Hearing Dates: February 2 and 4, 2011

**PROCEDURAL MATTERS**

1. At the close of the hearing on these matters, the record was held open to allow time for: (a) the State to redact State's Exhibit 3, (b) several audio disks to be transcribed, (c) the parties to review the transcript of the audio disks and compare them with the video recordings already admitted to the record, and (d) the parties to object to the admission of the redacted exhibit, the audio recordings, and the transcript of the audio recordings. No objections have been received. Accordingly:
  - The redacted version of State's Exhibit 3, marked State's Exhibit 3A, was admitted to the record. State's Exhibit 3 is being held as proffered material for the State.
  - The audio recordings, State's Exhibits 7A through 7E, were sealed to protect patient confidentiality and admitted to the record.
  - The transcript of the audio disks, marked Board Exhibit A, and the Hearing Examiner's errata sheet for that transcript, marked Board Exhibit B, were admitted to the record. Board Exhibit A was sealed to protect patient confidentiality.

The hearing record closed on March 4, 2011.

2. The Hearing Transcript was redacted from page 218, line 12, through page 221, line 4; and from page 244, line 16, through page 250, line 13, for the purpose of removing discussion that would be unfairly prejudicial to a party. Unredacted pages 218 through 221 and 244 through 250 were marked Board Exhibit C and are being held as proffered material.
3. Post-hearing, the Hearing Examiner determined that the name of a witness who testified in these matters could potentially be used to identify Patient 1. Accordingly, the Hearing Examiner ordered an amended transcript with "Friend of Patient 1" substituted for that witness' name. Further, the Hearing Examiner created and admitted to the record a

Confidential Key, marked Board Exhibit D, that identifies that witness. Board Exhibit D was sealed to protect patient confidentiality.

### SUMMARY OF THE EVIDENCE

All exhibits and the transcript of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

#### Background Information

1. According to the Ohio e-License Center, Larry Lee Smith, D.O., obtained his osteopathic medical degree in 1966 from the Philadelphia College of Osteopathic Medicine. He was granted License No. 34.001724 in June 1967. Dr. Smith practices general medicine in Canfield Village, Ohio. (Ohio e-License Center <<https://license.ohio.gov/Lookup/>>, accessed March 22, 2011)

#### Testimony of Patient 1

2. Dr. Smith's medical records indicate that he first saw Patient 1 in August 2008. Her last visit to his office was July 15, 2009. (St. Ex. 4)
3. Patient 1 testified that she is a former patient of Dr. Smith's, and that she had seen him for Suboxone treatment for her opiate addiction, which included heroin use. Patient 1 noted that she had been referred to him by a friend because he would see her despite her lack of health insurance. Patient 1 testified that Dr. Smith prescribed Suboxone right away. (Hearing Transcript [Tr.] at 111-112, 223-224)
4. Patient 1 testified that, at first, she liked Dr. Smith: "I thought he was wonderful. You know, he spoke a lot about God. Yes, I thought he was—he was a savior. You know, I thought he was someone that would—really wanted to reach out and help me, and, yes, I did. I looked up to him." (Tr. at 226)
5. Eventually, however, Patient 1's opinion of Dr. Smith changed. Patient 1 testified:

He would—was too personal about my looks. Like, would make comments. I felt comfortable enough to tell him how I was very self-conscious about myself, and which brought him to say you shouldn't be self-conscious about your body, your breasts—shouldn't be conscious. And, you know, he just said stuff a doctor shouldn't say.

(Tr. at 112)
6. Patient 1 testified that, when she first entered the Suboxone program, Dr. Smith had informed her that she must avoid Valium and Xanax because the combination of medications could kill her. Nevertheless, Dr. Smith later prescribed both of those

medications, Patient 1 said, to treat her epileptic seizures. Patient 1 testified, “He had me on a lot of Xanax and a lot of Valium.”<sup>1</sup> (Tr. at 113; See St. Ex. 4 at 5, 7, 9) Dr. Smith also prescribed Dilantin to Patient 1. (St. Ex. 4 at 9, 15)

7. Patient 1 testified that Dr. Smith eventually began touching her in a sexual way, including touching her breasts, and that he had sexual intercourse with her and performed oral sex on her. She testified that the sexual intercourse and oral sex occurred on a Saturday in 2009. On that day, Patient 1 had run out of Valium. She called Dr. Smith, told him that she needed a refill, and he asked her to come to his office. (Tr. at 112-114, 117-118)

Patient 1 testified that, when she arrived at Dr. Smith’s office, she went into an exam room. Dr. Smith shut the door behind them and gave her an envelope of pills. She believes they were Valium 10 mg. Dr. Smith gave her some water and she recalls taking some of the pills. Patient 1 testified that she had been nervous that day, and that “it was probably withdrawal from being on so much of what he had [her] on.” (Tr. at 114)

Patient 1 explained as follows that she was in a daze on the exam table:

I just remember him being on top of me. I remember being and feeling real weak. \* \* \*

\* \* \*

I, like, laid there. I couldn’t do anything. I didn’t grab him.

(Tr. at 114-115)

When asked if Dr. Smith had sex with her, Patient 1 replied:

Yes, yes. I remember him getting dressed and I was—I was, like, almost like this when I left. But I had to get my act together because it had just happened, and I couldn’t walk out and let anyone know because I just felt so—I can’t explain it. That’s why I didn’t tell nobody at first because I—How are you going to tell someone your doctor did that to you?

I eventually—It was weeks—a couple weeks, I don’t know exactly how many weeks. I went to one visit I know to see him after the incident, and I was with my best friend. And she said, “What’s wrong with you?” I was shaking. I was nervous to go back, but I needed to get my Suboxone. And I said, “Nothing,” I said, “but if you hear me scream, please come back and”—thank you—“please come back and check on me.”

---

<sup>1</sup> Neither of the notices of opportunity for hearing in this matter accused Dr. Smith of inappropriate prescribing or dispensing of medication; accordingly, such information shall not be considered by the Hearing Examiner or the Board as a basis for discipline.

It was norm—not a normal visit, but he had mentioned the incident to me. I don't remember in what words he used, but he didn't act like it didn't happen. He acknowledged that it did happen. And I think he asked me if I had told anyone or—I said no. And I got my prescription, I left.

Weeks go by, and I broke down because I couldn't take it—carry it anymore. And so I told my best friend and my mother. We went to the cops.

(Tr. at 115-116)

8. Patient 1 testified that, after contacting the police, she had gone back to Dr. Smith's office on multiple occasions carrying a purse with a hidden camera. (Tr. at 117)

#### **Testimony of Andrew Bodzak**

9. Andrew Bodzak testified that he currently teaches criminal justice at Pennsylvania State University. Prior to that, Mr. Bodzak was employed by the Canfield, Ohio, Police Department for roughly 30 years, and ended his career there as the Assistant Chief of Police. (Tr. at 16-17, 153-157)

10. Mr. Bodzak testified concerning his first contact with Patient 1:

Originally she had contacted me by telephone when I was off duty approximately May 30th of 2009. She indicated that she was a student—previously was a student of mine in the police academy, and I did not recognize the name. But she called me at my residence, and she was very emotional and claimed that she had been sexually assaulted by Dr. Smith, who is a physician in Canfield.

(Tr. at 18) Mr. Bodzak instructed Patient 1 to go to the Canfield police station to meet with him and file a complaint. After her complaint was filed, Mr. Bodzak determined there was sufficient probable cause to initiate an investigation. (Tr. at 19, 161-162)

11. Mr. Bodzak testified that, as part of the investigation of Dr. Smith, Patient 1 agreed to continue seeing Dr. Smith and to carry concealed electronic recording equipment with her into his office. Patient 1 did so on three occasions: June 3, June 15, and July 15, 2009. (Tr. at 19-23) Mr. Bodzak testified, "I asked her to engage in conversation, and that if Dr. Smith spoke about sex to go along with that \* \* \*." When asked if he had instructed her to engage in conversation of a sexual nature, Mr. Bodzak replied, "No. I said let Dr. Smith be the one to take the lead." (Tr. at 168)
12. Mr. Bodzak testified that no criminal charges resulted from the investigation. (Tr. at 169)

**Video Excerpts**

*June 3, 2009, visit*

13. At approximately 14:29:30 on the video of her June 3, 2009, visit, Dr. Smith briefly examined Patient 1's pupils, and the following conversation took place:

DR. SMITH: Look up here.

PATIENT NO. 1: What?

DR. SMITH: I got to see what your pupils are. See what they're telling me.

PATIENT NO. 1: How are they?

DR. SMITH: Pupils say—pupils say –

PATIENT NO. 1: (Unintelligible) pupil reader.

DR. SMITH: Huh? Pupils say I have been a bad girl.

PATIENT NO. 1: Negative.

DR. SMITH: I have done some things I shouldn't have done.

PATIENT NO. 1: Negative. That's not –

DR. SMITH: What?

PATIENT NO. 1: No, not me.

DR. SMITH: I took my panties off in front of my roommate.

PATIENT NO. 1: Who?

DR. SMITH: My roommate.

PATIENT NO. 1: Oh, would you stop. [Patient 1's Friend]?

DR. SMITH: Pardon?

PATIENT NO. 1: [Patient 1's Friend]?

DR. SMITH: Uh-huh. But it's dark. Pupils say, I do my best work in the dark.

(Board Exhibit [Bd. Ex.] A at 32-33; St. Ex. 6A, track 2, at 14:29:30 – 14:30:37)

14. Immediately thereafter, Patient 1 told Dr. Smith that she has excess skin and expressed concerned about her appearance. The following conversation then took place:

DR. SMITH: Well, what you like, should that bother anybody who cares?  
Absolutely not.

PATIENT NO. 1: Well, I don't know.

DR. SMITH: Did it bother you with your boyfriend?

PATIENT NO. 1: I was in the dark when I had a boyfriend. I could never be real open, you know what I mean? So it did affect, yes, it affected me.

DR. SMITH: It affected you.

PATIENT NO. 1: Yeah.

DR. SMITH: More so than him.

PATIENT NO. 1: (Unintelligible) yeah, probably with me.

DR. SMITH: He's more interested in your pussy.

(Bd. Ex. A at 33-34; Bd. Ex. B; St. Ex. 6A, track 3, at 14:30:52 – 14:31:30)

15. Subsequently, Dr. Smith inquired whether Patient 1's friend had accompanied Patient 1 to his office. This conversation followed:

PATIENT NO. 1: Yeah. She's out in the waiting room.

DR. SMITH: Ooh. Do I get to talk to her?

PATIENT NO. 1: If you wish. She's all yours. Well, not all yours, but I'll share her with you, and that's it.

DR. SMITH: You'll share her pussy with me?

PATIENT NO. 1: You can't have her. Huh?

DR. SMITH: Would you share her pussy with me?

PATIENT NO. 1: Maybe. Maybe.

DR. SMITH: She shares with you.

PATIENT NO. 1: She share—She'd probably share with me.  
(Unintelligible). Probably I could talk her into it.

DR. SMITH: Talk her into (unintelligible).

PATIENT NO. 1: (Unintelligible). Maybe. I've mentioned it, but she didn't  
say, you know. She was, like, huh. Give it some thought.

(Bd. Ex. A at 35-36; Bd. Ex. B; St. Ex. 6A, track 3, at 14:32:21 – 14:33:06)

16. Shortly thereafter, Dr. Smith questioned Patient 1 concerning her smoking. He also asked if Patient 1's friend smokes, and Patient 1 answered that she does. The following discussion took place:

DR. SMITH: Tell her I don't like to kiss girls that smoke.

PATIENT NO. 1: I know. You told me that you tasted nicotine on my skin,  
remember, yeah, you told me that. Shit.

DR. SMITH: I could taste nicotine in your pussy.

PATIENT NO. 1: What?<sup>2</sup> You could taste it in there, on me?<sup>3</sup>

DR. SMITH: All body fluids create—carry the solution. It will actually pass  
out through your skin.

PATIENT NO. 1: So you could taste it in my pussy. That's embarrassing a  
little, huh? Especially that you're not a nonsmoker. \* \* \*

(Bd. Ex. A at 38-39; Bd. Ex. B; St. Ex. 6A, track 3, at 14:34:58 – 14:35:45)

17. When the discussion turned to smoking cessation, Dr. Smith talked to Patient 1 about using Chantix, a smoking cessation medication. The discussion continued:

DR. SMITH: Okay. You got to get this Chantix started. It's free.

PATIENT NO. 1: What about side effects?

DR. SMITH: Side effects. Makes you short of breath.

---

<sup>2</sup> At this time, Dr. Smith, who is seated, pointed to his crotch. (St. Ex. 6A, track 3, at 14:35:17)

<sup>3</sup> Dr. Smith nodded his head in response to this question. (St. Ex. 6A, track 3, at 14:35:19)

PATIENT NO. 1: I'm already.

DR. SMITH: Makes you a lesbian and—

PATIENT NO. 1: I'm going to go get it then soon.

DR. SMITH: Right.

PATIENT NO. 1: Right. Right. Okay.

DR. SMITH: It will make you more of a lesbian if you—than you already were.

(Bd. Ex. A at 40-41; St. Ex. 6A, track 3, at 14:36:44 – 14:37:19)

*June 15, 2009, visit*

18. During Patient 1's testimony, she was shown a portion of the video taken during her June 15, 2009, visit. On State's Exhibit 6B, Track 1, starting at 17:58:36, Dr. Smith entered the exam room where Patient 1 was sitting. He walked up to Patient 1 and appears to give her a hug.<sup>4</sup> While that is happening, Patient 1 said, "Don't. Don't you. Don't." Dr. Smith asked, "Don't what?" Patient 1 replied, "Don't you don't. Don't do that, doctor." (Bd. Ex. A at 54-55; St. Ex. 6B, track 1, at 17:58:36 – 17:48:52)

When asked what had been happening at that time, Patient 1 responded, "He was hugging me and rubbing me." When asked where he had touched her, Patient 1 replied, "I think he put one of his hands on my breast and the other on my back, and he was, like, embracing if you would call it, like—you know, it was—like I said, that was the—that's how he was with me after that." (Tr. at 124)

*July 15, 2009, visit*

19. Toward the end of the video-recording for Patient 1's final, July 15, 2009, visit, after a discussion concerning Patient 1's non-compliance in taking her Dilantin, Patient 1 told Dr. Smith that he had been treating her differently since they had sex. Dr. Smith reacted by telling Patient 1 that she upset him, and accused her of selling her Suboxone, which Patient 1 emphatically denied. He also told Patient 1 that he no longer wanted her to be his patient. Moreover, Dr. Smith accused Patient 1 of not actually having seizures or "auras," which Patient 1 denied,<sup>5</sup> and of asking for too much Valium, which Patient 1 also denied. Finally, when Patient 1 asked Dr. Smith, "Then why did you have sex with me?" Dr. Smith

---

<sup>4</sup> All that is visible on the video at this time is Dr. Smith's back; Patient 1 cannot be seen. (St. Ex. 6B, track 1, at 17:58:40)

<sup>5</sup> Earlier during that visit, Patient 1 advised Dr. Smith that she had a seizure in her home five days earlier that resulted in the paramedics being called. He did not question her veracity at that time. (Bd. Ex. A at 98-100; St. Ex. 6C, track 2, at 13:57:55 – track 3 at 13:59:42)

replied, “I didn’t have sex with you. You’re the one who had sex with you.” (Bd. Ex. A at 105-111; St. Ex. 6C, track 3, at 14:05:06 – 14:08:23)

**Further Testimony of Patient 1**

20. Patient 1 testified that, after her July 15, 2009, visit, she did not see Dr. Smith again. Patient 1 further testified that she had had approximately 60 tablets left on her Suboxone prescription that she used to wean herself off of the medication. (Tr. at 118)

21. When asked how her experience with Dr. Smith has affected her feelings about doctors, Patient 1 replied:

I’m afraid of—How can I—How do I feel? I can’t trust a guy. I go to the ER for a toothache or a broken whatever, and I ask for a female.

The only time I don’t do that is when I have a seizure, because I’m not there and I don’t know what I’m doing when I have a seizure, but I don’t even—I don’t want a male doctor. No offense, but it’s hard. I never thought he would be like that.

(Tr. at 119)

22. Patient 1 testified that, during the video-recorded visits, Dr. Smith had tried to grab her breasts. (Tr. at 117)

23. On cross-examination, Patient 1 denied that she had ever been romantically interested in Dr. Smith. She further denied that she had written poetry to Dr. Smith. She testified that a poem that is included in her medical record is a poem that she had been required to write by the Canfield Drug Court program. She testified that it concerns her life while on drugs and how drugs had ruined her life. Moreover, she testified that she had written the poem before she met Dr. Smith. She testified that she may have read it to him and he may have kept a copy in her medical record. (Tr. at 226-227; St. Ex. 4 at 32)

When asked about a line in her poem that states, “Now I must make my decision and I know it will be tough, because one kiss was too many and a thousand not enough,” Patient 1 replied:

That means drugs. That’s a thing they say about drugs; once you do it once, you do it twice, then three is—you know, you keep doing it, that’s enough. It was too much and that’s when you become addicted.

(Tr. at 227)

### Testimony of Friend of Patient 1

24. Friend of Patient 1 (also referred to herein as “Patient 1’s Friend”) testified that she has known Patient 1 for about 12 years. (Tr. at 101-102) Patient 1’s Friend further testified that Patient 1 had gone to see Dr. Smith for help with her drug addiction:

Her mother and I were—we had found this doctor because she didn’t have insurance, and he was willing to work with her as far as helping out with, you know, medication and seeing her. And he was the only doctor we could find in the area that would help (Patient No. 1).

\* \* \*

At first he seemed like a really, really wonderful man. It was like a blessing to her, and she looked up to him. I mean, she thought that he was really helping her, and as time went on that wasn’t the case.

(Tr. at 102-103)

25. Patient 1’s Friend noted that Patient 1 was not able to drive at that time and that she or Patient 1’s mother had driven Patient 1 to her appointments with Dr. Smith. Patient 1’s Friend believes that she had accompanied Patient 1 to three or four visits. Patient 1’s Friend would wait either in the waiting room or in her car. (Tr. at 103)
26. Patient 1’s Friend testified that she began to notice some unusual things after Patient 1’s visits with Dr. Smith. For one thing, Patient 1 was always the last patient to leave Dr. Smith’s office; sometimes Patient 1’s Friend would wait two or three hours for Patient 1 to come out. Further, after about three or four weeks, Patient 1 began acting strangely following her appointments and just didn’t seem to be “with it.” When Patient 1’s Friend asked Patient 1 what was wrong, she would answer, “Nothing.” (Tr. at 103-104)
27. Patient 1’s Friend testified that, at one of Patient 1’s first appointments with Dr. Smith, Patient 1’s Friend and Patient 1’s mother had participated in a discussion with Patient 1 and Dr. Smith. At that time, Dr. Smith stated that Patient 1 would be prescribed Suboxone. In addition, Dr. Smith advised Patient 1 that “she was not allowed any other medications, no Xanax, no Ativan, [and] it would kill her if she was on that with Suboxone. And he stressed that to us, you know, to make sure that she didn’t have, you know, any other doctor or whatever give her any of that type of medication.” (Tr. at 104-105) Nevertheless, Patient 1’s Friend testified that, following a subsequent visit, when Patient 1 came out of Dr. Smith’s office:

She had a packet full of pills. I said, “What are those?” She goes, “The doctor gave them to me.” I said, “What are they?” She says, “Xanax.”

I said, "(Patient No. 1), you're not supposed to take those." I says, "Why would he give those to you?" I says, "Why isn't it in a prescription? Why did he give them to you in a little baggy?" It was like a little paper thing with a lid.

And he started prescribing her—I mean, next thing we know she was, like, in a daze. We couldn't even talk to her. She would just be, like, sleeping, she would fall down at the table. She didn't even know what she was doing.

And I had made it personal, I went in to see the doctor on my own. I walked into his office because her mother and I were concerned about her behavior. She wasn't acting right. And Dr. Smith, as I walked in there, he had questioned me if he—if she had a boyfriend. And I says, "Not that I know of."

And he was asking me personal questions, and it ended up being more personal about her than what I went in to ask him about her. It was, like, twisted around. He started asking me questions, if I had a boyfriend. It was just really bizarre. I just—I couldn't believe the conversation that we had.

I didn't know what was going on at the time. And after time had gone past and after all this was happening, (Patient No. 1) just kind of went into a silent zone. We couldn't get any information from her. She went quiet.

And so she broke down in my apartment and she told us what had happened. And I called her mom up to my—or, to my apartment and I made her sit down with us.

(Tr. at 105-106)

When asked what Patient 1 said had happened, Patient 1's Friend replied: "She said that Dr. Smith was—was having sex with her, he was raping her. And we then went to Canfield Police Department, and we went to the detective down there and I made her tell her story to them." (Tr. at 106-107)

28. Patient 1's Friend testified that Patient 1 went to the police and that they were asked to go back to Dr. Smith's office with recording equipment. Patient 1's Friend further testified that she was asked to accompany Patient 1. (Tr. at 107)
29. Patient 1's Friend recounted one visit where she had accompanied Patient 1 to Dr. Smith's office. On that occasion, Dr. Smith put Patient 1 in one room and Patient 1's Friend in another.<sup>6</sup> Patient 1's Friend testified:

He sat up on his table, and in between his legs he pulled me towards him. He put his hands on my face and went down my face, my neck and down the

---

<sup>6</sup> Patient 1's Friend noted that she is not a patient of Dr. Smith's. (Tr. at 107)

sides—both sides of myself, and told me he wants to see all of me, and asked me if—you know, about a threesome with (Patient No. 1)[.]

(Tr. at 107)

30. Patient 1's Friend testified that, prior to Patient 1 informing her regarding what had been going on with Dr. Smith, she and Patient 1 had been sitting in Dr. Smith's waiting room. When Patient 1 was called back, she said to Patient 1's Friend, "If you hear me scream, please come in and get me." Patient 1's Friend testified: "I thought she was joking. \* \* \* She was serious, and I didn't know it." (Tr. at 108)

### **Testimony of Patient 2**

31. Patient 2 testified that she had been a patient of Dr. Smith's, and first saw him on April 1, 2009.<sup>7</sup> Patient 2 testified that, prior to seeing Dr. Smith, she had been addicted to opiates for 15 years, including heroin for the last two years, and wanted to quit. She further testified that Dr. Smith ran a Suboxone program and that she passed by his office every day on her way to and from work. (Tr. at 86-88, 207)
32. Patient 2 testified that Dr. Smith provided help for her addiction with Suboxone. She further testified that Dr. Smith had dispensed Suboxone to her when she could not see another physician because of insurance problems. Moreover, Patient 2 testified that Dr. Smith had also treated her for depression, anxiety, and a sleep disorder. Patient 2 added that she also had problems with her back, and that her back problem had eventually led to her opiate addiction. (Tr. at 88, 210-212)
33. Patient 2 testified that Dr. Smith issued prescriptions and also dispensed medication at his office. (Tr. at 88)
34. Patient 2 further testified that, in addition to Suboxone, Dr. Smith prescribed medications for her that have "amnesiac behavioral effects" including Ambien, Xanax, and Ativan. (Tr. at 89)
35. When asked if there came a time when Dr. Smith had engaged in inappropriate contact with her, Patient 2 replied, "Yes." On some of her visits, Dr. Smith had performed osteopathic manipulative therapy to treat her back pain. Patient 2 testified, "[T]hat's where the first inappropriate contact began was parts of my body were being touched and groped that didn't belong to adjusting my back." (Tr. at 88-89)
36. Patient 2 testified that, on one occasion, she arrived at Dr. Smith's office for an appointment and she and Dr. Smith had been the only people there. Patient 2 further testified that Dr. Smith dispensed medication to her which she took immediately. (Tr. at 89-90) Patient 2 testified:

Xanax is the only thing that I remember that he said was what it was, but at the time I was having extreme trouble with my back. I also believe that I

---

<sup>7</sup> Dr. Smith's medical record for Patient 2 was not available at the hearing. (St. Ex. 5)

got an injection at the time, and I couldn't even—muscle relaxer is what I was told, but I don't know.

From there, I remember—my next memory is being unclothed from the waist down and being on an exam table with my legs up.

(Tr. at 90) Patient 2 further testified that Dr. Smith placed his finger in her vagina and in her anus. Moreover, Patient 2 testified that Dr. Smith had attempted to have sexual intercourse with her but was unable. (Tr. at 90-91)

37. Patient 2 testified that, on another occasion, in early June 2009, she had gone to Dr. Smith's farm. Patient 2 testified concerning the reason: "In repayment for office visits that were not paid for, I had no insurance, whatever, he owns a farm out in Hubbard, Ohio, and he wanted some help farm-wise, whatever." (Tr. at 91, 94, 212)

Patient 2 further testified that Dr. Smith raises goats on his farm and that she believes she may have fed the goats that day. Patient 2 noted that there is an old, abandoned three- or four-story schoolhouse building on Dr. Smith's farm. (Tr. at 92-93)

38. When asked if Dr. Smith had given her any medications that day, Patient 2 replied: "I believe I was already under the influence of things that had been prescribed by him and, yes, the same thing occurred there that occurred at the office as far as medications that he gave me." (Tr. at 92) Patient 2 believes that one medication Dr. Smith had given her to take that day was Ambien. Patient 2 testified, "I remember being completely mentally altered, and wanting to get out and not being able to." (Tr. at 93)
39. Patient 2 testified that Dr. Smith engaged in sexual conduct with her that day. She testified that it had occurred in the old schoolhouse, which she described as exceedingly cluttered. Patient 2 testified: "I remember him wanting some assistance with moving something or something that wasn't working. I can't remember what it was, [or] why I was even in the house, because the goats and the barns are outside." (Tr. at 92-94) With respect to what happened next, the following exchange took place:
- A. [By Patient 2] And I remember complaining of not feeling well and being sick because I could not stand up on my own, and he said, "I'll be right back." And I couldn't function, there was no way.
- And I believe there is a loss of time there, and I believe I actually fell asleep. I don't know.
- Q. [By Ms. Bockbrader] Where did you—where did you wake up?
- A. I woke up on a dirty, nasty mattress probably on top of a freezer on top of something else.

Q. What—Do you know what room or what floor that was on?

A. I believe the basement.

Q. Were you dressed?

A. No, ma'am.

Q. I'm sorry.

A. I have one in my hand, it's okay [referring to Kleenex].

Q. Oh, okay.

What had happened?

A. I don't—

Q. What condition were you in physically?

A. I was in pain and I was bleeding.

Q. Where were you bleeding from?

A. Vaginally and rectally I was bleeding, and I had abrasions on the inside of both of my thighs down to my knees that over the next few days I developed welts and bruises and had skin tears.

Q. Was Dr. Smith in the room?

A. Yes.

Q. Did he say anything to you?

A. (Shakes head.)

(Tr. at 94-95)

40. Patient 2 further testified that, when she woke up, she had had semen on her. (Tr. at 99)

41. Later during the hearing, the following exchange took place:

Q. [By Ms. Bockbrader] When you woke up on the mattress in the basement of the schoolhouse, who was—who else was there in the room with you?

A. [By Patient 2] Dr. Smith.

Q. What was he wearing?

A. A shirt.

Q. Did he have on any pants?

A. No, ma'am.

Q. Did he have on any underwear?

A. No, ma'am.

Q. Did he ask you what had happened to you?

A. No, he did not.

Q. And can you explain why you didn't seek medical attention on that day?

A. Because I chose not to pursue it because I thought it would be best if I just left it alone as my family not finding out.

They were not pleased with the care I was receiving. I thought I was going to a doctor for help and they knew otherwise. I didn't want it to be public record and I didn't want to go to the police with it.

As I stated earlier, I have a young daughter and I have an elderly mother. I was not going to pursue it. And it was also made clear to me in later days that my treatment would be terminated, my Suboxone and everything would be over with if we pursued the issue, and I was in no shape to do that right then.

Q. Who made that clear to you?

A. Dr. Smith.

(Tr. at 216-218)

42. Patient 2 testified that, after that event, she still had appointments scheduled with Dr. Smith and continued seeing him as a patient. When asked why, she replied:

Because he said the Suboxone and everything else would be withdrawn, and at that point I had my own legal issues. And the insinuation was made that he could make it look bad, as everybody would find out type thing, and I had

been a willing participant, et cetera. And I was the drug addict and he wasn't, so who is going to be believed?

(Tr. at 96)

43. Patient 2 testified that she stopped seeing Dr. Smith six or seven months later, in the fall of 2009. (Tr. at 97)

44. When asked how these events have affected her, Patient 2 testified:

I'd like it to go away. I just don't want to keep bringing it up. It's just something I don't want to relive. I don't want my daughter to ever know. My mother's 82. I mean, the drug addiction's been bad enough, but to find out that, no.

(Tr. at 98)

45. Patient 2 testified that she had been convicted of deception to obtain Vicodin from a pharmacy and theft. Following a probation violation, she was incarcerated for 60 days in late 2009 to early 2010. Patient 2 further acknowledged that she had been convicted of such offenses on more than one occasion. Finally, Patient 2 acknowledged that she had engaged in untruthfulness in committing such offenses. (Tr. at 208-210)

#### **Dr. Smith's Criminal Conviction**

46. On January 25, 2010, in the Court of Common Pleas for Mahoning County, Ohio, Dr. Smith pleaded guilty to and was found guilty of one first degree misdemeanor count of Label Required, in violation of Section 3719.08(D), Ohio Revised Code.<sup>8</sup> (St. Ex. 3A)

### **CREDIBILITY OF WITNESSES**

The Hearing Examiner found Patient 1, Friend of Patient 1, and Patient 2 to be credible witnesses. This finding is based upon the Hearing Examiner's observation of the witnesses' demeanor during their live testimony and their tone of voice during their live and telephone testimony, and upon a review of the testimony of those witnesses taken together. Moreover, statements made by

---

<sup>8</sup> Section 3719.08(D), Ohio Revised Code, states, "A licensed health professional authorized to prescribe drugs who personally furnishes a controlled substance to a patient shall comply with division (B) of section 4729.29 of the Revised Code with respect to labeling and packaging of the controlled substance." Section 4729.29(B), Ohio Revised Code, states, in relevant part:

When a prescriber personally furnishes drugs to a patient pursuant to division (A)(1) of this section, the prescriber shall ensure that the drugs are labeled and packaged in accordance with state and federal drug laws and any rules and regulations adopted pursuant to those laws. Records of purchase and disposition of all drugs personally furnished to patients shall be maintained by the prescriber in accordance with state and federal drug statutes and any rules adopted pursuant to those statutes. \* \* \*

Dr. Smith on the video-recording of Patient 1's June 3, 2009, visit strongly suggest that he had had performed a sexual act on her, in addition to the other inappropriate sexual comments and references he made, which corroborates the testimony of Patient 1. In addition, the Hearing Examiner found it compelling that both Patient 1 and Patient 2 testified that they were given mind-altering medication by Dr. Smith prior to Dr. Smith engaging in sexual conduct with them. Accordingly, the Hearing Examiner finds the testimony of these witnesses to be credible, and believes that each of them testified truthfully concerning her encounters with Dr. Smith.

### FINDINGS OF FACT

#### Case No. 10-CRF-023

1. On January 25, 2010, in the Court of Common Pleas for Mahoning County, Ohio, Larry Lee Smith, D.O., pleaded guilty to and was found guilty of one first degree misdemeanor count of Label Required, in violation of Section 3719.08(D), Ohio Revised Code.

#### Case No. 10-CRF-042

2. From 2008 to 2009, in the routine course of his practice, Dr. Smith provided care, including Suboxone treatment, to Patients 1 and 2 as identified on a Confidential Patient Key.
3. In 2009, despite Dr. Smith's concurrent physician-patient relationship, he engaged in sexual intercourse with Patient 1 in his office.

Further, Dr. Smith saw Patient 1 during a patient care visit on June 3, 2009. During said visit:

- a. Dr. Smith told Patient 1 that her boyfriend is "more interested in your pussy."
- b. During a conversation about smoking cessation, Dr. Smith told Patient 1, "I could taste nicotine in your pussy."
- c. Dr. Smith pointed to his crotch when Patient 1 asked, "What?" in response to his statement in paragraph 3.b, above.
- d. While discussing a female who had accompanied Patient 1 to his office, Dr. Smith asked Patient 1, "You'll share her pussy with me?" He then repeated the question, "Would you share her pussy with me?"
- e. Dr. Smith told Patient 1 that Chantix "makes you a lesbian."
- f. The evidence is insufficient to support a finding that Dr. Smith engaged in sexual misconduct by attempting to fondle the breasts of Patient 1 during Patient 1's June 3, 2009, visit.

Moreover, during a patient care visit with Patient 1 on June 15, 2009, Dr. Smith engaged in sexual misconduct by attempting to fondle the breasts of Patient 1.

4. In 2009, despite a concurrent physician-patient relationship subsequent to Patient 2 coming to him for Suboxone treatment, Dr. Smith engaged in sexual misconduct by performing anal and vaginal digital penetration of Patient 2 in his office during a patient visit. Further, on a separate occasion in or around June 2009, Dr. Smith engaged in sexual intercourse with Patient 2.

### **RELEVANT OHIO ADMINISTRATIVE CODE RULES**

1. Rule 4731-26-01(C), Ohio Administrative Code, defines “patient,” in relevant part, as follows:

“Patient” means a person for whom the licensee has provided health care services, whether provided by mutual consent or implied consent, or provided without consent pursuant to a court order. Once a licensee-patient relationship is established, a person remains a patient until the relationship is terminated.

\* \* \*

2. Rule 4731-26-01(H), Ohio Administrative Code, defines “sexual misconduct,” in relevant part, as follows:

“Sexual misconduct” means conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. \* \* \*

3. Rule 4731-26-02(A), Ohio Administrative Code states:

A licensee shall not engage in sexual misconduct with a patient or key third party, as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.

### **CONCLUSIONS OF LAW**

#### **Case No. 10-CRF-023**

1. The guilty plea of Larry Lee Smith, D.O., and the judicial finding of guilt, as described in Finding of Fact 1, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

**Case No. 10-CRF-042**

2. Dr. Smith's acts, conduct, and/or omissions as described in Findings of Fact 2, 3 (except for 3.f), and 4, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code.
3. Pursuant to Rule 4731-26-03(A)(1), Ohio Administrative Code, violation of Rule 4731-26-02(A), Ohio Administrative Code, as described in Conclusion of Law 2, also violates Section 4731.22(B)(6), Ohio Revised Code.

**RATIONALE FOR THE PROPOSED ORDER**

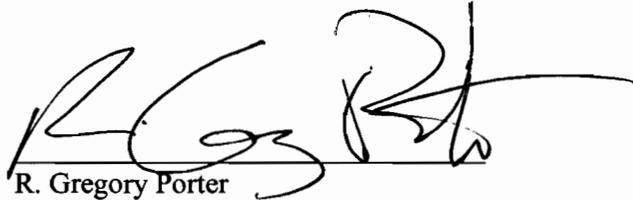
Dr. Smith's sexual misconduct with two vulnerable patients deserves the severest sanction.

**PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Larry Lee Smith, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

  
R. Gregory Porter  
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

## EXCERPT FROM THE DRAFT MINUTES OF MAY 11, 2011

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Suppan announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Emmett G. Cooper, M.D.; Janet Elizabeth Despot, M.D.; Surjit Singh Dinsa, M.D.; Brian Francis Lane, M.D.; Arthur Harry Smith, M.D.; Larry Lee Smith, D.O.; and Henry J. Taylor, III, M.D. A roll call was taken:

ROLL CALL:

Dr. Strafford	- aye
Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Suppan	- aye
Mr. Albert	- aye
Dr. Madia	- aye
Dr. Talmage	- aye
Dr. Amato	- aye
Ms. Elsass	- aye
Dr. Ramprasad	- aye

Dr. Suppan 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:

Dr. Strafford	- aye
Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Suppan	- aye
Mr. Albert	- aye
Dr. Madia	- aye
Dr. Talmage	- aye
Dr. Amato	- aye
Ms. Elsass	- aye
Dr. Ramprasad	- aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member. In addition, Dr. Amato served as Acting Supervising Member in all but two of the matters before the Board. Therefore, Dr. Amato can only vote in the matters of Dr. Dinsa and Dr. Taylor, and must abstain from voting in all other cases.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....

LARRY LEE SMITH, D.O., Case Nos. 10-CRF-023 & 10-CRF-042

.....

Dr. Talmage exited the meeting prior to this discussion.

.....

**Dr. Steinbergh moved to approve and confirm Mr. Porter’s Findings of Fact, Conclusions of Law, and Proposed Order in the consolidated matters of Larry Lee Smith, D.O. Mr. Hairston seconded the motion.**

.....

A vote was taken on Dr. Steinbergh’s motion to approve:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Amato	- abstain
	Ms. Elsass	- aye

Dr. Kamprasad - aye

The motion to approve carried.



# 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

February 9, 2011

Case number: 11-CRF- *015*

Larry Lee Smith, D.O.  
5 Court Street  
Canfield, OH 44406

Dear Dr. Smith:

Enclosed please find certified copies of the Entry of Order, Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 9, 2011, including a Motion adopting the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning whether your failure to submit to the examination as directed was due to circumstances beyond your control as set forth in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice. Further information concerning such hearing is contained within the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice.

THE STATE MEDICAL BOARD OF OHIO

*Lance A. Talmage, M.D.*  
Lance A. Talmage, M.D., Secretary *by authorization*

*Mailed 2-10-11*

**CERTIFICATION**

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on February 9, 2011, to Adopt the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice, constitute true and complete copies of the Motion and Order in the Matter of Larry Lee Smith, D.O., Case number: 11-CRF- 015 as they appear in the Journal of the State Medical Board of Ohio.

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

*Lance A. Talmage, M.D.*  
Lance A. Talmage, M.D., Secretary *by authorization*

(SEAL)

February 9, 2011  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 :  
LARRY LEE SMITH, D.O. :  
 :  
CASE NUMBER: 11-CRF- 015 :

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 9th day of February, 2011.

Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice, that there is clear and convincing evidence that Larry Lee Smith, D.O., has violated Section 4731.22(B)(19), Ohio Revised Code, as alleged in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice that is enclosed herewith and fully incorporated herein; and

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice, that Dr. Smith's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 9th day of February, 2011:

It is hereby ORDERED that the certificate of Larry Lee Smith, D.O., to practice osteopathic medicine and surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Larry Lee Smith, D.O., shall immediately cease the practice of osteopathic medicine and surgery in Ohio and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

  
Lance A. Talmage, M.D. Secretary *by authorization*

(SEAL)

February 9, 2011  
Date

# 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

EXCEPRT FROM THE DRAFT MINUTES OF FEBRUARY 9, 2011

CITATIONS, PROPOSED DENIALS, ORDERS OF SUMMARY SUSPENSION & NOTICES OF IMMEDIATE SUSPENSION

LARRY LEE SMITH, D.O. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

-----

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Larry Lee Smith, D.O., in accordance with Section 4731.22(G), Ohio Revised Code, and to issue the Notice of Summary Suspension and Opportunity for Hearing. Mr. Hairston seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Madia	- abstain
	Dr. Ramprasad	- aye

The motion carried.



# 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

OPPORTUNITY FOR HEARING ON FAILURE TO SUBMIT TO AN EXAMINATION  
AND  
NOTICE OF SUMMARY SUSPENSION  
BASED UPON PRESUMPTION OF AN ADMISSION OF INABILITY TO PRACTICE

February 9, 2011

Case number: 11-CRF- *015*

Larry Lee Smith, D.O.  
5 Court Street  
Canfield, OH 44406

Dear Dr. Smith:

Due to your failure to submit to an examination on January 26, 2011, as ordered by the State Medical Board of Ohio [Board] and your failure to notify the Board of any circumstances beyond your control preventing you from submitting to said examination, pursuant to Section 4731.22(B)(19), Ohio Revised Code, a legal presumption has been established that you have admitted the factual and legal allegations demonstrating an inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills, as alleged against you in the Board's letter dated December 21, 2010, and sent to you by certified mail [December 21, 2010 certified letter] as well by way of hand-delivery on or about December 27, 2010, so ordering you to submit to such examination. Accordingly, the Secretary and the Supervising Member of the Board have determined that there is clear and convincing evidence that you have violated Section 4731.22(B)(19), Ohio Revised Code, and have further determined that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1) through (5), below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice osteopathic medicine or surgery in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice osteopathic medicine and surgery in Ohio.

Larry Lee Smith, D.O.

Opportunity for Hearing on Failure to Submit to an Examination and

Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice

Page 2

Furthermore, in accordance with Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby notified that the Board intends, for one or more of the following reasons, to determine whether your failure to submit to the aforementioned examination was due to circumstances beyond your control, which would rebut the legal presumption of inability to practice and merit termination of the instant summary suspension of your certificate in conjunction with rescheduling the examination as directed by the Board, or conversely, whether your failure to submit to the aforementioned examination was due to circumstances within your control, which would render the legal presumption of inability to practice conclusive and result in the Board further determining whether to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place you on probation based upon your legally admitted inability to practice:

- (1) By letter dated December 21, 2010, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(19), Ohio Revised Code, and ordered you to undergo an examination to determine if you are in violation of Section 4731.22(B)(19), Ohio Revised Code. The Board's determination was based upon one or more of the reasons outlined in such letter, which included the following:
  - (a) During the time period from in or about 2008 to in or about 2010, you provided care, including Suboxone treatment, to Patients 1 and 2, in the routine course of your practice to Patients 1, 2 and 3 as identified in the Patient Key [attached to the December 21, 2010 letter].
  - (b) In or about March 2009, despite your concurrent physician-patient relationship, you engaged in sexual intercourse with Patient 1 in your office.

Further, you saw Patient 1 during a patient care visit on or about June 3, 2009.  
During said visit:

- (i) You stated that Patient 1's boyfriend "is more interested in your pussy";
- (ii) During a conversation about smoking cessation you stated, "I can taste it in your pussy";
- (iii) You pointed at your crotch when Patient 1 asked, "What?" in response to your statement in paragraph [(b)(ii)] above;
- (iv) You asked "Will you share her pussy with me?" while discussing a female who had accompanied Patient 1 to your office. You then repeated the question, "Will you share her pussy with me?";
- (v) You stated that Chantix "makes you a lesbian";

- (vi) You engaged in sexual misconduct by attempting to fondle the breasts of Patient 1.

Further, on or about June 15, 2009, during a patient care visit with Patient 1, you engaged in sexual misconduct by attempting on two occasions to fondle the breasts of Patient 1.

- (c) In or about 2009, despite your concurrent physician-patient relationship, you engaged in sexual misconduct by performing anal and vaginal digital penetration of Patient 2 in your office during a patient visit. Further, you engaged in sexual intercourse with Patient 2 in or about 2009, subsequent to Patient 2 coming to you for Suboxone treatment. Based upon such conduct, on or about April 14, 2010, the Board issued to you a notice of opportunity for hearing regarding the above.  
\* \* \*
- (d) On or about October 4, 2010, despite your concurrent physician-patient relationship, you performed cunnilingus on Patient 3 in your office during a patient visit. In a recorded interview with law enforcement authorities on or about October 8, 2010, you stated that you licked Patient 3's clitoris for three seconds during a patient visit. You further contended that the sexual contact was consensual; however, Patient 3 disputed that contention. On or about October 28, 2010, in the Court of Common Pleas for Mahoning County, Ohio, you were indicted on one felony count of Rape in violation of Section 2907.02(A)(2)(B), and one felony count of Sexual Battery in violation of Section 2907.03(A)(6), Ohio Revised Code. The criminal trial in this matter is currently pending.

- (2) The December 21, 2010 certified letter from the Board further notified you that, pursuant to Section 4731.22(B)(19), Ohio Revised Code, you were ordered to submit to a psychiatric/psychosexual examination. The examination was scheduled to take place with Stephen G. Noffsinger, M.D., on January 26, 2011, at 8:30 a.m.

The December 21, 2010 certified letter from the Board further notified you that failure of an individual to submit to an examination as directed constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control. Finally, the letter notified you that if you failed to submit to the examination, and such failure was not due to circumstances beyond your control, the Board would be authorized to enter a default and final order without the taking of testimony or presentation of evidence.

- (3) You were duly notified of the examination order and its scheduled date. The certified letter return receipt is signed and dated December 27, 2010, and you were hand-delivered a copy of the letter on or about December 27, 2010.

- (4) By letter dated January 26, 2011, the Board was notified by Dr. Noffsinger that you failed to appear for the examination that the Board scheduled for you. Although your attorney notified the Board after the fact that you had chosen not to attend the examination, and you forwarded certain written information to the Board offices after the scheduled examination date, at no time did you inform the Board that your failure to appear was due to circumstances beyond your control. Accordingly, pursuant to Section 4731.22(B)(19), Ohio Revised Code, and in consideration of the affidavits of David P. Katko, Enforcement Attorney; Jacqueline Moore, Public Information Assistant [redacted]; and Kay Rieve, Administrative Officer; copies of which are attached hereto and fully incorporated herein, the Board hereby FINDS that you have admitted the truth of the allegations demonstrating inability to practice as set forth in the December 21, 2010 letter from the Board. The Board FINDS that pursuant to Section 4731.22(B)(19), Ohio Revised Code, your failure to appear for the examination ordered by the Board as directed constitutes “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.
- (5) Further, the Board has not received information that you have been determined to be capable of practicing in accordance with acceptable and prevailing standards of care.

Section 4731.22(B)(19), Ohio Revised Code, provides that any individual authorized to practice accepts the privilege of practicing in this state, and by doing so, shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the Board in writing; and that the expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual’s control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (5) above, individually and/or collectively, constitute “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning whether your failure to submit to the examination as directed was due to circumstances beyond your control. 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 of this notice.

Larry Lee Smith, D.O.

Opportunity for Hearing on Failure to Submit to an Examination and  
Notice of Summary Suspension Based Upon Presumption of an Admission of Inability to Practice  
Page 5

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery 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, MD*  
Lance A. Talmage, M.D. *by authorization*  
Secretary

LAT/DPK/FLB  
Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3017 6858  
RETURN RECEIPT REQUESTED

cc: BY HAND DELIVERY

cc: Douglas E. Graff, Esq., 604 East Rich Street Ste. 2100  
Columbus, OH 43215-5468

CERTIFIED MAIL #91 7108 2133 3938 3017 6841  
RETURN RECEIPT REQUESTED

## AFFIDAVIT

The State of Ohio  
Franklin County, SS

I, David P. Katko, being duly cautioned and sworn, do hereby depose and state that the following is true based upon my first-hand knowledge:

- 1) I am employed by the State Medical Board of Ohio [Board].
- 2) I serve the Board in the position of Enforcement Attorney.
- 3) In the course of my regular duties, I am responsible for coordinating the investigation of complaints against applicants and licensees under the jurisdiction of the Board and assembling the evidence necessary to prove potential violations of the Medical Practices Act of Ohio, Chapters 4730., 4731., 4760., 4762., 4774., and 4776., Ohio Revised Code.
- 4) I coordinated the investigation of the complaints filed against Larry Lee Smith, D.O., which resulted in the Secretary and Supervising Member of the Board directing the issuance of a letter sent certified mail on December 21, 2010 [December 21, 2010 letter] ordering Larry Lee Smith, D.O., to submit to an examination pursuant to Section 4731.22(B)(19), Ohio Revised Code.
- 5) The December 21, 2010 letter, which is attached hereto and incorporated herein, ordered Larry Lee Smith, D.O., to submit to a psychiatric examination scheduled to take place with Stephen G. Noffsinger, M.D., at University Hospitals of Cleveland, Walker Building, Room 7134, 10524 Euclid Avenue, Cleveland, OH 44106, on Wednesday, January 26, 2011, at 8:30 a.m.
- 6) On December 27, 2010, the December 21, 2010 letter was personally served on Larry Lee Smith, D.O., by a Board Investigator. A copy of the personal service receipt signed by Dr. Smith is attached hereto and incorporated herein. In addition, the certified letter return receipt for the December 21, 2010 letter is signed and dated December 27, 2010, and is attached hereto and incorporated herein.
- 7) On Thursday, January 26, 2011, at approximately 9:00 a.m., I was contacted by Dr. Noffsinger by phone, and advised that Larry Lee Smith, D.O., did not appear for the examination nor did Dr. Smith contact Dr. Noffsinger in any way. On January 26, 2011, I received an e-mail from Dr. Noffsinger advising that Dr. Smith had not appeared for the scheduled examination and that Dr. Smith had not contacted Dr. Noffsinger in any way. A copy of that e-mail is attached hereto and incorporated herein.
- 8) To date, I have not been contacted by Larry Lee Smith, D.O., regarding his failure to appear for the psychiatric evaluation scheduled for Wednesday, January 26, 2011, at 8:30 a.m.

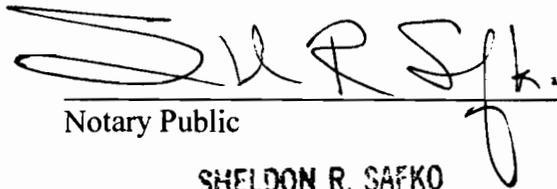
- 9) In a letter dated January 26, 2001, received by the Board via e-mail on or about January 26, 2001, I received written confirmation that Larry Lee Smith, D.O., did not appear for his psychiatric examination with Stephen G. Noffsinger, M.D., scheduled for Wednesday, January 26, 2011, at 8:30 a.m. A copy of the letter is attached hereto and incorporated herein.

Further, Affiant Sayeth Naught.



David P. Katko, Enforcement Attorney

Sworn to and signed before me, Sheldon SAFKO, Notary Public, this 4th day of February, 2011.



Notary Public

**SHELDON R. SAFKO**  
ATTORNEY AT LAW  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Has No Expiration  
Section 147.03 R.C.

# 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

December 21, 2010

## **Personal and Confidential**

Larry Lee Smith, D.O.  
5 Court Street  
Canfield, OH 44406

Dear Doctor Smith:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4731.22(B)(19), Ohio Revised Code, to wit: “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.”

This determination is based upon one or more of the following reasons:

- (1) During the time period from in or about 2008 to in or about 2010, you provided care, including Suboxone treatment, to Patients 1 and 2, in the routine course of your practice to Patients 1, 2 and 3 as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)
- (2) In or about March 2009, despite your concurrent physician-patient relationship, you engaged in sexual intercourse with Patient 1 in your office.

Further, you saw Patient 1 during a patient care visit on or about June 3, 2009.  
During said visit:

- a. You stated that Patient 1’s boyfriend “is more interested in your pussy”;
- b. During a conversation about smoking cessation you stated, “I can taste it in your pussy”;
- c. You pointed at your crotch when Patient 1 asked, “What?” in response to your statement in paragraph (2)(b.) above;

- d. You asked "Will you share her pussy with me?" while discussing a female who had accompanied Patient 1 to your office. You then repeated the question, "Will you share her pussy with me?";
- e. You stated that Chantix "makes you a lesbian";
- f. You engaged in sexual misconduct by attempting to fondle the breasts of Patient 1.

Further, on or about June 15, 2009, during a patient care visit with Patient 1, you engaged in sexual misconduct by attempting on two occasions to fondle the breasts of Patient 1.

- (3) In or about 2009, despite your concurrent physician-patient relationship, you engaged in sexual misconduct by performing anal and vaginal digital penetration of Patient 2 in your office during a patient visit. Further, you engaged in sexual intercourse with Patient 2 in or about 2009, subsequent to Patient 2 coming to you for Suboxone treatment. Based upon such conduct, on or about April 14, 2010, the Board issued to you a notice of opportunity for hearing regarding the above. The administrative hearing in this matter is presently scheduled to commence on January 18, 2011.
- (4) On or about October 4, 2010, despite your concurrent physician-patient relationship, you performed cunnilingus on Patient 3 in your office during a patient visit. In a recorded interview with law enforcement authorities on or about October 8, 2010, you stated that you licked Patient 3's clitoris for three seconds during a patient visit. You further contended that the sexual contact was consensual; however, Patient 3 disputed that contention. On or about October 28, 2010, in the Court of Common Pleas for Mahoning County, Ohio, you were indicted on one felony count of Rape in violation of Section 2907.02(A)(2)(B), and one felony count of Sexual Battery in violation of Section 2907.03(A)(6), Ohio Revised Code. The criminal trial in this matter is currently pending.

By the authority vested in the State Medical Board of Ohio by Section 4731.22(B)(19), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at University Hospitals of Cleveland, Walker Building, Room 7134, 10524 Euclid Avenue, Cleveland, Ohio 44106. You are to report to Stephen Noffsinger, M.D., on January 26, 2011, at 8:30 a.m. for a psychiatric/psychosexual evaluation.

Pursuant to Section 4731.22(B)(19), Ohio Revised Code, you are responsible for the expense of this evaluation. The total estimated cost of this evaluation is \$1,750.00. You must present a certified check or money order in this amount made payable to Stephen Noffsinger M.D., to the examiner prior to the beginning of the examination. Failure to

B19 Examination  
Larry Lee Smith, D.O.  
Page 3

present a certified check or money order in the amount specified to the examiner will result in the examination being cancelled, and will be deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control.

Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

Copies of the applicable statute sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/DPK/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3021 1665  
RETURN RECEIPT REQUESTED

cc: BY PERSONAL SERVICE

cc: Douglas E. Graff, Esq.  
604 East Rich Street, Suite 2100  
Columbus, OH 43215-5468

CERTIFIED MAIL #91 7108 2133 3938 3021 1658  
RETURN RECEIPT REQUESTED

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

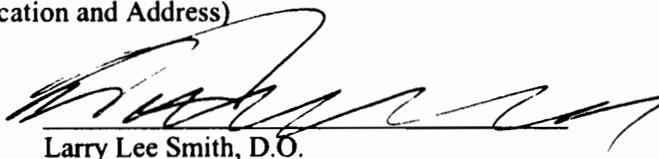
(614) 466-3934  
med.ohio.gov

## ACKNOWLEDGMENT OF RECEIPT

I, Larry Lee Smith, D.O., acknowledge that on or about 12/27/2010,  
(Date)

I received a copy of the December 21, 2010, correspondence from the Board ordering me to appear at an  
evaluation. Dr. Smith was served at:

5 Lower Street Canfield, OH 44400  
(Location and Address)

  
Larry Lee Smith, D.O.

27 Dec 10  
Date

I, Dawn M. Smith, Investigator for the State Medical Board of  
Ohio, do hereby give witness this 27th day of December 2010, to the above  
acknowledgement of date received.

  
Dawn Smith  
Investigator  
State Medical Board of Ohio

## Katko, David

---

**From:** Steve [sgn5@msn.com]  
**Sent:** Wednesday, January 26, 2011 9:38 AM  
**To:** Katko, David  
**Subject:** Re: Dr. Larry Lee Smith no show.

Dr. Larry Lee Smith failed to show for his 8:30 board ordered psychiatric examination. I have not received a call or voicemail from Dr. Smith.

"Katko, David" <David.Katko@med.state.oh.us> wrote:

>Dr. Noffsinger: Thanks for the call. My contact info is below. Dave

>

>David P. Katko, Enforcement Attorney

>State Medical Board of Ohio

>30 East Broad Street, 3rd Floor

>Columbus, OH 43215-6127

>Phone: 614-728-3676

>Fax: 614-728-5946

>E-mail: David.Katko@med.state.oh.us<mailto:David.Katko@med.state.oh.us>

>

>WARNING This e-mail is sent in confidence and is intended only for the individual or entity to which it is addressed. Any other distribution, copying or disclosure is strictly prohibited. The contents of this e-mail may also be subject to privilege, including but not limited to attorney-client privilege and the attorney work product doctrine, and all rights to all privileges are expressly claimed and not waived. If you have received this message in error, please notify the sender by reply e-mail or by calling (614) 728-3676 and immediately delete it from your system without copying or forwarding it. Thank you for your cooperation.

>



CASE WESTERN RESERVE



University Hospitals  
Case Medical Center

Department of Psychiatry  
Mainstop WLK 5080  
Walker Bldg #7134  
10524 Euclid Ave  
Cleveland, Ohio 44106

Stephen G. Noffsinger, M.D.  
Associate Professor of Psychiatry

Phone: 216-844-8749  
Fax: 216-844-1703

January 26, 2011

David Katko, Esq.  
Enforcement Attorney  
State Medical Board of Ohio  
30 East Broad Street  
Columbus, OH 43215

**RE: Larry Lee Smith, D.O.**

Dear Mr. Katko:

Larry Smith was scheduled for a psychiatric evaluation today with me at 8:30 AM, as ordered by the State Medical Board of Ohio. Dr. Smith failed to show for the psychiatric evaluation, and did not call to indicate he would not be attending the appointment.

Best wishes,

Stephen Noffsinger, M.D.  
Associate Professor of Psychiatry  
Case School of Medicine



Date Produced: 01/03/2011

STATE MEDICAL BOARD OF OHIO

The following is the delivery information for Certified Mail™ item number 7108 2133 3938 3021 1665. Our records indicate that this item was delivered on 12/27/2010 at 09:44 a.m. in CANFIELD, OH, 44406. The scanned image of the recipient information is provided below.

Signature of Recipient:

Jan Kavutti  
JEAN LAVOTTI

Address of Recipient:

7601 St

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 4225901 18019711SMITH DPK

AFFIDAVIT

The State of Ohio  
Franklin County, SS

I, Kay Rieve, being duly cautioned and sworn, do hereby depose and state that the following is true based upon my first-hand knowledge:

- 1) I am employed by the State Medical Board of Ohio [Board].
- 2) I serve the Board in the position of Administrative Officer.
- 3) In such position, I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code.
- 4) I have this day carefully examined the records of the Board pertaining to Larry Lee Smith, D.O.
- 5) Based on such examination, I have found the last known address of record of Larry Lee Smith, D.O., to be:

5 Court Street  
Canfield, OH 44406

- 6) Further, Affiant Sayeth Naught.



\_\_\_\_\_  
Kay Rieve  
Administrative Officer

Sworn to and signed before me, Daniel Zinsmaster, Notary Public, this 1<sup>st</sup>  
day of February, 2011.



DANIEL S. ZINSMASER, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.



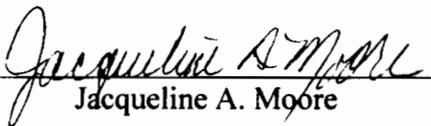
\_\_\_\_\_  
Notary Public

STATE MEDICAL BOARD OF OHIO  
AFFIDAVIT

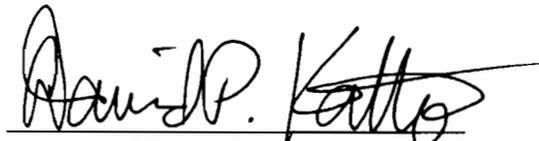
The State of Ohio,  
Franklin County, SS

I, Jacqueline A. Moore, being first duly cautioned and sworn, state the following to be true based upon my first-hand knowledge:

1. I am a Public Information Assistant for the State Medical Board of Ohio, hereafter Board.
2. In my position for the Board, I am responsible for receiving and maintaining the case record files for citations issued by the Board.
3. On or about February 7, 2011, I received a thirteen page document faxed from the office of Larry Lee Smith, D.O. The cover sheet indicated that the subject of the fax was "Hearing" and was addressed to the "State Medical Board of Ohio." Those documents are attached hereto and incorporated herein by reference.

  
Jacqueline A. Moore

Sworn to and signed before me, David P. Katko, Notary Public, this 8<sup>th</sup> day of February, 2011.

  
Notary Public



David P. Katko  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Section 147.03 R.C.

Dr. Larry Lee Smith, D.O.  
Olde Courthouse Bldg., Suite 100  
Canfield, Ohio 44406.  
Phone: 330-533-5555 Fax: 330-5334280

# Fax

To: State Medical Board of Ohio From: Larry Lee Smith /cc  
Fax: 614 728 5946 Date: February 4, 2011  
Phone: \_\_\_\_\_ Pages: 12 + cover  
Re: Hearing CC: \_\_\_\_\_

Urgent     For Review     Please Comment     Please Reply     Please Recycle

•Comments:

## WARNING

### PRIVELEGED AND CONFIDENTIAL INFORMATION

This facsimile message may contain privileged and confidential information intended for the use of the person to whom it is directed. If the reader of this message is not the intended recipient, you are hereby notified any review, communication, distribution or copying of this message is prohibited. If you have received this message in error or any documents attached hereto, please immediately notify me by telephone and destroy the original papers and messages.

MEDICAL BOARD

FEB - 4 2011

**Dr. Larry Lee Smith, D.O., Inc.**  
**OSTEOPATHIC PHYSICIANS AND SURGEONS**  
**DIPLOMATS, AMERICAN BOARD OF GENERAL PRACTICE**  
**OLDE COURTHOUSE BUILDING, SUITE 100**  
**CANFIELD, OHIO 44106**  
**PHONE: 330-533-5555 FAX: 330-533-4780**

February 4, 2011

State Medical Board of Ohio  
30 E. Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215-6127

**Re: False complaints filed with the  
State Medical Board of Ohio**

To Whom It May Concern:

Enclosed are several of my psychiatric examinations. No evaluations in the amount of one thousand seven hundred and fifty dollars (\$1,750.00) will change these facts. I object to these tactics. If any one were foolish enough to pay that amount again they would probably need a psychiatric evaluation.

Please reschedule us for a hearing in the month of March. There are nine factual witness' and more then one hundred character witness'

Please send me all the evidences', witness list, tapes, and credentials.

Due to illnesses and inclement weather and scheduling of various witnesses it is impossible for us too have attend your rescheduled hearing for today.

There are many people interested in the outcome of this hearing.

This letter is written on the advise of counsel, Attorney Mark Hammi.

**MEDICAL BOARD**

FEB - 4 2011

Enclosed are copies of my three psychiatric evaluations

Should you have any further questions please do not hesitate to contact this office and I will be happy to assist you in any way I can.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Lee Smith". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Larry Lee Smith, D.O.

LLS:cc

MEDICAL BOARD

16 4 2013

**THIS PAGE REDACTED.**



**THIS PAGE REDACTED.**



# 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

April 14, 2010

Case number: 10-CRF- 042

Larry Lee Smith, D.O.  
5 Court Street  
Canfield, OH 44406

Dear Doctor Smith:

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 osteopathic medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) During the time period from in or about 2008 to in or about 2009, you provided care, including Suboxone treatment, in the routine course of your practice to Patients 1 and 2 as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)
- (2) In or about March 2009, despite your concurrent physician-patient relationship, you engaged in sexual intercourse with Patient 1 in your office.

Further, you saw Patient 1 during a patient care visit on or about June 3, 2009.  
During said visit:

- a. You stated that Patient 1's boyfriend "is more interested in your pussy."
- b. During a conversation about smoking cessation you stated "I can taste it in your pussy;"
- c. You pointed at your crotch when Patient 1 asked, "What?" in response to your statement in paragraph (2)b. above;

*Mailed 4-15-10*

- d. You asked “Will you share her pussy with me?” while discussing a female who had accompanied Patient 1 to your office. You then repeated the question “Will you share her pussy with me?”;
- e. You stated that Chantix “makes you a lesbian;”
- f. You engaged in sexual misconduct by attempting to fondle the breasts of Patient 1.

Further, on or about June 15, 2009, during a patient care visit with Patient 1, you engaged in sexual misconduct by attempting on two occasions to fondle the breasts of Patient 1.

- (3) In or about 2009, despite your concurrent physician-patient relationship, you engaged in sexual misconduct by performing anal and vaginal digital penetration of Patient 2 in your office during a patient visit. Further, you engaged in sexual intercourse with Patient 2 in or about 2009, subsequent to Patient 2 coming to you for Suboxone treatment.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A)(1), Ohio Administrative Code, violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), 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 of 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, permanently

Larry Lee Smith, D.O.

Page 3

revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery 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/DPK/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3067 6763  
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.  
604 East Rich Street Ste. 2100  
Columbus, OH 43215-5468

CERTIFIED MAIL #91 7108 2133 3936 3067 6756  
RETURN RECEIPT REQUESTED

# 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

March 10, 2010

Case number: 10-CRF- 023

Larry Lee Smith, D.O.  
5 Court Street  
Canfield, OH 44406

Dear Doctor Smith:

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 osteopathic medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about January 25, 2010, in the Court of Common Pleas for Mahoning County, Ohio, you pled guilty to and were found guilty of one first degree misdemeanor count of Label Required in violation of Section 3719.08(D), Ohio Revised Code.

The facts as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), 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 of 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.

*Mailed 3-11-10*

Larry Lee Smith, D.O.

Page 2

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery 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,

A handwritten signature in black ink that reads "Lance A. Talmage, M.D." with a stylized flourish at the end.

Lance A. Talmage, M.D.  
Secretary

LAT/DPK/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3069 5238  
RETURN RECEIPT REQUESTED

FILED  
COURT OF APPEALS  
02 MAR 21 PM 1:40  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Larry L. Smith, D.O., :  
Appellant-Appellee, :  
v. : No. 01AP-863  
State Medical Board of Ohio, : (REGULAR CALENDAR)  
Appellee-Appellant. :

---

O P I N I O N

Rendered on March 21, 2002

---

*Friedman & Gilbert, and Terry H. Gilbert, for Larry L. Smith, D.O.*

*Betty D. Montgomery, Attorney General, Mark K. Crawford and Hanz R. Wasserburger, for State Medical Board of Ohio.*

---

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

Appellee-appellant, State Medical Board of Ohio ("board"), appeals from a judgment of the Franklin County Court of Common Pleas reversing the board's order that reprimanded appellant-appellee, Larry L. Smith, D.O., (1) for practicing osteopathic medicine while his certificate to practice medicine was suspended, and (2) for judicial findings of guilt based on that conduct. The board assigns a single error on appeal:

THE TRIAL COURT ERRED IN FINDING THAT R.C.  
4731.281 BARS THE BOARD FROM TAKING

DISCIPLINARY ACTION AGAINST DR. SMITH FOR A  
JUDICIAL FINDING OF GUILT OF TWENTY-FIVE  
MISDEMEANORS IN THE COURSE OF PRACTICE.

Dr. Smith has been an osteopathic doctor practicing medicine in Canfield, Ohio since 1969. Pursuant to statute, physicians who are licensed must periodically renew their medical certificates and pay the required renewal fee. See R.C. 4731.281. Renewal applications are to be mailed by the board to all licensed physicians prior to the renewal deadline.

Until 1996, Dr. Smith timely renewed his certificate to practice osteopathic medicine. In 1996, however, Dr. Smith failed to submit his renewal application or pay the required fee to renew his certificate for the biennial period of October 1, 1996 to September 30, 1998. As a consequence, on September 30, 1996, Dr. Smith's license to practice osteopathic medicine lapsed and was suspended on October 1, 1996 by operation of law under former R.C. 4731.281(D), which provides that the "[f]ailure of any certificate holder to register and comply with this section shall operate automatically to suspend the holder's certificate to practice, on the first day of October in the year registration is required, and the continued practice after the suspension of the certificate to practice shall be considered as practicing without a license." Dr. Smith was not advised that his license was suspended and he continued to see patients, issue prescriptions, and practice medicine in his Canfield, Ohio office.

On July 17, 1997, various law enforcement personnel raided Dr. Smith's office and executed a search warrant based on Dr. Smith's practicing osteopathy without a certificate. Following the police raid, Dr. Smith suspended his medical practice until September 11, 1997, when he drove to the board's offices in Columbus, Ohio to submit a

renewal application and pay the required fees. On that date, Dr. Smith met with the chief of licensure for the board, and in accordance with R.C. 4731.281 submitted a renewal application, a registration fee, a twenty-five dollar late application fee, and a certificate of continuing medical education for the previous biennial period. Dr. Smith's osteopathic medical license was reinstated that day pursuant to R.C. 4731.281.

On August 28, 1997, Dr. Smith was charged in Mahoning County Court with twenty-five counts of practicing osteopathic medicine without a certificate, a first-degree misdemeanor in violation of R.C. 4731.43, and with various violations of drug statutes. On February 13, 1998, Dr. Smith entered a plea of no contest to the twenty-five misdemeanor counts, stipulated to findings of guilt regarding those counts, and paid court costs and a fine of \$10,000. The drug charges were dismissed as part of the plea bargain.

On April 5, 2000, the board notified Dr. Smith of its intent to take disciplinary action against him based on the following allegations:

On or about September 30, 1996, your certificate to practice osteopathic medicine and surgery in Ohio expired. Upon your failure to submit an application for renewal, your certificate was automatically suspended October 1, 1996, in accordance with Section 4731.281(D) Ohio Revised Code (as in effect prior to June 30, 1997).

Subsequently, on or about August 10, 1997, you submitted a renewal application with payment of registration fee and reinstatement penalty, and your license was subsequently reinstated on or about September 11, 1997.

On or about February 13, 1998 in Area Court #5, Mahoning County Court, Canfield, Ohio, you pleaded no contest to, and were found guilty of twenty-five (25) first degree misdemeanor counts of practicing without a certificate, in violation of Section

4731.43, Ohio Revised Code, Practicing Osteopathy without a certificate.

The acts underlying your above plea of no contest and ensuing conviction, were that, from the date your license lapsed on or about September 30, 1996, until on or about July 15, 1997, you practiced osteopathic medicine and surgery in Canfield, Ohio, without a valid certificate issued by the State Medical Board of Ohio.

In its notice to Dr. Smith, the board asserted the misdemeanor convictions 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 former R.C. 4731.22(B)(11), and thus serves as a statutory basis for the board to discipline a licensee.

An administrative hearing was held on the matter on July 20, 2000. At the hearing, the misdemeanor convictions were admitted into evidence. The board presented evidence regarding Dr. Smith's failure to renew his certificate, as well as the suspension and reinstatement of Dr. Smith's certificate to practice osteopathic medicine. Dr. Smith testified he did not receive the renewal application and, prior to the raid of his office on July 17, 1997 by law enforcement personnel, he did not realize his certificate had expired. The hearing officer found the violations had been proven.

In mitigation, however, the hearing officer found: (1) Dr. Smith's failure to renew his certificate in 1996 resulted from negligent oversight and was not a willful or intentional act, (2) Dr. Smith immediately ceased practicing medicine when he learned of the problem and did not resume his practice until he had properly renewed his certificate, (3) the police search of his office and the subsequent criminal convictions and fine served as punishment for Dr. Smith, and (4) Dr. Smith was remorseful for his conduct. (Report of hearing examiner, 7.) The hearing officer recommended that Dr. Smith be reprimanded.

On September 13, 2000, the board approved the hearing officer's report and recommendation, and ordered a reprimand of Dr. Smith.

On Dr. Smith's appeal, the Franklin County Court of Common Pleas found Dr. Smith's license was appropriately suspended by operation of law under R.C. 4731.281(D) because Dr. Smith practiced osteopathy without a license while in noncompliance with the recertification requirements of R.C. 4731.281(B). The court determined Dr. Smith subsequently came into compliance and had his license reinstated with no restrictions on September 11, 1997 pursuant to R.C. 4731.281(D), which provides that "[a] certificate to practice suspended for less than two years for failure to register shall be reinstated by the board upon submission of the current and delinquent registration fees, the twenty-five-dollar penalty for late applications, and certification by signature of the applicant that the applicant has completed the requisite continuing medical education."

Relying on *McCarthy v. Ohio State Med. Bd.* (1989), 63 Ohio App.3d 543, the court further concluded that once the board had reinstated Dr. Smith's osteopathic medical license pursuant to R.C. 4731.281 with no restrictions, the board could not impose further disciplinary action on Dr. Smith under any provision of R.C. 4731.22. The court stated the only penalty provision applicable to these facts is R.C. 4731.99, which makes it a misdemeanor to practice medicine without a certificate, but the court noted that provision had already been imposed on Dr. Smith in his plea to the twenty-five misdemeanor counts. The court reversed the board's order of discipline against Dr. Smith.

On appeal to this court, the board asserts the common pleas court erred in relying on *McCarthy* and in finding the board's reinstatement of Dr. Smith's certificate pursuant to R.C. 4731.281 precluded the board from taking subsequent disciplinary action against Dr. Smith under R.C. 4731.22(B)(11).

In *McCarthy*, Dr. McCarthy, an osteopathic doctor, failed to renew his certificate with the state medical board until eighteen months after the deadline for renewal had passed, at which time the doctor complied with the reinstatement provisions set forth in R.C. 4731.281 and his certificate was reinstated. During the eighteen months Dr. McCarthy was in noncompliance with R.C. 4731.281, he continued to practice medicine. In November 1986, after Dr. McCarthy's certificate to practice had been reinstated, the board notified Dr. McCarthy by letter of its charges against him, including practicing osteopathy without a certificate in violation of R.C. 4731.22(B)(16) and 4731.43. Following a hearing, the board revoked the doctor's license to practice medicine. On the doctor's appeal to this court, the board argued that its disciplining the doctor was authorized under the "catch-all" provision of R.C. 4731.22. Rejecting the board's argument, this court stated as follows:

\*\*\* R.C. 4731.281 carves out an exception to the "catch-all" provision of R.C. 4731.22 and sets forth specifically the penalty and the conditions which must be met for reinstatement. *It obviously was not the intent of the legislature to allow an osteopath to have his license reinstated pursuant to R.C. 4731.281, only to have it revoked under R.C. 4731.22 for the same infraction.* On the contrary, in this case, the board's dual attempt to reinstate and revoke the license in the same breath is statutorily irreconcilable. Hence, R.C. 4731.22 is not applicable to the matter presented herein, and with deference to the specific and mandatory language of R.C. 4731.281, the appellant had an unqualified right to have his license reinstated upon the submission of current and

delinquent fees, the payment of a \$25 penalty, and the certification as to the required medical education. *Id.* at 548. (Emphasis added.)

The board argues *McCarthy* is distinguishable because the doctor in *McCarthy* was charged under the "catch-all" provision of R.C. 4731.22(B)(16) for failure to renew his certificate, whereas the board here charged and disciplined Dr. Smith under the independent ground of R.C. 4731.22(B)(11) based on his misdemeanor convictions, not merely on his failure to renew his certificate while continuing to practice medicine.

Contrary to the board's contention, *McCarthy* is controlling in this case. It is irrelevant whether the board undertook its disciplinary action against Dr. Smith under R.C. 4731.22(B)(11) after it reinstated his license under R.C. 4731.22(B)(16) as in *McCarthy*, or under some other subsection of that statute. The holding in *McCarthy* is not limited to a particular subsection of R.C. 4731.22. See *McCarthy, supra*, at 548. Instead, in *McCarthy*, the pertinent question was whether the initial suspension of the certificate and the subsequent disciplinary measure were based upon "the same infraction," or the same underlying conduct. *Id.*

Here, both the suspension of Dr. Smith's certificate to practice osteopathy and the subsequent misdemeanor convictions were predicated on his failure to renew his certification as required by R.C. 4731.281. Dr. Smith was found guilty of violating R.C. 4731.43, practicing osteopathy without a certificate, only because the board suspended his license pursuant to R.C. 4731.281 due to his failure to renew his certificate. Both actions were based on Dr. Smith's "failure to renew his certificate"; thus, both were based on "the same infraction." Accordingly, once the board suspended Dr. Smith's license for failure to renew his certification and then fully reinstated his license without restriction

pursuant to R.C. 4731.281, it would be contrary to policy, as stated in *McCarthy*, to allow the board to again penalize Dr. Smith for his failure to renew his certification.

The board nonetheless points to two cases where this court has held that a "plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice" under R.C. 4731.22(B)(11) was sufficient to permit the board to discipline a licensee. See *Davidson v. Ohio State Med. Bd.* (May 7, 1998), Franklin App. No. 97APE08-1036, unreported, and *Herman v. Ohio State Med. Bd.* (Nov. 28, 2000), Franklin App. No. 99AP-967, unreported. We agree that a violation of R.C. 4731.22(B)(11) is sufficient to permit the board to discipline a licensee under appropriate circumstances, as this court held in *Davidson* and *Herman*. However, *Davidson* and *Herman* are factually distinguishable from *McCarthy* and the present case.

In *Davidson*, the appellant doctor pled guilty to a misdemeanor charge of obstructing official business that involved the removal of billing documents from patient files under investigation. The board subsequently suspended the doctor's license based on his commission of a misdemeanor in the course of practice in violation of R.C. 4731.22(B)(11), and this court affirmed the board's disciplinary action. *Davidson*, however, is distinguishable because in *Davidson* the board took only one disciplinary action against the doctor, that being the suspension of the doctor's license. The board did not suspend the doctor's license, reinstate it, and then take further disciplinary action against the doctor based on the same conduct that gave rise to the original suspension, as occurred here.

In *Herman*, a consent agreement to suspend the appellant doctor's license was entered into between the board and the doctor because the doctor informed the

board he had a relapse of his chemical dependency. The suspension was premised on a violation of R.C. 4731.22(B)(26), impairment of ability to practice. Subsequently, the board permanently revoked the doctor's license for his violation of R.C. 4731.22(B)(11), based on the doctor's guilty plea to two misdemeanor counts involving the doctor's diversion of medication from a patient for his personal use, thus placing the patient in a critical care area of a hospital at grave risk while in the doctor's care. In *Herman*, this court determined the conduct underlying the board's two actions against the doctor was not the same, and therefore the board's initial disciplinary action of suspending the doctor's license did not preclude the board from subsequently revoking the doctor's license in that case. Here, in contrast, because the board's two disciplinary actions against Dr. Smith were based on the same underlying conduct, the board was precluded from taking further disciplinary action against Dr. Smith after the board reinstated Dr. Smith's certificate to practice osteopathy with no restrictions. *McCarthy, supra*. Because *McCarthy* is controlling, the common pleas court properly determined the board's order was in error.

Accordingly, the board's single assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BOWMAN and BROWN, JJ., concur.

---

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

LARRY L. SMITH, D.O.  
Old Courthouse Building, Suite 100  
Canfield Village, Ohio 44406-1492,

CASE NO. 00CVF-09-8695

Appellant/Appellee,

JUDGE FAIS

vs.

THE STATE MEDICAL BOARD OF OHIO  
77 South High Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43266-0315,

Appellee/Appellant.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
01 JUL 26 PM 2:38  
CLERK OF COURTS

**NOTICE OF APPEAL**  
**OF THE STATE MEDICAL BOARD OF OHIO**

Please take notice that the State Medical Board of Ohio hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from the Decision on Merits and Entry Reversing Order Issued by the State Medical Board rendered on June 26, 2001, and journalized by Judgment Entry filed on June 27, 2001, on the grounds that the said Decision and Entry are not in accordance with law.

Respectfully submitted,

BETTY D. MONTGOMERY (0007102)  
Attorney General

*Mary Crawford*

MARY K. CRAWFORD (0021451)  
HANZ R. WASSERBURGER (0068665)  
Assistant Attorneys General  
Health & Human Services Section  
30 East Broad Street, 26<sup>th</sup> floor  
Columbus, Ohio 43215-3428  
(614) 466-8600

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
01 JUL 26 PM 2:48  
CLERK OF COURTS

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal of the State Medical Board of Ohio, was served first class U.S. Mail this 26<sup>th</sup> day of July, 2001, upon Terry H. Gilbert, Friedman & Gilbert, 1380 Ontario Street, Suite 1700, Cleveland, Ohio 44113-1726.



MARY K. CRAWFORD  
Assistant Attorney General

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

LARRY L. SMITH, M.D., ]  
Appellant ]  
v. ]  
STATE MEDICAL BOARD OF OHIO, ]  
Appellee. ]

FILED  
JUN 27 2001  
CLERK OF COURTS  
FRANKLIN COUNTY, OHIO

CASE NO. 00CVF09-8695

JUDGE FAIS

FINAL APPEALABLE

DECISION AND JUDGMENT ENTRY REVERSING THE  
ORDER OF THE STATE MEDICAL BOARD OF OHIO

Rendered this 26<sup>th</sup> day of June, 2001.

Fais, J.

This case is before the Court on a R.C. 119.12 appeal from the Order of the State Medical Board of Ohio reprimanding Appellant for failure to renew his medical license. The only issues in this case are whether or not the Board had the authority to reprimand him and, if so, whether or not its decision to do so was an abuse of discretion.

On April 5, 2000, the Board mailed Dr. Smith a notice of opportunity for hearing letter which informed him that the Board intended to take disciplinary action against his medical license based on the following allegations:

- (1) On or about September 30, 1996, your certificate to practice osteopathic medicine and surgery in Ohio expired. Upon your failure to submit an application for renewal, your certificate was automatically suspended October 1, 1996, in accordance with Section 4731.28(D) Ohio Revised Code (as in effect prior to June 30, 1997).

FILED  
COURT  
COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
2001 JUN 27 AM 10:09  
CLERK OF COURTS

- (2) On or about February 13, 1998 in Area Court #5, Mahoning County Court, Canfield, Ohio, you pleaded no contest to, and were found guilty of twenty-five (25) first degree misdemeanor counts of practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code, Practicing Osteopathy without a certificate.

The Board further asserted that the convictions amounted to "plea(s) of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice" as that clause is used in R.C. 4731.22(B)(11). It offered him the opportunity for a hearing, which he requested, and which took place on July 20, 2000. The hearing examiner found the violations to have been proved and recommended a reprimand. The Board adopted this recommendation at its meeting on September 13, 2000. This timely appeal followed.

In a R.C. 119.12 appeal, this Court must affirm the order of the Commission if it is supported by substantial, reliable, and probative evidence. ***Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St. 3d 570; Insight Enterprises, Inc. v. Ohio Liquor Control Comm. (1993), 87 Ohio App. 3d 692.*** The Supreme Court in ***Our Place, supra*** defined the quality of the evidence required as:

- (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.

49

- (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.

At the hearing, the convictions were admitted into evidence and Debra Jones, who is in charge of renewal applications for the Board, testified. She stated that a renewal form for the 1996-98 renewal period was mailed to Dr. Smith's office where he has practiced for 31 years. When he did not return the renewal application, his license was suspended by operation of law. The Board, at that time, did not send reminders. In July, 1997, his office was raided and searched. He was eventually charged with and convicted of 25 counts of practicing medicine without a license, M-1s.

On September 10, 1997, Dr. Smith drove to Columbus to renew his certificate. He was able to achieve that with Ms. Jones' help by filling out the application, paying a \$250 renewal fee and a \$25 late fee, and submitting proof that his continuing medical education was up to date. His license was reinstated on September 11, 2000.

Dr. Smith testified that he never received the renewal application and did not realize his certificate had expired. He was very offended at the conduct of the police whom he said threatened him with guns and tore up his office.

In recommending reprimand only, the hearing examiner found him to be remorseful, obviously believing this was an honest mistake. No objections to his

report and recommendation were filed. The Board found it difficult to believe he did not know his certificate was expired.

Appellant argues that since Appellant did not have a certificate, his actions could not have occurred in the course of his practice. He also urges that he has been punished enough and that the Medical Board charges should be dropped because his reinstatement should be considered to be retroactive to the end of the previous biennium, thereby making moot any claim that he practiced without a license.

R.C. 4731.281(B) provides:

(B) Every person holding a certificate under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatry shall, on or before July 1, 1992, and on or before the first day of July of every even-numbered year thereafter, apply to the state medical board for a certificate of registration with the board upon an application, which shall be furnished by the board, and shall pay at such time a fee of two hundred fifty dollars to the board. The board shall deposit the fee into the state treasury to the credit of the occupational licensing and regulatory fund created by section 4743.05 of the Revised Code, except that, until January 14, 1998, the board shall deposit twenty dollars of the fee into the state treasury to the credit of the physician loan repayment fund created by section 3702.78 of the Revised Code.

Except for the registration occurring in 1992, the board shall assess a penalty of twenty-five dollars for late applications. The board shall deposit penalties into the occupational licensing and regulatory fund.

Section (D) provides:

Failure of any certificate holder to register and comply with this section shall operate automatically to

suspend the holder's certificate to practice, and the continued practice after the suspension of the certificate to practice shall be considered as practicing without a license. A certificate to practice suspended for less than two years for failure to register shall be reinstated by the board upon submission of the current and delinquent registration fees, the twenty-five dollar penalty for later applications, and certification by signature of the applicant that the applicant has completed the requisite continuing medical education.

The board, on or before the first day of March of each year of registration, shall mail or cause to be mailed to every person registered to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, an application for registration addressed to the last known post-office address of such person or may cause such application to be sent to such person through the secretary of any recognized medical, osteopathic, or podiatric society. Failure of such person to receive an application from the board shall not excuse the person from the requirements contained in this section.

Based upon the clear language of this statute, both Appellant's arguments must fail. The statute provides that if the doctor keeps practicing after the expiration of his license, he is practicing without a license. It does not matter whether he knows he is suspended or not. The language imposes a strict liability type situation. There is nothing in the statute that would give the reinstatement any retroactive effect. The language is to the contrary—the license is not reinstated until the requirements found in R.C. 4731.281 are met. This did not occur until September, 1997.

Appellant cites *McCarthy v. Ohio State Medical Board (1989), 63 Ohio App. 3d 543* for the proposition that Appellant has met the requirements for relicensure and cannot be disciplined further. As was the case in *McCarthy*, there is no question that Dr. Smith came into compliance in September 1997 and that from October 1, 1996 through his relicensure he was practicing osteopathy without a license. Appellant's argument is that the Board should not be permitted to discipline a license which they have reinstated. Appellee, on the other hand, urges that *McCarthy* is distinguishable because he was charged under the "catch-all" provision of 4731.22(B)(16) while Dr. Smith is charged under R.C. 4731.22(B)(11):

(B) The board, by an affirmative vote of not fewer than six members, 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:

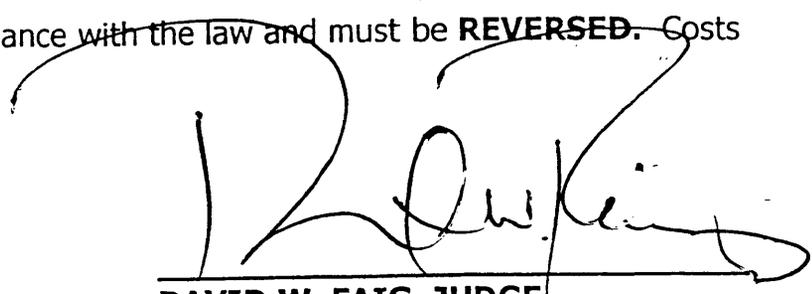
(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

However, this Court is persuaded that *McCarthy* intended to prevent this type of double punishment for the same offense. Whether the charge is brought under section (B)22 or (B)(11) of R.C. 4731.22, the Board is still imposing discipline against a license which it has reinstated with no restrictions. As the Court held in *McCarthy*:

It obviously was not the intent of the legislature to allow an osteopath to have his license reinstated pursuant to R.C. 4731.281 only to have it revoked under R.C. 4731.22 for the same infraction. . . The board's dual attempt to reinstate and revoke the license in the same breath is statutorily irreconcilable. Hence R.C. 4731.22<sup>1</sup> is not applicable to the matter presented herein, and with deference to the specific and mandatory language of R.C. 4731.22, the appellant had an unqualified right to have his license reinstated upon the submission of current and delinquent fees, the payment of a \$25 penalty, and the certification as to the required medical education.

The *McCarthy* Court further held that the only penalty provision applicable to these facts is under R.C. 4731.99. Dr. Smith has already had that section imposed for his pleas to the 25 misdemeanor counts. This action by the Board is an attempt to further punish him under R.C. 4731.22(B)(11) after it incongruously returned his license with no restrictions.

While the Court is cognizant of the fact that reprimand is minimal, the holding in *McCarthy*, in this Court's view, precludes further disciplinary action by the Board once the certificate is reinstated. Therefore, the order of the State Medical Board is not in accordance with the law and must be **REVERSED**. Costs to Appellee.

  
\_\_\_\_\_  
DAVID W. FAIS, JUDGE

6-26-01

<sup>1</sup> It did not limit its holding to section (B)(22) of R.C. 4731.22, but rather held that the entire statute did not apply.

Appearances:

Terry H. Gilbert, Esq.  
Attorney for Appellant

Hanz R. Wasserburger, Esq.  
Attorney for Appellee



# State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

September 13, 2000

Larry L. Smith, D.O.  
Old Courthouse Building, Suite 100  
Canfield Village, OH 44406-1492

Dear Doctor Smith:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 13, 2000, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 281 981 425  
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.  
CERTIFIED MAIL RECEIPT NO. Z 281 981 426  
RETURN RECEIPT REQUESTED

*Mailed 9/15/00*

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

LARRY L. SMITH, D.O.

\*

**ENTRY OF ORDER**

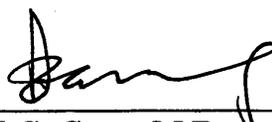
This matter came on for consideration before the State Medical Board of Ohio on September 13, 2000.

Upon the Report and Recommendation of Sharon W. Murphy, 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 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 Larry L. Smith, D.O., be REPRIMANDED.

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

(SEAL)

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

SEPTEMBER 13, 2000  
Date

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 13, 2000, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Larry L. Smith, D.O., 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.

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

(SEAL)

\_\_\_\_\_  
SEPTEMBER 13, 2000  
Date

2000 AUG 17 P 5: 44

**REPORT AND RECOMMENDATION  
IN THE MATTER OF LARRY L. SMITH, D.O.**

The Matter of Larry L. Smith, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio on July 20, 2000.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated April 5, 2000, [corrected letter mailed April 12, 2000] the State Medical Board of Ohio [Board] notified Larry L. Smith, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery based on the following allegations:

“(1) On or about September 30, 1996, [Dr. Smith’s] certificate to practice osteopathic medicine and surgery in Ohio expired. Upon [his] failure to submit an application for renewal, [Dr. Smith’s] certificate was automatically suspended October 1, 1996, in accordance with Section 4731.281(D) Ohio Revised Code (as in effect prior to June 30, 1997).

“Subsequently, on or about August 10, 1997, [Dr. Smith] submitted a renewal application with payment of registration fee and reinstatement penalty, and [his] license was subsequently reinstated on or about September 11, 1997.

“(2) On or about February 13, 1998, in Area Court #5, Mahoning County Court, Canfield, Ohio, [Dr. Smith] pleaded no contest to, and [was] found guilty of twenty-five (25) first degree misdemeanor counts of practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code, Practicing osteopathy without a certificate.

“The acts underlying [Dr. Smith’s] above plea of no contest and ensuing conviction, were that, from the date [his] license lapsed on or about September 30, 1996, until on or about July 15, 1997, [he] practiced osteopathic medicine and surgery in Canfield, Ohio, without a valid certificate issued by the State Medical Board of Ohio.

“[Dr. Smith was] fined \$50.00 and payment of costs for each of the twenty-five (25) counts and required to pay the Mahoning County Drug Task Force the amount of \$10,000.00 as reimbursement for the costs of investigation.”

2000 AUG 17 P 5:44

The Board alleged that the judicial findings of guilt, as alleged in paragraph 2, 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 (as in effect prior to March 9, 1999).”

Accordingly, the Board advised Dr. Smith of his right to request a hearing in this matter. (State’s Exhibit 1A).

- B. By document received by the Board on May 1, 2000, Douglas E. Graff, Esq., requested a hearing on behalf of Dr. Smith. (State’s Exhibit 1B).

## II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Anne B. Strait, Assistant Attorney General.
- B. On behalf of the Respondent: Douglas E. Graff, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

- A. Presented by the State
  - Debra L. Jones
- B. Presented by the Respondent
  - 1. Larry L. Smith, D.O.
  - 2. John J. Vargo, D.O.

### II. Exhibits Examined

- A. Presented by the State
  - 1. State’s Exhibits 1A through 1L: Procedural exhibits.
  - 2. State’s Exhibit 2: Certified copies of State Complaints filed in Mahoning County [Ohio] Court No. 5 in cases captioned *State of Ohio v. Larry Lee Smith*, Case Nos. 97CR180 through 97CR204. [Note: Social Security Numbers were redacted from these documents by the Hearing Examiner post hearing.]

2000 AUG 17 P 5:44

3. State's Exhibit 3: Certified copy of the Disposition filed in Mahoning County [Ohio] Court No. 5 in *State v. Smith*.
4. Substitute State's Exhibit 4: July 20, 2000, Certification of Debra L. Jones concerning the licensure status of Dr. Smith. [Note: The original State's Exhibit 4 contained an error. The substitute exhibit was admitted in its stead without objection from either party.]
5. State's Exhibits 5 and 6: Copies of Dr. Smith's applications for biennial renewal of his certificate, signed September 10, 1997, and March 2, 1998, respectively.

B. Presented by the Respondent

Respondent's Exhibit A: Curriculum vitae of Larry Lee Smith, D.O.

C. Post-hearing Exhibits

On the Hearing Examiner's own motion, the following exhibits are admitted to the record:

1. Board Exhibit A: Dr. Smith's Post Hearing Statement.
2. Board Exhibit B: The State's Post Hearing Statement.

### PROCEDURAL MATTERS

The hearing record in this matter was held open until August 14, 2000, to permit the parties to submit post-hearing statements. These statements were timely received, and the hearing record closed on August 14, 2000.

### SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. Larry L. Smith, D.O., obtained his osteopathic medical degree from the Philadelphia College of Osteopathic Medicine and Surgery in 1966. Thereafter, Dr. Smith completed a general rotating internship at the Youngstown Osteopathic Hospital in Youngstown, Ohio. Dr. Smith also completed a Nuclear Medicine Preceptorship at the Nuclear Medicine Institute in Cleveland, Ohio. Thereafter, Dr. Smith served in the U.S. Army, and completed an Intensive Formal Preceptorship in Diagnostic Radiology at the Valley Forge General Hospital, Valley

2000 AUG 17 P 5:44

Forge, Pennsylvania. Dr. Smith testified that, in 1969, he started a practice in Canfield, Ohio, and has practiced at that location since that time. Dr. Smith further testified that that he was certified in general practice in 1974 by the American Osteopathic Board of General Practice. (Respondent's Exhibit [Resp. Ex.] A; Hearing Transcript [Tr.] at 29-33).

2. Debra L. Jones testified at hearing on behalf of the State. Ms. Jones testified that she is the Chief of CME, Records, and Renewal for the Board. Ms. Jones further testified that her responsibilities include processing the periodic renewals of certificates of physicians licensed by the Board. (Tr. at 10-11).

Ms. Jones testified that the Board had mailed Dr. Smith a renewal application for the 1996-1998 registration period, and that it had been mailed to Dr. Smith's address of record. Ms. Jones further testified that Dr. Smith did not return a completed renewal application to the Board. Therefore, on October 1, 1996, Dr. Smith's certificate to practice osteopathic medicine and surgery in Ohio was suspended for failure to renew. (State's Exhibit [St. Ex.] 4; Tr. at 11, 17-19).

Ms. Jones testified that, in 1996, the Board did not send notices to physicians who failed to timely renew that their certificates had been suspended. (Tr. at 18-23).

Ms. Jones further testified that, on September 10, 1997, Dr. Smith personally presented to the Board an application for renewal of his certificate. Moreover, Dr. Smith paid \$275.00 in registration fees, which included a \$25 late registration fee. Ms. Jones advised that Dr. Smith's certificate was reinstated on September 11, 1997. (St. Exs. 5; Tr. at 11-13). [Note: During hearing there was some discussion concerning whether Dr. Smith's renewal application had been signed on August 10 or September 10, 1997. The parties agreed to stipulate that Dr. Smith had signed it on September 10, 1997. (Tr. at 16-17)]

3. Dr. Smith testified that on July 17, 1997, during his regular office hours, his office was raided and searched by various law enforcement agents from a multi-county Drug Task Force, the Board, the Pharmacy Board, the Canfield Police Department, and the DEA. Dr. Smith testified that the agents were "aggressive" and "intimidating" and were armed with "large caliber guns." Moreover, Dr. Smith testified that the agents removed items from his office, and that the process lasted for approximately five hours. Dr. Smith testified that it left his office "literally desecrated." Dr. Smith testified that he had been presented with a search warrant and asked if he was aware that he had been practicing without a license. Dr. Smith testified that he had not been aware of that, and that had he known he would have corrected it immediately. (Tr. at 33-35).

Dr. Smith acknowledged that he is now aware that he had not renewed his certificate in 1996. Dr. Smith further testified, however, that, prior to the raid of his office, he had not aware been that his certificate had expired. (Tr. at 34, 43).

4. On August 28, 1997, in the Mahoning County Court No. 5, twenty-five complaints were filed against Dr. Smith, charging him with violating Section 4731.43, Ohio Revised Code, Practicing Osteopathy Without Certificate, a misdemeanor of the first degree. On February 13, 1998, Dr. Smith pleaded no contest to the twenty-five complaints, and was found guilty by the court. The court sentenced Dr. Smith to pay costs for each count, plus a total fine of \$50.00. In addition, the court ordered Dr. Smith to pay \$10,000.00 to the Mahoning County Drug Task Force as reimbursement for the costs of its investigation. (St. Exs. 2 and 3).
5. Dr. Smith testified that, on September 10, 1997, he went to the Board's offices to reinstate his certificate. Dr. Smith testified that he spoke to Ms. Jones, who told him that he must submit a renewal application, a \$250.00 registration fee, a \$25.00 late registration fee, and certification of his continuing medical education. Dr. Smith further testified that he had provided these items to Ms. Jones who then advised him that he was free to practice. Dr. Smith testified that he was taken aback by the brevity of the process, and asked for something official to confirm that he was actually allowed to resume practice. Ms. Jones obliged and wrote a statement to that effect and, at Dr. Smith's request, affixed the Board's seal. (Tr. at 36-38).

Dr. Smith testified, on the advice of his attorney, that he had waited until September to reinstate his license after the July raid. Dr. Smith testified that his attorney had advised him to wait until after the police investigation had been completed. Dr. Smith testified that, after being notified by his attorney that he could seek reinstatement, he drove to the Board's offices the following day. (Tr. at 44-45).
6. Dr. Smith acknowledged that he had practiced medicine from the time his license lapsed until the police raid, but explained that he had done so without realizing that he had failed to renew. Dr. Smith testified that, from the time of the police raid until his reinstatement, he had refrained from the practice of osteopathic medicine. (Tr. at 39-41).
7. Dr. Smith testified that he had surrendered his DEA registration in July 1997 but that it has since been returned to him. (Tr. at 41).
8. John J. Vargo, D.O., testified on behalf of Dr. Smith. Dr. Vargo testified that he practices family medicine in Austintown, Ohio, and that he has been licensed to practice medicine in Ohio for eleven years. Dr. Vargo testified that he knows Dr. Smith as a colleague and mentor, and as a friend. Dr. Vargo testified that Dr. Smith is a good doctor, and a good businessman as well. (Tr. at 47-51).

#### FINDINGS OF FACT

1. On September 30, 1996, the certificate of Larry L. Smith, D.O., to practice osteopathic medicine and surgery in Ohio expired due to his failure to submit an application for renewal.

2000 AUG 17 P 5:44

On October 1, 1996, in accordance with Section 4731.281(D), Ohio Revised Code (as in effect prior to June 30, 1997), Dr. Smith's certificate was automatically suspended.

2. On February 13, 1998, in Mahoning County Court No. 5, Canfield, Ohio, Dr. Smith pleaded no contest to, and was found guilty of, twenty-five first degree misdemeanor counts of violating Section 4731.43, Ohio Revised Code, Practicing Osteopathy Without Certificate. The court sentenced Dr. Smith to pay costs for each count, plus a total fine of \$50.00. In addition, the court ordered Dr. Smith to pay \$10,000.00 to the Mahoning County Drug Task Force as reimbursement for the costs of its investigation.

The acts underlying Dr. Smith's criminal convictions were that, from October 1, 1996, the date Dr. Smith's license was automatically suspended until July 17, 1997, the date Dr. Smith's office was raided, Dr. Smith had practiced osteopathic medicine and surgery in Ohio without a valid certificate issued by the Board.

3. On September 10, 1997, Dr. Smith submitted a renewal application, along with payment of a \$250.00 registration fee and a \$25.00 late registration fee. Dr. Smith's certificate was reinstated on September 11, 1997.

### CONCLUSIONS OF LAW

Dr. Smith argued, through his counsel, that when Dr. Smith's certificate was reinstated in September 1997 the reinstatement had been retroactive to October 1996. Accordingly, Dr. Smith argued that he cannot now be accused of having practiced without a certificate. Alternatively, Dr. Smith argued that, because a certificate is required to practice, Dr. Smith's convictions for practicing without a certificate could not have constituted "a misdemeanor committed in the course of practice."

These arguments are not persuasive. First, as noted in The State's Post Hearing Statement, Section 4731.281(D), Ohio Revised Code, requires that a certificate holder's failure to renew his or her certificate shall result in the certificate being automatically suspended, and further states that "the continued practice after the suspension of the certificate to practice shall be considered as practicing without a license." (R.C. 4731.281[D]). Nothing in the Revised Code or the Administrative Rules suggests that a later license renewal voids the earlier offense of practicing without a license.

Second, if possession of a valid certificate is required for some act to have occurred "in the course of practice," then the offense of practicing osteopathy without a certificate could never be committed—if one did not have the certificate, one could not be "practicing."

Accordingly the judicial findings of guilt of Larry L. Smith, D.O., as set forth in Findings of Fact 2, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed

2000 AUG 17 P 5:44

in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code (as in effect prior to March 9, 1999).

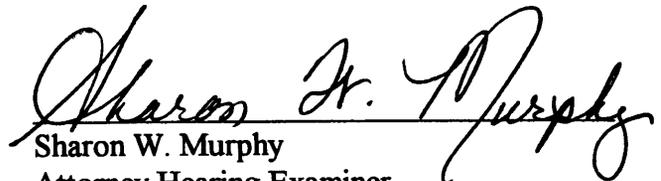
\* \* \* \* \*

Physicians who are licensed by the Board are required by statute to periodically renew their certificates to practice. In 1996, Dr. Smith failed to do so and continued to practice after the automatic suspension of his certificate. Dr. Smith was eventually convicted of twenty-five misdemeanor counts of practicing osteopathy without a certificate. Such conduct has in the past been deemed by this Board to warrant a severe sanction. In mitigation, however, it would appear that Dr. Smith's failure to renew his certificate in 1996 had resulted from negligent oversight and was not a willful or intentional act. In addition, Dr. Smith immediately ceased practicing when he learned of the problem, and did not resume practice until he had properly renewed his certificate and paid a late registration fee. Moreover, the police search of Dr. Smith's office, and subsequent criminal convictions, fine, and order to reimburse the Mahoning County Drug Task Force clearly have served to punish Dr. Smith. Moreover, these events have made it extremely unlikely that Dr. Smith will ever again practice without a license. Finally, Dr. Smith is unmistakably remorseful for his conduct. Accordingly, the Board would be well justified in showing leniency toward Dr. Smith.

#### PROPOSED ORDER

It is hereby ORDERED that Larry L. Smith, D.O., be REPRIMANDED.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

## EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 13, 2000

### REPORTS AND RECOMMENDATIONS

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

Dr. Egner 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 Ann Arbor Institute of Massage Therapy; Gregory Charles Brant, D.O.; Larry L. Smith, D.O.; Youra Tymochko, D.O.; and Lawrence L. Young, III, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Egner	- aye

Dr. Egner 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. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Egner	- aye

Dr. Egner noted that, in accordance with the provision in Section 4731.22(F)(2), 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.

Dr. Egner 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.

.....

Dr. Egner asked Dr. Steinbergh whether she had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Ann Arbor Institute of Massage Therapy; Gregory Charles Brant, D.O.; Larry L. Smith, D.O.; Youra Tymochko, D.O.; and Lawrence L. Young, III, M.D.

Dr. Steinbergh replied that she had.

Dr. Egner asked whether Dr. Steinbergh 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.

Dr. Steinbergh stated that she does.

.....

LARRY L. SMITH, D.O.

.....

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF LARRY L. SMITH, D.O. DR. STEINBERGH SECONDED THE MOTION.**

.....

A vote was taken on Dr. Somani's motion to approve and confirm:

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 13, 2000  
IN THE MATTER OF LARRY L. SMITH, D.O.

VOTE:

Mr. Albert	- abstain
Dr. Bhati	- aye
Dr. Talmage	- aye
Dr. Somani	- aye
Dr. Buchan	- aye
Mr. Browning	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

## Corrected

April 5, 2000

Larry L. Smith, D.O.  
Old Courthouse Building, Suite 100  
Canfield Village, Ohio 44406-1492

Dear Doctor Smith:

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about September 30, 1996, your certificate to practice osteopathic medicine and surgery in Ohio expired. Upon your failure to submit an application for renewal, your certificate was automatically suspended October 1, 1996, in accordance with Section 4731.281(D) Ohio Revised Code (as in effect prior to June 30, 1997).

Subsequently, on or about August 10, 1997, you submitted a renewal application with payment of registration fee and reinstatement penalty, and your license was subsequently reinstated on or about September 11, 1997.

- (2) On or about February 13, 1998 in Area Court #5, Mahoning County Court, Canfield, Ohio, you pleaded no contest to, and were found guilty of twenty-five (25) first degree misdemeanor counts of practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code, Practicing osteopathy without a certificate.

The acts underlying your above plea of no contest and ensuing conviction, were that, from the date your license lapsed on or about September 30, 1996, until on or about July 15, 1997, you practiced osteopathic medicine and surgery in Canfield, Ohio, without a valid certificate issued by the State Medical Board of Ohio.

You were fined \$50.00 and payment of costs for each of the twenty-five (25) counts and required to pay the Mahoning County Drug Task Force the amount of \$10,000.00 as reimbursement for the costs of investigation. Copies of the criminal Complaints [counts] and Judgment Entry are attached hereto and fully incorporated herein.

The judicial findings of guilt, as alleged in paragraph (2) above, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the

*Mailed 4/6/00  
Second Mailing 4/12/00*

Larry L. Smith, D.O.

Page 2

course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code (as in effect prior to March 9, 1999).

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 of 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.

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,



Carol L. Egner, M.D.  
President

AGG/jag  
Enclosures

CERTIFIED MAIL # Z 281 981 510  
RETURN RECEIPT REQUESTED

SECOND MAILING  
CERTIFIED MAIL RECEIPT NO. Z 281 981 338  
RETURN RECEIPT REQUESTED

9702180

STATE COMPLAINT

STATE OF OHIO.

] ss.

Mahoning County Court

]

5 # Area - District

Mahoning County,

Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 11th

day of December, A. D. 1996 at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

[Signature]  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97CP 181

STATE COMPLAINT

STATE OF OHIO.

] ss.

Mahoning County Court

]

5 # Area - District

Mahoning County,

Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I. Bodzak

who being duly sworn according to law, deposes and says that on or about the 27th

day of June A. D. 1997, at the County of Mahoning, City of Canfield

aforsaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE

4731.43 OHIO REVISED CODE

MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedie Laudo  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ce B 182

**STATE COMPLAINT**

STATE OF OHIO.

] ss.

Mahoning County Court

]

5 # Area - District

Mahoning County,

Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 23rd

day of December, A. D. 1996, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedus Lando  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97clB 183

STATE COMPLAINT

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew J. Bodzak

who being duly sworn according to law, deposes and says that on or about the 15th

day of December, A. D. 1996, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedric Paul  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ceB 184

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I. Bodzak

who being duly sworn according to law, deposes and says that on or about the 30th

day of December, A. D. 1996, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedus Janda  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ceB185

**STATE COMPLAINT**

STATE OF OHIO.

] ss.  
]

**Mahoning County Court  
5 # Area - District  
Canfield, Ohio**

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 11th

day of July A. D. 1997, at the County of Mahoning, City of Canfield

aforsaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100  
Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board  
or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

**\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio**

*This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedus Standa  
Deputy Clerk - County Court

**MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643**

97cl 186

**STATE COMPLAINT**

STATE OF OHIO.                    ] ss.  
  ]   
Mahoning County,

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me,   Kathy Williams   Clerk of said County Court

personally came   Detective Andrew I Bodzak  

who being duly sworn according to law, deposes and says that on or about the   4th  

day of   October  , A. D. 1996, at the County of   Mahoning  , City of   Canfield  

aforsaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100  
Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board  
or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed   Andrew J. Bodzak  

Sworn to before me and subscribed before me, this   28TH   day of   AUGUST   1997

  Jedus Sada    
Clerk - County Court

**MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643**

97ceB 187

STATE COMPLAINT

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 19th

day of May A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Judith Budak  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

9702188.

STATE COMPLAINT

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I. Bodzak

who being duly sworn according to law, deposes and says that on or about the 30th

day of June A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedie J. [Signature]  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ce. 189

**STATE COMPLAINT**

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 7th

day of July A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedie Staudt  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97CEB 190

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I. Bodzak

who being duly sworn according to law, deposes and says that on or about the 14th

day of July A D 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

[Signature]  
Deputy Clerk - County Court

**MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643**

97ce191

STATE COMPLAINT

STATE OF OHIO. ] ss.

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 23rd

day of June A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedus Lado  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

9702 192

**STATE COMPLAINT**

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 31st

day of January, A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Judith Laude  
Deputy Clerk - County Court

**MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643**

9702 193

STATE COMPLAINT

STATE OF OHIO.

] ss.  
|

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew J. Bodzak

who being duly sworn according to law, deposes and says that on or about the 5th

day of March, A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedric Budo  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ce 194

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 9th  
day of June A. D. 1997, at the County of Mahoning, City of Canfield

aforsaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100  
Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board  
or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedediah  
Deput Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

Copy 9/22/95

STATE COMPLAINT

STATE OF OHIO.

] ss.

Mahoning County Court

]

5 # Area - District

Mahoning County,

Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I. Bodzak

who being duly sworn according to law, deposes and says that on or about the 19th

day of February, A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Judith Hudis  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

9702196

STATE COMPLAINT

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 26th

day of February, A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedus Budo  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

Copy 9702197

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 16th

day of June A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedie Nauola  
Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

9700 B 198

STATE COMPLAINT

STATE OF OHIO.

] ss.  
|

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew J. Bodzak

who being duly sworn according to law, deposes and says that on or about the 14th  
day of July A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100  
Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board  
or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST (1997)

Judith Wade  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

Copy

97ce 199

STATE COMPLAINT

STATE OF OHIO.

] ss.  
|

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 14th

day of March, A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedediah ...  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ce 200

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 15th

day of January, A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jedric Naud  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ce 201

STATE COMPLAINT

STATE OF OHIO.

] ss.  
]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Mahoning County,

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew J. Bodzak

who being duly sworn according to law, deposes and says that on or about the 2nd  
day of June A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100  
Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board  
or without complying with all the provisions of the law relating to such practice.*

PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

[Signature]  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PSH(330)533-3643

9702 202

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I. Bodzak

who being duly sworn according to law, deposes and says that on or about the 28th

day of May A. D. 1997, at the County of Mahoning, City of Canfield

aforesaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Jessie Nanda  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97cl 203

STATE COMPLAINT

STATE OF OHIO. ] ss.  
Mahoning County, ]

Mahoning County Court  
5 # Area - District  
Canfield, Ohio

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew J. Bodzak

who being duly sworn according to law, deposes and says that on or about the 4th

day of March, A. D. 1997 at the County of Mahoning, City of Canfield

aforsaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100 Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio

*This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Judith Gaudi  
Deputy Clerk - County Court

MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643

97ce 204

**STATE COMPLAINT**

STATE OF OHIO. ] ss.  
Mahoning County, ]

**Mahoning County Court  
5 # Area - District  
Canfield, Ohio**

Before me, Kathy Williams Clerk of said County Court

personally came Detective Andrew I Bodzak

who being duly sworn according to law, deposes and says that on or about the 6th

day of June A D 1997, at the County of Mahoning, City of Canfield

aforsaid, Dr. Larry Lee Smith whose medical office address is Olde Courthouse Building, Suite # 100  
Canfield, Ohio 44406

*did unlawfully practice osteopathic medicine without a valid certificate from the State of Ohio Medical Board  
or without complying with all the provisions of the law relating to such practice.*

**PRACTICING OSTEOPATHY WITHOUT CERTIFICATE  
4731.43 OHIO REVISED CODE  
MISDEMEANOR OF THE FIRST DEGREE**

**\*\*\*Larry Lee Smith, D.O. Date of Birth 01/04/40  
7645 Chestnut Ridge Hubbard, Ohio**

*This being  
contrary to the form of the statute in such case made and provided, and against the peace and dignity  
of the State of Ohio.*

Signed Andrew J. Bodzak

Sworn to before me and subscribed before me, this 28TH day of AUGUST 1997

Judith Landa  
Deputy Clerk - County Court

**MAHONING COUNTY COURT # 5  
CANFIELD, OHIO  
72 North Broad St. PS#(330)533-3643**

IN THE MAHONING COUNTY  
AREA COURT #5  
CANFIELD, OHIO 44406

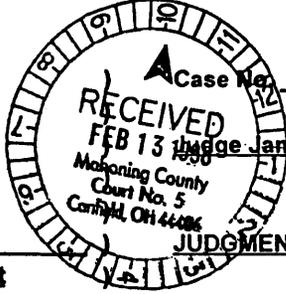
STATE OF OHIO

Plaintiff

vs.

LARRY SMITH

Defendant



Case No. 97CRA 179 et al.

Judge James C. Evans

JUDGMENT ENTRY

Defendant in Court with counsel, J. Walter Dwygowski and pursuant to plea negotiations, and under the Agreement of The Assisting Officers, The Defendant withdrew her former plea of NOT guilty; enters a plea of NO Contest to The charge as enumerated; stipulates to a finding of guilty; stipulates to Probable Cause for all arrests; and is hereby sentenced as follows:

97CRA 179 - Poss of Drugs - 2925.11(A) - Dismissed on grounds that Lab testing revealed no presence of controlled substances in sample NO-COSTS.

97CR 177 (B) - Records of Crds. Sub. 3719.07E - Dismissed

97CR 178 (B) - Labelling of Crds. Sub. 3719.08(B) - Dismissed

97CRB180 TRM and including 97CCB 204 - Practicing Osteopathy without a license - 4731.43 - on each count The Defendant shall pay costs; total fine \$50.00 to be applied to 97CR180 (B).

Further, The Defendant shall pay to The Mahoning County Drug Task Force The amount of \$10,000.00 (TEN THOUSAND DOLLARS) AS REIMBURSEMENT FOR THE COSTS OF INVESTIGATION. IN addition to all fines & costs.

THE Canfield Police Department shall return to THE DEPT all items seized upon. All contaminated drugs shall BE Retained and Destroyed by The Mah. County Drug Task Force.

Feb 13, 1998

Date

James C. Evans

JUDGE JAMES C. EVANS

David J. Gilroy  
Prosecuting Attorney

Jim A. [Signature]  
Attorney for Defendant

Complainant

[Signature]  
Defendant