



# State Medical Board of Ohio

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May 10, 2006

Gary Ray Lutz, D.O.  
8401 West Charleston Blvd., Apt. 1033  
Las Vegas, NV 89117

Dear Doctor Lutz:

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 10, 2006, 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 setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8418  
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4329 8395  
RETURN RECEIPT REQUESTED

*Mailed 5-12-06*

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 10, 2006, 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 Gary Ray Lutz, 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.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

May 10, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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\*

GARY RAY LUTZ, D.O.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 10, 2006.

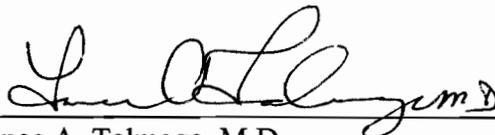
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the 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 Gary Ray Lutz, 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 notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.

Secretary

May 10, 2006

Date

2006 MAR 17 A 9:38

**REPORT AND RECOMMENDATION  
IN THE MATTER OF GARY RAY LUTZ, D.O.**

The Matter of Gary Ray Lutz, D.O., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on August 2, 2005.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated April 13, 2005, the State Medical Board of Ohio [Board] notified Gary Ray Lutz, D.O., 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 on an April 11, 2005, action allegedly taken by the Nevada State Board of Osteopathic Medicine [Nevada Board] against Dr. Lutz's license to practice in that State. The Board also alleged that the conduct of Dr. Lutz underlying the Nevada Board action violated the terms of Dr. Lutz's November 16, 1998, Order of the State Medical Board of Ohio.

The Board alleged that Dr. Lutz's conduct constitutes "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in \* \* \* R.C. 4731.22(B)(15)." The Board further alleged that the Nevada Board action concerning Dr. Lutz constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in R.C. 4731.22(B)(22)."

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

- B. By document received by the Board on May 12, 2005, Eric J. Plinke and John P. Carney, Esqs., requested a hearing on behalf of Dr. Lutz. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Thomas E. Madden and Tara L. Berrien, Assistant Attorneys General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

1. Gary Ray Lutz, D.O., as upon cross-examination
2. Charles A. Woodbeck, Esq.
3. Jackie Moore

#### B. Presented by the Respondent

Gary Ray Lutz, D.O.

### II. Exhibits Examined

#### A. Presented by the State

1. State's Exhibits 1A through 1M: Procedural exhibits. [Note: Attachments to State's Exhibit 1A were redacted from that exhibit during the hearing. (See Tr. at 116)]
2. State's Exhibit 2A: Copy of an April 15, 2004, Interim Agreement between Dr. Lutz and the Board whereby Dr. Lutz agreed to refrain from practicing in Ohio during the pendency of this matter, and attachments which consist of copies of the following: February 13, 2004, Emergency Order of Summary Suspension of License to Practice Osteopathic Medicine in the State of Nevada; October 14, 1998, Certification; October 14, 1998, Entry of Order; September 10, 1998, Report and Recommendation in the Matter of Gary Ray Lutz, D.O.; excerpt from the draft minutes of the Board's October 14, 1998, Board meeting concerning Dr. Lutz; and May 13, 1998, notice of opportunity for hearing sent by the Board to Dr. Lutz.
3. State's Exhibit 2B: Copy of the minutes regarding Dr. Lutz from the Board's May 12, 1999, meeting.
4. State's Exhibits 3 through 7: Copies of documents maintained by the Nevada State Board of Osteopathic Medicine concerning Dr. Lutz, consisting of the following:
  - a. State's Exhibit 3: February 12, 2004, Complaint.
  - b. State's Exhibit 4: February 12 2004, Request for Emergency Order of Summary Suspension.
  - c. State's Exhibit 5: February 13, 2004, Emergency Order of Summary Suspension of License to Practice Osteopathic Medicine in the State of Nevada.

- d. State's Exhibit 6: October 4, 2004, Amended Complaint.
- e. State's Exhibit 7: April 11, 2005, Findings of Fact, Conclusions of Law, and Order Revocating Medical License.

B. Presented by the Respondent

1. Respondent's Exhibit A: Letters of support written on behalf of Dr. Lutz by his medical colleagues.
2. Respondent's Exhibit B: Copies of blank documents from Dr. Lutz's practice consisting of Weekly Progress Notes and Narcotic and Pain Related Medication Agreement.

### PROFFERED MATERIALS

The following documents were neither admitted to the hearing record nor considered by the Hearing Examiner, but are being sealed from public disclosure and held as proffered material:

- I. State's Amended Exhibit 1A: A copy of the Board's April 13, 2005, notice of opportunity for hearing issued to Dr. Lutz.
- II. Respondent's Exhibit C: A copy of the Board's April 13, 2005, notice of opportunity for hearing issued to Dr. Lutz that is missing an attachment.

### PROCEDURAL MATTERS

There was considerable testimony and argument concerning whether the Nevada Board Order had been attached to the copy of the Board's April 13, 2005, notice of opportunity for hearing [Notice] sent to Dr. Lutz. Based upon that testimony and argument, the Hearing Examiner simply notes that it is possible that the Nevada Board Order had *not* been attached to Dr. Lutz's copy of the Notice. (See Tr. at 189-211)

### 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.

#### Background Information

1. Gary Ray Lutz, D.O., obtained his osteopathic medical degree in 1979 from the Kansas City College of Osteopathic Medicine and Surgery. In 1980, Dr. Lutz completed a one-year

rotating internship at Grandview Hospital in Dayton, Ohio. (State's Exhibit [St. Ex.] 2A at 24)

Dr. Lutz testified that he has been practicing osteopathic medicine for about 26 years. (Hearing Transcript [Tr.] at 17)

### **The 1998 Board Action against Dr. Lutz**

2. By letter dated May 13, 1998, the Board notified Dr. Lutz that it had proposed to discipline Dr. Lutz's license to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Lutz had been convicted of two misdemeanor offenses: disorderly conduct and contributing to the unruliness of a child. Dr. Lutz requested a hearing, and a hearing was held on July 22, 1998. On September 10, 1998, the Board's Hearing Examiner issued a Report and Recommendation [R&R] for the Board's consideration. (St. Ex. 2A at 21, 37-40)

At its meeting on October 14, 1998, the Board considered Dr. Lutz's case. During that meeting, the Board adopted the Findings of Fact as set forth in the R&R, which stated as follows:

1. On or about March 24, 1997, in the Municipal Court of Vandalia, Ohio, Dr. Lutz was found guilty of disorderly conduct in violation of Section 2917.11(A), Ohio Revised Code, a misdemeanor of the fourth degree. The acts underlying this conviction were that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the October 1996 issue of Penthouse magazine. Dr. Lutz was acting as a high school football team physician at the time of the transaction.
2. On or about January 13, 1998, in the Common Pleas Court of Miami County, Ohio, Juvenile Division, Dr. Lutz was found guilty of contributing to the unruliness of a child in violation of Section 2919.24(A), Ohio Revised Code, a misdemeanor of the first degree. The acts underlying this conviction were that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the March 1996 issue of Penthouse Variations magazine at his office.
3. There was no evidence presented to support a finding that Dr. Lutz derived or hoped to derive sexual gratification from his interactions with Patient 1.

(St. Ex. 2A at 30, 38; Quote at 30) (Emphasis in original)

Moreover, the Board adopted the Conclusions of Law as set forth in the R&R that Dr. Lutz's misdemeanor convictions had constituted "'plea[s] of guilty to, or a judicial finding[s] of guilt

of, \* \* \* misdemeanor[s] committed in the course of practice,' as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.” (St. Ex. 2A at 31, 38; Quote at 31)

Finally, the Board issued an Entry of Order [Ohio Board Order] effective November 16, 1998, that permanently revoked Dr. Lutz’s license, but stayed that revocation subject to a suspension for at least six months with requirements for reinstatement, to be followed by probationary monitoring for at least five years. (St. Ex. 2A at 15-20)

3. Effective May 13, 1999, the Board granted Dr. Lutz’s request for reinstatement of his license to practice osteopathic medicine and surgery in Ohio, subject to the probationary requirements of the Ohio Board Order (St. Ex. 2B) The requirements included the following:

3. Upon reinstatement, Dr. Lutz’s certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

\* \* \*

- b. Dr. Lutz shall obey all federal, state and local laws; all rules governing the practice of osteopathic medicine and surgery in Ohio; and all terms of probation imposed by the courts in Case No. 96CRB03044 and Case No. 98-40002.

(St. Ex. 2A at 18) Since his reinstatement, Dr. Lutz’s Ohio certificate has been subject to the probationary terms, conditions, and limitations set forth in the Ohio Board Order. (St. Ex. 2A at 2; Tr. at 30-32)

4. Dr. Lutz testified that, for approximately 17 years prior to the Board’s October 1998 suspension of his Ohio license, he had had a solo practice in West Milton, Ohio. At some point preceding the Board’s suspension order, Dr. Lutz had also taken over a practice in Englewood, Ohio, and practiced out of both offices. Dr. Lutz testified that, after his license had been reinstated in May 1999, he had combined the two practices. (Tr. at 120-121)

Dr. Lutz testified that, shortly after his license had been reinstated, a long-term friend in Nevada had invited him to join his group practice in that state. Dr. Lutz further testified, “I felt, in light of the history that I had made for myself here, that it would be a good start to go out there.” (Dr. Lutz noted that he had maintained a Nevada license since about 1982.) Finally, Dr. Lutz testified that he had moved to and begun practicing in Nevada on November 30, 1989. (Tr. at 25-28, 121-122; Quote at 121)

### **The Nevada Board Action**

5. On February 12, 2004, the Investigative Board Member of the Nevada State Board of Osteopathic Medicine [Nevada Board] issued a Complaint against Dr. Lutz, along with a Request for Emergency Order of Summary Suspension of Dr. Lutz’s certificate to practice

osteopathic medicine in Nevada. The following day, February 13, 2004, the Nevada Board issued an Emergency Order of Summary Suspension of License to Practice Osteopathic Medicine in the State of Nevada, thereby suspending Dr. Lutz's certificate to practice osteopathic medicine in Nevada pending proceedings on the Complaint. (St. Exs. 3-5)

Subsequently, on October 4, 2004, the Investigative Board Member of the Nevada Board issued an Amended Complaint against Dr. Lutz. (St. Ex. 6)

[Note that any allegations contained in the Complaint and Amended Complaint that are not reflected in the Nevada Board's Findings of Fact and Conclusions of Law, as described in detail below, must be disregarded by the Hearing Examiner and by the Board in making any decision concerning this matter. (See Tr. at 110-116)]

6. On March 8 and 9, 2005, a hearing was held concerning the allegations set forth in the Amended Complaint. (St. Ex. 7 at 1) Dr. Lutz was present at that hearing with counsel, but did not testify during the hearing. (Tr. at 181)
7. On April 11, 2005, the Nevada Board issued its Findings of Fact, Conclusions of Law, and Order Revocating Medical License [Nevada Board Order]. (St. Ex. 7)

The Nevada Board Order states that, prior to the March 8 and 9, 2005, hearing, Dr. Lutz, through his counsel, had admitted all allegations contained in Counts 2 through 7 of the Amended Complaint concerning Patients B, C, and D. (St. Ex. 7 at 1) These counts stated:

- Dr. Lutz treated Patient B from January 24 through February 12, 2004. In the course of that treatment, he prescribed controlled substances to Patient B "including Methadone, Methadose, Lortab, and OxyContin" in excessive amounts. Such prescribing and medical treatment "evidences a failure to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and is malpractice." (St. Ex. 6 at 5)
- Dr. Lutz treated Patient C from January 8, 2003, through January 20, 2004. In the course of that treatment, he prescribed controlled substances to Patient C "including Actiq, hydrocodone, Xanax, Percocet, OxyContin, and Klonopin[.]" Such prescribing and medical treatment "evidences a failure to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and is malpractice." (St. Ex. 6 at 6)
- Dr. Lutz treated Patient D from May 7, 2001, through December 12, 2003. In the course of that treatment, he prescribed controlled substances to Patient D "including Percodan, Percocet, Lortab, Klonopin, OxyContin, [and] Actiq" in excessive amounts. Such prescribing and medical treatment "evidences a failure to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and is malpractice." (St. Ex. 6 at 6-7)

However, Dr. Lutz did not admit to the allegations in Count 1 of the Amended Complaint concerning his treatment of Patient A. (Tr. at 46) [This will be discussed in further detail below.]

8. On April 11, 2005, the Nevada Board issued its Findings of Fact, Conclusions of Law, and Order Revocating Medical License [Nevada Board Order]. In its Findings of Fact, the Nevada Board stated as follows:

Based upon the record of the proceedings, including but not limited to the testimony and exhibits offered, the [Nevada] Board finds:

1. The medical records obtained from the DEA pertaining to Patients A, B, C, and D do contain proof of over-prescribing of medications to those patients. Records pertaining to other patients of Dr. Lutz are not before this Board and were not considered.
2. Dr. Robert Kessler testified that Dr. Lutz over-prescribed for Patients A, B, C, and D; and Dr. Kessler is knowledgeable as an expert as to the standard of care in the practice of Osteopathic medicine.
3. The lack of due diligence by Dr. Lutz in following up with Patients and their Contracts concerning controlled substance was inadequate. The lack of follow-up includes, but is not limited to, little history taking (if any), lack of following charts, not determining if prescriptions are being filled too frequently, lack of referral of patients to specialists when suicidal ideology is expressed, too rapid of an increase in medication, and no urine tests for drug abuse.
4. The lack of due diligence and follow-up with patients as expressed immediately above is gross malpractice, and the number of patients seen by Dr. Lutz as compared to only these four cases is irrelevant as to whether gross malpractice was committed on these four patients.
5. Dr. Lutz, through counsel, admitted the allegations contained in Counts II through VII, inclusive, of the Amended Complaint pertaining to Patients B, C, and D.
6. Dr. Lutz's care and treatment of Patients A, B, C, and D consistently fell below the standard of care for Osteopathic physicians, in this community, and such care and treatment was in disregard of established medical procedures for patients.
7. Dr. Lutz used medical procedures, services and/or treatment which were inappropriate and unnecessary.

8. Because of the few number of patients whose treatment are at issue, this Board cannot make a determination that a pattern of malpractice existed.
9. Dr. Lutz did issue prescriptions during a period of time when his license was suspended.
10. Should any finding of fact be more properly construed as a conclusion of law, may it be so deemed.

(St. Ex. 7 at 4-5)

Moreover, in its Conclusions of Law, the Nevada Board stated, among other things, that Dr. Lutz's "[o]ver-prescribing medications for Patients A, B, C, and D is malpractice as well as gross malpractice," as those terms are defined in Nevada Revised Statutes 633.071 and 633.041, respectively. In addition, the Nevada Board concluded that that Dr. Lutz's care and treatment rendered to those patients included medical procedures, services, and/or treatment which were inappropriate, inadequate and/or unnecessary. The Nevada Board further concluded that Dr. Lutz's "care and treatment rendered to Patients A, B, C, and D fell below the standard of care for osteopathic physicians in this community," in violation of Nevada law. Finally, the Nevada Board concluded that Dr. Lutz had continued to prescribe medication while his Nevada medical license was suspended. (St. Ex. 7 at 5-6; Quotes at 6)

Finally, the Nevada Board ordered that Dr. Lutz's license be revoked, and awarded fees and costs to the Nevada Board for bringing the action. (St. Ex. 7 at 7)

9. Dr. Lutz testified that, even though the Nevada Board had revoked his license to practice in that state, the Nevada Board had also advised him that he could take a narcotics prescribing course at Vanderbilt University in Nashville, Tennessee, and apply for reinstatement of his Nevada license after one year. (Tr. at 148-149)

#### **Additional Evidence Concerning the Nevada Board Action with Regard to Patient A**

10. With regard to Patient A, Count 1 of the Amended Complaint had alleged, among other things that,
  - On October 10, 2003, Dr. Lutz had treated Patient A and had been informed "that Patient A had suicidal ideation." Further, on that date, Dr. Lutz issued to Patient A prescriptions for triazolam, morphine sulfate, Endocet, and amitriptyline. (St. Ex. 6 at 3)
  - In addition, Count 1 alleged that, on December 8, 2003, Dr. Lutz had learned that Patient A had been hospitalized for attempting suicide by "intestinal error."<sup>1</sup> (St. Ex. 6 at 3)

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<sup>1</sup> The quoted phrase was used twice in the Amended Complaint. See State's Exhibit 6 at ¶11 and ¶16.

- Moreover, Count 1 alleged that, on or about December 12, 2003, Dr. Lutz had again treated Patient A and prescribed Xanax, Percocet, and Halcion. (St. Ex. 6 at 3)
- Furthermore, Count 1 alleged that Dr. Lutz had been aware that Patient A had been prescribed Zoloft by a psychiatrist, but that Dr. Lutz did not contact or attempt to contact the psychiatrist “to discuss the implications of prescribing additional narcotic medications.” (St. Ex. 6 at 3)
- Finally, Count 1 alleged that, on January 2, 2004, Patient A had been found dead in her apartment, and that the Medical Examiner had opined that the cause of death had been “due to acute, combined drug intoxication (amitriptyline, alprazolam). Manner of Death: Suicide.” (St. Ex. 6 at 2-4; Quote at 2)

11. In the Nevada Board Order, under the heading “Discussion of Testimony and Evidence,” the Nevada Board stated as follows pertaining to Patient A:

The Investigating Member presented \* \* \* Dr. Robert Kessler, as an expert witness\* \* \*. Dr. Kessler testified in detail concerning Dr. Lutz’s care and treatment of Patients A, B, C, and D; and the medical records concerning Patients A, B, C, and D were offered into evidence. \* \* \*

Concerning Patient A, Dr. Kessler testified that this patient’s medical records indicated that the patient expressed suicidal ideology; yet, Dr. Lutz failed to refer the patient to a psychiatrist or a medical facility \* \* \*, although he did talk to Patient A about a previously attempted suicide. It was Dr. Kessler’s opinion that Dr. Lutz over-prescribed medication for this patient as well, without adequate workup. Ultimately, this patient committed suicide. Dr. Kessler also expressed his opinion that the care and treatment rendered by Dr. Lutz to Patient A did not meet the standard of care ordinarily exercised by osteopathic physicians in good standing in this community. \* \* \*

On cross-examination, Dr. Kessler did agree that other physicians were also prescribing medication for this patient, and such was evident from the autopsy report. Dr. Kessler also admitted that he has seen situations where a patient is losing insurance and had prescriptions refilled at an earlier date while coverage was still available. \* \* \* The Board also questioned Dr. Kessler about Patient A, the possibility that the patient was selling drugs[,] \* \* \* the requirement that a patient enter into a contract concerning controlled substance, and the notations made when additions are made to a medical record.

(St. Ex. 7 at 2) (Underline in original)

12. Dr. Lutz acknowledged that he had been present during the Nevada Board hearing when testimony was elicited from Dr. Kessler that Dr. Lutz had learned from Patient A in

October that she was having thoughts of suicide. However, Dr. Lutz testified that Dr. Kessler had later recanted that testimony. (Tr. at 40-49)

Further, Dr. Lutz denied that Patient A had told him during a visit on October 10, 2003, that she had had suicidal ideations. Rather, Dr. Lutz testified that Patient A had advised him that her mother and her sister, with whom she lived, were suicidal. Dr. Lutz further testified that Patient A had advised that “her mother was instructing her sister on how to commit suicide correctly \* \* \*.” However, Dr. Lutz testified that the Nevada Board and Dr. Kessler had misinterpreted his handwritten notes concerning that visit to mean that Patient A had been the one inquiring about suicide. Finally, Dr. Lutz testified that Patient A had not told him at that time that she herself was suicidal. (Tr. at 46-48, 147; Quote at 47)

13. Dr. Lutz testified that he had not learned of a suicide attempt by Patient A until December 2, 2003.<sup>2</sup> Dr. Lutz further testified that, on that day, he had been informed of Patient A’s attempted suicide by another individual who had originally referred Patient A to him. Dr. Lutz further testified, “I made a note to put in her chart, and it’s one of the notes that never made it into the record that [Dr. Kessler] reviewed. He never saw that.” (Tr. at 143-144)

In addition, Dr. Lutz testified that the individual he had spoken to on December 2, 2003, had also advised that Patient A may have been selling her medication. Dr. Lutz indicated that he had not been aware of that possibility prior to that conversation. (Tr. at 146)

14. Dr. Lutz testified that, the last time that he saw Patient A, she had lost her job and was going to lose her insurance. Dr. Lutz further testified that he had therefore written a prescription for double the amount of medication that he normally prescribed “so she could get it as long a she could \* \* \*.” Moreover, Dr. Lutz noted that Dr. Kessler had acknowledged that insurance coverage can be an issue in relation to when a patient fills a prescription. (Tr. at 145-146; Quote at 145)

Nevertheless, in what appears to be inconsistent testimony, Dr. Lutz later testified,

[On] December 12th, I cut back her medications, which they did not reflect, and cut them down to what I consider like a suicide watch; so that they had—they could not get their medications for a month at a time, as they were used to, but had to go 10 days at a time and had to go back to the pharmacy to refill them. So that the pharmacy had a watch on her, as well as I did, and they would have to call me and notify me if she was varying from that pattern.

(Tr. at 179)

15. Dr. Lutz testified that Patient A had previously had brain surgery to treat a tumor, which “left her with some deficit and recalcitrant migraines, and that’s what the Percocet was

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<sup>2</sup> Dr. Lutz described this date as “the Tuesday after Thanksgiving 2003.” (Tr. at 143) Administrative notice is taken that this day was December 2, 2003.

for.” Moreover, Dr. Lutz testified that Elavil had been given to her to help prevent the migraines. Finally, Dr. Lutz testified that Patient A had died from overdosing on Elavil. (Tr. at 183-184; Quote at 184)

### **Additional Evidence Concerning the Nevada Board Action with Regard to Prescriptions Issued by Dr. Lutz Following his Nevada Suspension**

16. The Nevada Board Order, in Findings of Fact 9, states, “Dr. Lutz did issue prescriptions during a period of time when his license was suspended.” (St. Ex. 7 at 5) The Nevada Board’s Discussion of Testimony and Evidence indicates that evidence had been presented that, although Dr. Lutz had been suspended by the Nevada Board on February 13, 2004, he issued prescriptions that “were dated between February 28 or February 26 and March 1<sup>st</sup> [2004].” (St. Ex. 7 at 4)
17. Dr. Lutz testified that his suspension had taken effect on February 13, 2004, at which time his computer and all of his medical records and appointment calendars had been seized. However, Dr. Lutz further testified that Mr. Delap, the Assistant Executive Director for the Nevada Board, also warned Dr. Lutz not to abandon his patients. Dr. Lutz testified, “I never did understand that statement from him, ‘you don’t abandon your patients.’ Like, well, you just abandoned them for me.” (Tr. at 132-133, 136; Quote at 133)

Dr. Lutz testified that, because his office records had been removed, he had not been able to contact patients who were scheduled for appointments to inform them of the closing of his office. Accordingly, Dr. Lutz testified that he had placed a notice on his door advising patients that he was unable to see them. Dr. Lutz stated that his notice advised patients to contact another physician, Dr. Lampinen, “or like here to check in with the Board.” Moreover, Dr. Lutz testified that he had placed a similar message on his office telephone. (Tr. at 134-136; Quote at 134)

Dr. Lutz testified that, sometime the following week, he, his secretary, and his secretary’s daughter had gone to his office to pack things up. While there, two of Dr. Lutz’s patients who had recently moved out of the area appeared for their regular appointment. Dr. Lutz explained that, even though those patients had relocated, they had continued to see him because “[t]hey thought that once a month it wasn’t too far to drive back and forth.” Dr. Lutz further testified that one of the patients suffered from colitis and migraine headaches, and the other had chronic back pain. Dr. Lutz testified that, because the patients “had driven 70 miles,” he had tried to contact Dr. Lampinen on their behalf to get them in to see him that day. (Tr. at 134-135; Quotes at 135) However,

[Dr. Lampinen] couldn’t see them because it kind of had to do with like a whole workup himself for these people, and so I went ahead and refilled for a month their medications and told them, you know, they may or may not accept them. To the best of my knowledge, they had notified the pharmacies I was no longer a physician. If they made any balk about it, to go ahead and—you know, I can’t help you. Don’t fight it. I’ve lost my license. If you can

get them for another month, then try and get yourself a new doctor, maybe closer to home.

(Tr. at 135) Finally, when asked if the medications he prescribed were medications that he had prescribed to the patients previously, Dr. Lutz replied, “Yeah. They pretty well knew what they were on because I didn’t have a chart to look to.” (Tr. at 137)

18. Dr. Lutz testified that he did not charge the patients for the prescriptions or for anything else that he did that day. (Tr. at 137)
19. When asked why he had written prescriptions, knowing that his license had been suspended, Dr. Lutz replied,

I didn’t know what else to help these people do, to help them. If you take away their medicine, they go into withdrawal. That’s abandonment. If you don’t help them, I think that’s abandonment. And I attempted to get them an appointment with my friend that was taking my patients that point, so not to be an abandonment. He couldn’t deal with it that way, and they live 70 miles away.

(Tr. at 141)

20. Dr. Lutz acknowledged that prescribing medication constitutes the practice of medicine. (Tr. at 172-173)

#### **Further Testimony from Dr. Lutz concerning his Nevada Practice**

21. Dr. Lutz testified that, prior to the Nevada Board’s summary suspension of his Nevada certificate, he had served a predominantly low-income patient population. Dr. Lutz testified that about twenty-five percent of his patients had had health insurance; the remaining seventy-five percent had had none. Dr. Lutz explained, “That’s why I kept my fees low.” (Tr. at 126-127)
22. Dr. Lutz testified that Patients A through D had been his most difficult cases and were not typical of his overall patient population. Dr. Lutz further testified that three of those patients had had no insurance. Moreover, Dr. Lutz testified that those three patients were so poor that they could not have afforded the ten- or twenty-percent co-payments even if they had had insurance. Dr. Lutz stated that pain clinics had turned them away, and that he did not know what else to do with them. (Tr. at 152-154) Furthermore, Dr. Lutz testified,

You know, I never started out in pain medicine, per se, and I never did that here. I didn’t like it. I can say I only wrote Percodan maybe 10 times in 17 years, and Dilaudid never in this state. I mean, it was a whole kind of—a whole new ball game out there. I tried to take care of it as best I could, as long as I could.

\* \* \*

So I was kind of the end of the road, and I did what I could possibly think of to do to take care of these folks, and that's who we end up with, your Patient A, B, C, and D. \* \* \*

(Tr. at 154-155)

23. With regard to Patient A, Dr. Lutz testified that he had tried "to figure out how to keep her on her Elavil for another six months so she wouldn't go whacko, off the deep end, as a bipolar manic-depressive person. She couldn't afford the [psychiatrist] that she was referred to, fees." Dr. Lutz further testified that Patient A did not comply with Dr. Lutz's instruction that she see the psychiatrist who had treated her following her suicide attempt. Dr. Lutz also testified, somewhat paradoxically, that Patient A "would never give [him] her psychiatrist's name and number that she was going to privately so that [Dr. Lutz] could consult with [him or her]." Moreover, Dr. Lutz testified that he had attempted to obtain her records, but never received them. (Tr. at 155)
24. Dr. Lutz testified that he had created a form for use in his office called Weekly Progress Notes so that he would not forget to obtain all the appropriate information that he needed from his pain patients. Dr. Lutz further testified that he had also created a Narcotic and Pain Related Medication Agreement. Dr. Lutz stated, "I made everybody that walked through my door read it and sign it so they were understanding of what was going to be expected of them." Dr. Lutz further testified that he made *all* of his patients sign the agreement, not just patients who were receiving controlled substances. Dr. Lutz explained, "I wanted to go there because I was dealing with a very complex, very sensitive issue today, where everybody's looking over your shoulders[.]" (Respondent's Exhibit [Resp. Ex.] B; Tr. at 157-158; Quotes at 157-158)

#### **Dr. Lutz's April 15, 2004, Interim Agreement with the Board**

25. On or about April 9, 2004, Dr. Lutz signed an Interim Agreement with the Board, acknowledging the above Nevada Board Summary Suspension, and agreeing not to practice osteopathic medicine and surgery in any form in Ohio. The Interim Agreement became effective on April 15, 2004. The Interim Agreement states, in part,

The Interim Agreement is to remain in effect until either of the following occurs:

- A. A final resolution on the merits of the Emergency Order of Summary Suspension currently pending before the Nevada Board is reached, and based upon that resolution, the Ohio Board enters a Final Order following issuance of a notice of opportunity for hearing;

- B. The Ohio Board determines, after a final resolution of the pending Nevada action, that no further action is warranted, and notifies Dr. Lutz of that determination in writing.

(St. Ex. 2 at 5)

26. Dr. Lutz testified that he has been compliant with his Interim Agreement with the Board. (Tr. at 163)

### **Additional Information**

27. Dr. Lutz testified that, since his suspension and subsequent revocation by the Nevada Board, he has continued to participate in continuing medical education, and he intends to take the prescribing course at Vanderbilt University recommended to him by the Nevada Board. Dr. Lutz further testified that he intends to reapply for licensure in Nevada at the appropriate time. (Tr. at 151-152)
28. Dr. Lutz testified that, on February 9, 2004, he had last appeared before the Board pursuant to the Ohio Board Order, and that he had submitted a request for release from that Order the following day. Dr. Lutz testified that, just a few days later, his Nevada license had then been summarily suspended. However, Dr. Lutz testified that, at the time that he had submitted his request to be released from the Ohio Board Order, he had not received anything from the Nevada Board that would indicate that there was any complaint or issue with his practice. (Tr. at 124-126)
29. Dr. Lutz testified that he has never been subject to a malpractice lawsuit. (Tr. at 122)
30. Dr. Lutz presented letters of support from medical colleagues in both Nevada and Ohio. These letters describe Dr. Lutz has a competent family physician who is a well-liked by his patients and who gives his patients appropriate treatment. (Resp. Ex. A)
31. Dr. Lutz testified that he has admitted his wrongdoing, and has tried to improve where he had been wrong. (Tr. at 165)
32. Dr. Lutz testified that “there isn’t a day that goes by that \* \* \* I don’t reflect on what I did to get into the position of bankruptcy, humiliation, et cetera. I mean, it’s been—I’ve coped with it, but it’s been hard.” (Tr. at 165)

Moreover, Dr. Lutz testified that he has done everything he can to comply with the Ohio Board Order. Dr. Lutz further testified that he has learned about himself and learned how to avoid problems in the future through psychiatric counseling. Furthermore, Dr. Lutz testified that, pursuant to that Order, he has been actively engaged in Sex Addicts Anonymous [SAA] and has tried to help others in that group. Dr. Lutz further testified that he is the longest standing member of the SAA group that he attends every Sunday. In addition, Dr. Lutz testified that he believes that he has a lot of good years left to practice

medicine. Additionally, Dr. Lutz asked the Board for mercy and to allow him to continue to practice in Ohio. Finally, Dr. Lutz stated that he would comply with any requirements imposed upon him by the Board. (Tr. at 164-166)

### **FINDINGS OF FACT**

1. By Order of the State Medical Board of Ohio [Ohio Board Order], which became effective November 16, 1998, the Board took action against the certificate of Gary Ray Lutz, D.O., to practice osteopathic medicine and surgery in Ohio. In the Ohio Board Order, the Board permanently revoked Dr. Lutz's certificate, but stayed the revocation subject to a suspension for at least six months with requirements for reinstatement, to be followed by probationary requirements for at least five years.

The Ohio Board Order was based upon Findings of Fact that Dr. Lutz had been convicted in court of violating Section 2917.11(A), Ohio Revised Code, Disorderly Conduct, a misdemeanor of the fourth degree; and Section 2919.24(A), Ohio Revised Code, Contributing to the Unruliness of a Child, a misdemeanor of the first degree. Further, the Board concluded that said convictions constituted violation of Section 4731.22(B)(11), Ohio Revised Code.

2. Effective May 13, 1999, the Board granted Dr. Lutz's request for reinstatement, subject to the probationary terms, conditions, and limitations of the Ohio Board Order, which included the following:
  3. Upon reinstatement, Dr. Lutz's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

\* \* \*

- b. Dr. Lutz shall obey all federal, state and local laws; all rules governing the practice of osteopathic medicine and surgery in Ohio; and all terms of probation imposed by the courts in Case No. 96CRB03044 and Case No. 98-40002.

Dr. Lutz has been subject to the probationary requirements of the Ohio Board Order from the date of his reinstatement on May 13, 1999, through the present.

3. On February 12, 2004, the Investigative Board Member of the Nevada State Board of Osteopathic Medicine [Nevada Board] issued a Complaint against Dr. Lutz, along with a Request for Emergency Order of Summary Suspension of Dr. Lutz's certificate to practice osteopathic medicine in Nevada. The following day, February 13, 2004, the Nevada Board issued an Emergency Order of Summary Suspension of License to Practice Osteopathic

Medicine in the State of Nevada, thereby suspending Dr. Lutz's certificate to practice osteopathic medicine in Nevada pending proceedings on the Complaint.

On October 4, 2004, the Investigative Board Member of the Nevada Board issued an Amended Complaint against Dr. Lutz.

4. On April 11, 2005, the Nevada Board issued its Findings of Fact, Conclusions of Law, and Order Revocating Medical License [Nevada Board Order] concerning Dr. Lutz.

In the Nevada Board Order, the Nevada Board issued Conclusions of Law that stated, among other things, that Dr. Lutz's "[o]ver-prescribing medications for Patients A, B, C, and D is malpractice as well as gross malpractice," as those terms are defined in Nevada Revised Statutes 633.071 and 633.041, respectively. In addition, the Nevada Board concluded that that Dr. Lutz's care and treatment rendered to those patients included medical procedures, services, and/or treatment which were inappropriate, inadequate and/or unnecessary. The Nevada Board further concluded that Dr. Lutz's "care and treatment rendered to Patients A, B, C, and D fell below the standard of care for osteopathic physicians in this community," in violation of Nevada law. Finally, the Nevada Board concluded that Dr. Lutz had continued to prescribe medication while his Nevada medical license was suspended.

5. On or about April 9, 2004, soon after the Investigative Board Member of the Nevada Board filed the Complaint against Dr. Lutz, Dr. Lutz signed an Interim Agreement with the Ohio Board, acknowledging the summary suspension of his Nevada certificate, and agreeing not to practice osteopathic medicine and surgery in any form in Ohio. The Interim Agreement became effective on April 15, 2004, and is to remain in effect until either of the following occurs:
  - A. A final resolution on the merits of the Emergency Order of Summary Suspension currently pending before the Nevada Board is reached, and based upon that resolution, the Ohio Board enters a Final Order following issuance of a notice of opportunity for hearing;
  - B. The Ohio Board determines, after a final resolution of the pending Nevada action, that no further action is warranted, and notifies Dr. Lutz of that determination in writing.

The evidence indicates that Dr. Lutz has been compliant with his Interim Agreement.

### **CONCLUSIONS OF LAW**

1. The conduct of Gary Ray Lutz, D.O., as set forth in Findings of Fact 2 and 4, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

2. The Nevada Board's Findings of Fact, Conclusions of Law, and Order Revocating Medical License, as set forth in Findings of Fact 4, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of \* \* \* osteopathic medicine and surgery \* \* \* for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

\* \* \* \* \*

The medical practice issues addressed in the Nevada Board Order, which included prescribing controlled substances and other dangerous drugs in excessive amounts, and knowingly issuing prescriptions during the suspension of his Nevada certificate, merit the severest sanction.

#### **PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Gary Ray Lutz, 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 notification of approval by the Board.



R. Gregory Porter, Esq.  
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 MAY 10, 2006

### REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Carl Floyd Gottschling, M.D.; Donald R. Kiser, D.O.; Gary Ray Lutz, D.O.; Sonia Shetal Shah, M.D.; and Stephen David Waite, M.D. A roll call was taken:

|            |                |       |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert     | - aye |
|            | Dr. Egner      | - aye |
|            | Dr. Talmage    | - aye |
|            | Dr. Varyani    | - aye |
|            | Dr. Buchan     | - aye |
|            | Dr. Kumar      | - aye |
|            | Mr. Browning   | - aye |
|            | Ms. Sloan      | - aye |
|            | Dr. Davidson   | - aye |
|            | Dr. Steinbergh | - aye |
|            | Dr. Robbins    | - aye |

Dr. Robbins 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. Egner      | - aye |
|            | Dr. Talmage    | - aye |
|            | Dr. Varyani    | - aye |
|            | Dr. Buchan     | - aye |
|            | Dr. Kumar      | - aye |
|            | Mr. Browning   | - aye |
|            | Ms. Sloan      | - aye |
|            | Dr. Davidson   | - aye |
|            | Dr. Steinbergh | - aye |

Dr. Robbins - aye

Dr. Robbins 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Robbins 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.

.....  
GARY RAY LUTZ, D.O.  
.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF GARY RAY LUTZ, D.O. DR. STEINBERGH SECONDED THE MOTION.**  
.....

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

|       |              |           |
|-------|--------------|-----------|
| Vote: | Mr. Albert   | - abstain |
|       | Dr. Egner    | - aye     |
|       | Dr. Talmage  | - abstain |
|       | Dr. Varyani  | - aye     |
|       | Dr. Buchan   | - aye     |
|       | Dr. Kumar    | - aye     |
|       | Mr. Browning | - aye     |
|       | Ms. Sloan    | - aye     |
|       | Dr. Davidson | - aye     |

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

April 13, 2005

Gary Ray Lutz, D.O.  
8600 West Charleston Boulevard, Apt. #1094  
Las Vegas, Nevada 89117

Dear Doctor Lutz:

In accordance with R.C. Chapter 119., 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 you or place you on probation for one or more of the following reasons:

- (1)(a) By Order of the State Medical Board of Ohio (Ohio Board), effective November 16, 1998, your certificate to practice osteopathic medicine and surgery was permanently revoked; the revocation was stayed; your certificate was suspended for an indefinite period of time, but not less than six (6) months; conditions were established for reinstatement; and provided for subsequent probationary terms, conditions and limitations for a period of at least five (5) years.

The above Ohio Board Order was based upon the Findings of Fact of a violation of R.C. 4731.22(B)(11) to wit: R.C. 2917.11(A), disorderly conduct, a misdemeanor of the fourth degree, and a violation of R.C. 4731.22(B)(11) to wit: R.C. 2919.24(A), contributing to the unruliness of a child, a misdemeanor of the first degree.

Effective May 13, 1999, your request for reinstatement was granted by the Ohio Board, subject to the probationary terms, conditions and limitations of the above Ohio Board Order, a copy of which is attached hereto and incorporated herein.

- (b) On or about February 12, 2004, the Nevada State Board of Osteopathic Medicine (Nevada Board) filed a Complaint and a Request for Emergency Order of Summary Suspension, against your Nevada license; on or about February 13, 2004, filed an Emergency Order of Summary Suspension of License to Practice Osteopathic Medicine in the State of Nevada; and, on or about October 4, 2004, filed an Amended Complaint, copies of which are attached hereto and incorporated herein.

MAILED 4-14-05

- (c) On or about April 9, 2004, you entered into an Interim Agreement with the Ohio Board, acknowledging the above Nevada Board Summary Suspension, and agreeing not to practice osteopathic medicine and surgery in any form in Ohio, with this Interim Agreement to remain in effect until either of the following occurs:

\* \* \*

- A. A final resolution on the merits of the Emergency Order of Summary Suspension currently pending before the Nevada Board is reached [paragraph (1)(b) above], and based upon that resolution, the Ohio Board enters a Final Order following issuance of a notice of opportunity for hearing;
- B. The Ohio Board determines, after a final resolution of the pending Nevada action, that no further action is warranted, and notifies Dr. Lutz of that determination in writing.

\* \* \*

Further, you agreed you shall remain subject to the probationary terms, conditions and limitations imposed by the Ohio Board Order [paragraph (1)(a) above], except where those terms conflict with the Interim Agreement, you shall comply with the Interim Agreement. A copy of the Ohio Board Interim Agreement is attached hereto and incorporated therein.

- (2) The Ohio Board Order, paragraph (1)(a) above, provides:

\* \* \*

3. Upon reinstatement, Dr. Lutz's certificate shall be subject to the following probationary terms, conditions and limitations for a period of at least five years:

\* \* \*

- b. Dr. Lutz shall obey all federal, state and local laws, all rules governing the practice of osteopathic medicine and surgery in Ohio; and all terms of probation imposed by the courts in Case No. 96CRB03044 and Case No. 98-40002.

\* \* \*

From your reinstatement by the Ohio Board, on or about May 13, 1999, paragraph (1)(a) above, to date, you have been subject to the above probationary terms, conditions and limitations.

The Nevada Board Findings of Fact, Conclusions of Law, and Order Revocating Medical License in Case No. AD-04-327, filed April 11, 2005, (Nevada Board Revocation Order), paragraph three (3) below, includes a Finding of Fact that your lack of due diligence in following-up with Patients and their Contracts concerning controlled substances is gross malpractice. NRS (Nevada Revised Statute) 633.041 defines gross malpractice.

The Conclusions of Law, of the below Nevada Board Revocation Order, concluded, *inter alia*, that your over-prescribing medications for the patients concerned is malpractice, as well as gross malpractice.

By your violation of the above statute of the State of Nevada, you have failed to obey all federal, state and local laws, as required by paragraph 3 b. of the above Ohio Board Order.

- (3) The Conclusions of Law of the Nevada Board Revocation Order, *inter alia*, concluded your care and treatment of the patients concerned fell below the standard of care for Osteopathic physicians in the community; and that your care and treatment rendered included medical procedures, services, and/or treatment which were inappropriate, inadequate and or unnecessary.

Further, the Nevada Board concluded your over-prescribing of medications for the patients concerned is malpractice, as well as gross malpractice; and that you continued to prescribe medication while your Nevada medical license was suspended.

The underlying conduct is provided in greater detail in the Nevada Board Revocation Order, a copy of which is attached hereto and incorporated herein.

Your acts, conduct, and/or omissions, as alleged in paragraph two (2) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section R.C. 4731.22(B)(15).

Further, the Nevada Board Order, as alleged in paragraphs two (2) and three (3) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R.C. Chapter 119., 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,

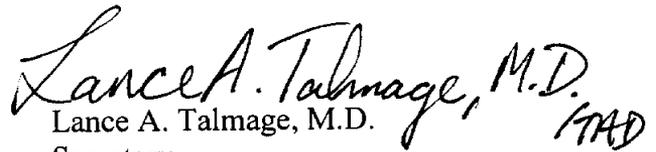
or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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 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, R.C. 4731.22(L), 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/cw  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5149 5735  
RETURN RECEIPT REQUESTED

1                   **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2  
3   IN THE MATTER OF THE COMPLAINT  
4   AGAINST  
5   GARY LUTZ, D.O.  
6                   RESPONDENT.

Case No.: AD-04-1-327

Filed: 2-12-04

  
Executive Director

7  
8  
9  
10                   **COMPLAINT**

11           Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, and by  
12   virtue of the authority vested in it by said chapter, the Investigative Board Member of the  
13   Nevada Board of Osteopathic Medicine, having a reasonable basis to believe that GARY  
14   LUTZ, D.O. hereinafter referred to as "RESPONDENT," has violated the provisions of said  
15   chapter, hereby issues its formal Complaint, stating the Investigative Board Member's charges  
16   and allegations, as follows:

17           1.     That RESPONDENT is licensed in active status to practice medicine in the state  
18   of Nevada, and at all times alleged herein, was so licensed by the Board of Osteopathic  
19   Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada  
20   Revised Statutes.

21           2.     That NRS 633.511(1) provides that unprofessional conduct is grounds for  
22   initiating disciplinary proceedings.

23           3.     NRS 633.511(1) provides "Unprofessional conduct" includes:

24                   (f) Engaging in any:

25                               (1) Professional conduct which is intended to deceive or  
26                               which the board by regulation has determined is unethical;

27                               ...

28           4.     Pursuant to NAC 633.350, a licensee engages in unethical conduct if he:

...



1           120           Morphine Sulfate    100 mg  
2           150           Endocet            650mg-10mg  
3           90            Amitriptyline       100mg

4

5           10.    On or about December 12<sup>th</sup>, 2003, Respondent learned about Patient A's  
6 attempted suicide which required her to be hospitalized for intestinal error and subsequently  
7 treated at Southern Nevada Adult Mental Health Services.

8           11.    On or about December 12, 2003, Respondent treated Patient A and prescribed  
9 the following medications:

| 10 | <u>Quantity</u> | <u>Medication</u> | <u>Dosage</u> |
|----|-----------------|-------------------|---------------|
| 11 | 30              | Xanax             | 2mg           |
| 12 | 150             | Percocet          | 325mg         |
| 13 | 15              | Halcion           | .25mg         |

14

15           12.    Respondent's medical records indicate that Patient A already had a prescription  
16 for Amitriptyline, which was prescribed on October 10, 2003, and refilled on December 17,  
17 2003 while another doctor put her on Zoloft. The Zoloft was prescribed by a psychiatrist from  
18 Southern Nevada Adult Mental Health Services for Patient A. There is no indication in the  
19 record that Respondent contacted or attempted to contact Patient A's psychiatrist to discuss  
20 the implications of prescribing additional narcotic medications.

21           13.    The medication found at Patient A's home after her death and inventoried by the  
22 Clark County Coroner's office in its Medication Activity Log on January 2, 2004 is as follows:

| 23 | <u>Medication</u> | <u>Rx Amount</u> | <u>Amount Left</u> | <u>Rx Date</u> | <u>Physician</u> |
|----|-------------------|------------------|--------------------|----------------|------------------|
| 24 | Amitriptyline     | 90               | 0                  | 12/17/03       | Dr. DO Lutz      |
| 25 | Alprazolam        | 90               | 49                 | 6/3/03         | Dr. Gary Lutz    |
| 26 | Hydrocodone       | 120              | 0                  | 12/08/03       | Dr. Gary Lutz    |
| 27 | Cephalexin        | 40               | 9                  | 12/22/03       | Dr. Gary Lutz    |
| 28 | Zoloft            | 13               | 2                  | 12/17/03       | Dr. Rosenthal    |

|   |            |    |      |          |               |
|---|------------|----|------|----------|---------------|
| 1 | Alprazolam | 90 | 72.5 | 8/01/03  | Dr. Gary Lutz |
| 2 | Ambien     | 30 | 15.5 | 10/22/03 | Dr. Gary Lutz |
| 3 | Triazolam  | 15 | 0    | 12/17/03 | Dr. Gary Lutz |

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**COUNT ONE**

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14. The allegations set forth in paragraphs 1 through 13 are incorporated herein as if set out in full.

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15. The medication prescribed by Respondent on or about October 10, 2003 when Respondent was aware that Patient A had suicidal ideation and was depressed was malpractice. Triazolam, Morphine Sulfate and Endocet are narcotics which are depressants. In prescribing said narcotics, Respondent failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and by prescribing the medication Respondent endangered the patient and committed gross malpractice.

15

16

17

18

16. Xanax and Percocet are narcotics which are depressants. The medication prescribed by Respondent on or about December 12, 2003 when Respondent was aware that Patient A had actually attempted suicide by intestinal error and was on antidepressant medication prescribed by her psychiatrist constitutes repeat and gross malpractice.

19

20

21

22

17. Respondent prescribed medications without consultation with her psychiatrist and treated Respondent for depression without referring patient to a psychiatric specialist. Respondent prescribed depressants to a depressed person in quantities that could be dangerous to the patient knowing her suicidal tendency.

23

24

25

26

18. Respondent repeatedly and grossly failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and by prescribing the medication Respondent endangered the patient. Such conduct constitutes repeated and gross malpractice.

27

28

19. The gross and repeated malpractice committed by RESPONDENT, GARY LUTZ, D.O., is grounds for disciplinary action pursuant NRS 633.511(4).

COUNT TWO

20. The allegations set forth in paragraphs 1 through 19 are incorporated herein as if set out in full.

21. Respondent treated Patient B from January 2003 to January 2004. In his treatment of Patient B, Respondent prescribed Methdone, HCL, or Methodose, a form of Methodone, a controlled substance, as follows:

| <u>Date</u> | <u>Medication</u> | <u>Quantity</u> | <u>Dosage</u> |
|-------------|-------------------|-----------------|---------------|
| 1/27/03     | Methadone HCL     | 1080            | 10 mg         |
| 2/24/03     | Methadone HCL     | 1080            | 10 mg         |
| 3/21/03     | Methadone HCL     | 1080            | 10 mg         |
| 4/15/03     | Methadone HCL     | 1080            | 10 mg         |
| 5/12/03     | Methadone HCL     | 1080            | 10 mg         |
| 6/6/03      | Methadone HCL     | 1080            | 10 mg         |
| 6/30/03     | Methadose         | 1080            | 10 mg         |
| 7/23/03     | Methadone HCL     | 1080            | 10 mg         |
| 8/12/03     | Methadose         | 1080            | 10 mg         |
| 9/5/03      | Methadone HCL     | 1080            | 10 mg         |
| 9/26/03     | Methadone HCL     | 1080            | 10 mg         |
| 10/13/03    | Methodose         | 1080            | 10 mg         |
| 10/29/03    | Methodose         | 1800            | 10 mg         |
| 11/24/03    | Methadone HCL     | 1000            | 10 mg         |
| 12/23/03    | Methadone HCL     | 1000            | 10 mg         |
| 1/09/04     | Methadone HCL     | 1000            | 10 mg         |

22. At the quantity prescribed, the patient would take 36 doses of medication per day. The amount of Methodose prescribed on 10/29/03 of 1800, the patient would take 60 doses a day. Even if Methodone was prescribed for chronic pain, such amounts as prescribed are excessive. In addition to the excessive prescribing of Methadone; Lortab and Amphetamines, both controlled substances were simultaneously prescribed in excessive

1 doses over the same 12 month period.

2 23. That RESPONDENT'S prescribing of a controlled substance is excessive and is  
3 a violation of NAC 633.350(6) and NRS 633.131(f)(1) and constitutes unprofessional conduct  
4 and is grounds for disciplinary action pursuant to NRS 633.511(1).

5 . . .

6 **COUNT THREE**

7 24. The allegations set forth in paragraphs 1 through 23 are incorporated herein as if  
8 set out in full.

9 25. That the public health, safety, and welfare imperatively require action and  
10 summary suspension of GARY LUTZ, D.O.'s, license to practice medicine in the state of  
11 Nevada pending a hearing on the Complaint. That the continuing practice of medicine or the  
12 continuing ability to practice medicine by GARY LUTZ, D.O., during the pendency of the time  
13 necessary for a hearing on this Complaint would endanger the health, safety, and welfare of  
14 his patients.

15 WHEREFORE, the Investigative Member of the Board of Osteopathic Medicine prays  
16 as follows:

- 17 1. That the Nevada State Board of Osteopathic Medicine schedule an emergency  
18 hearing and affirmatively find that the public health, safety, and welfare  
19 imperatively require emergency action and summarily suspend RESPONDENT's  
20 license to practice Osteopathic Medicine in the state of Nevada pending a  
21 hearing on the Complaint pursuant to NRS 633.591;
- 22 2. That the Nevada State Board of Osteopathic Medicine conduct a hearing on this  
23 Complaint as provided by statute;
- 24 3. That, pursuant to NRS 633.651, RESPONDENT be publicly reprimanded and/or  
25 the license of RESPONDENT, GARY LUTZ, D.O., be revoked, suspended,  
26 limited to a specified branch of osteopathic medicine, or placed on probation  
27 with conditions and terms as the Nevada State Board of Osteopathic Medicine  
28 may deem just and proper and which are not inconsistent with law;

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4. That RESPONDENT, GARY LUTZ, D.O., be ordered to pay reasonable attorney's fees and costs of the investigation and the administrative and disciplinary proceedings.

DATED this 12 day of February, 2004.

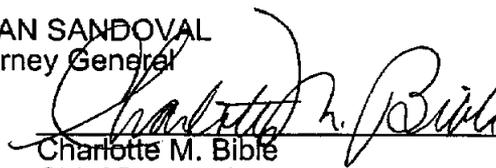
By:

  
\_\_\_\_\_  
GARY MONO, D.O.,  
Investigating Member of the  
Nevada Board of Osteopathic Medicine

Submitted by:

BRIAN SANDOVAL  
Attorney General

By:

  
\_\_\_\_\_  
Charlotte M. Bible  
Chief Deputy Attorney General  
555 E. Washington Avenue, Suite 3900  
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Las Vegas, NV 89101

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**BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

IN THE MATTER OF THE COMPLAINT )  
AGAINST )  
GARY LUTZ, D.O. )  
RESPONDENT. )

Case No.: AD-04-1-327

Filed: 2-12-04

[Signature]  
Executive Director

**REQUEST FOR EMERGENCY ORDER OF SUMMARY SUSPENSION**

Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, and by virtue of the authority vested in it by said chapter, the Investigative Board Member of the Nevada Board of Osteopathic Medicine, hereby requests an emergency order of summary suspension of GARY LUTZ' ("Respondent") license to practice osteopathic medicine, pursuant to NRS 633.581 and 633.591 and NAC 633.450. The request is based upon the Complaint on file herein, and any evidence and argument presented at the hearing thereon.

The allegations in the Complaint are hereby incorporated herein as if set forth in full. The Complaint alleges in two Counts that Respondent is in violation of NRS 633.511(1) due to unprofessional conduct, and NRS 633.511(4), due to gross or repeated malpractice. Respondent is alleged to be unprofessional and unethical by prescribing a controlled substance in a manner or amount that the board determines is excessive. NRS 633.131(f)(1) and NAC 633.350(6). Respondent is alleged to have committed repeated malpractice and/or gross malpractice by engaging in malpractice where the failure to exercise the requisite degree of care, diligence or skill consists of gross negligence; willful disregard for established medical procedures; or willfull and consistent use of medical procedures, services or treatment considered by osteopathic physicians in the community to be inappropriate or unnecessary in the cases where used. NRS 633.041.

Patient A, a patient of Respondent's died of a drug overdose, exact date of death is unknown but was last seen on December 28, 2003 and found dead and decomposing in her apartment on January 2, 2004. The patient was last seen by Respondent on December 12,

1 2003 and last treated by Respondent on December 22, 2003. The Clark County Coroner's  
2 Autopsy Report by Gary D. Telgenhoff, M.S., D.O., Medical Examiner, dated January 3, 2004  
3 makes the following opinion: "Cause of Death: It is my opinion that the death of [Patient A] is  
4 due to acute, combined drug intoxication (amitriptyline, alprazolam). Manner of Death:  
5 Suicide." (Attached hereto as Exhibit A.)

6 On October 10, 2003, Respondent treated Patient A. At this examination it was made  
7 known to Respondent that Patient A had suicidal ideation. In spite of such information,  
8 Respondent prescribed the following medications to Patient A:

| <u>Quantity</u> | <u>Medication</u> | <u>Dosage</u> |
|-----------------|-------------------|---------------|
| 15              | Triazolam         | .25mg dose;   |
| 120             | Morphine Sulfate  | 100 mg        |
| 150             | Endocet           | 650mg-10mg    |
| 90              | Amitriptyline     | 100mg         |

14 (Medical record is attached hereto as Exhibit B.)

15 On or about December 12, 2003, Respondent learned about Patient A's attempted  
16 suicide which required her to be hospitalized for intestinal error and subsequently treated at  
17 Southern Nevada Adult Mental Health Services.

18 On or about December 12, 2003, Respondent treated Patient A and prescribed the  
19 following medications:

| <u>Quantity</u> | <u>Medication</u> | <u>Dosage</u> |
|-----------------|-------------------|---------------|
| 30              | Xanax             | 2mg           |
| 150             | Percocet          | 325mg         |
| 15              | Halcion           | .25mg         |

24 Respondent's medical records indicate that Patient A already had a prescription for  
25 Amitriptyline, which was prescribed by Respondent on October 10, 2003, and refilled on  
26 December 17, 2003 while another doctor put her on Zoloft. The Zoloft was prescribed by a  
27 psychiatrist from Southern Nevada Adult Mental Health Services for Patient A. There is no  
28 indication in the record that Respondent contacted or attempted to contact Patient A's

1 psychiatrist to discuss the implications of prescribing additional medications. (Medical record  
2 is attached hereto as Exhibit C.)

3 The medication found at Patient A's home after her death and inventoried by the Clark  
4 County Coroner's office in its Medication Activity Log on January 2, 2004 is as follows:

| 5  | <u>Medication</u> | <u>Rx Amount</u> | <u>Amount Left</u> | <u>Rx Date</u> | <u>Physician</u> |
|----|-------------------|------------------|--------------------|----------------|------------------|
| 6  | Amitriptyline     | 90               | 0                  | 12/17/03       | Dr. DO Lutz      |
| 7  | Alprazolam        | 90               | 49                 | 6/3/03         | Dr. Gary Lutz    |
| 8  | Hydrocodone       | 120              | 0                  | 12/08/03       | Dr. Gary Lutz    |
| 9  | Cephalexin        | 40               | 9                  | 12/22/03       | Dr. Gary Lutz    |
| 10 | Zoloft            | 13               | 2                  | 12/17/03       | Dr. Rosenthal    |
| 11 | Alprazolam        | 90               | 72.5               | 8/01/03        | Dr. Gary Lutz    |
| 12 | Ambien            | 30               | 15.5               | 10/22/03       | Dr. Gary Lutz    |
| 13 | Triazolam         | 15               | 0                  | 12/17/03       | Dr. Gary Lutz    |

14 Triazolam, Morphine Sulfate and Endocet are narcotics which are depressants. These  
15 medication prescribed by Respondent on or about October 10, 2003 when Respondent was  
16 aware that Patient A had suicidal ideation and being treated for depression was malpractice.  
17 In prescribing said narcotics, Respondent committed malpractice by failing to use the requisite  
18 degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good  
19 standing in the community and by prescribing said medication Respondent endangered the  
20 patient.

21 Xanax and Percocet are narcotics which are depressants. These medications  
22 prescribed by Respondent on or about December 12, 2003 when Respondent was previously  
23 made aware that Patient A had actually attempted suicide by intestinal error and was on  
24 antidepressant medication prescribed by her psychiatrist was repeat and gross malpractice.

25 Respondent prescribed medications without consultation with her psychiatrist and  
26 treated Respondent for depression without referring patient to a psychiatric specialist.  
27 Respondent prescribed depressants to a depressed person in quantities that could be  
28 dangerous to the patient knowing her suicidal tendency. Respondent repeatedly and grossly

1 failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic  
2 physicians in good standing in the community and by prescribing the medication Respondent  
3 endangered the patient. Therefore, Respondent has engaged in repeated and gross  
4 malpractice which has resulted in the death of a patient and cannot practice osteopathic  
5 medicine safely and skillfully.

6 Respondent's repeated and gross malpractice is detrimental to the public's health,  
7 safety and welfare. Because Respondent continues to treat patients, the public health,  
8 safety, and welfare imperatively require emergency action and a summary suspension of  
9 Respondent's license to practice Osteopathic Medicine.

10 The Complaint also alleges Respondent engaged in unprofessional conduct which is  
11 detrimental to the public health, safety and welfare. Respondent treated Patient B from  
12 January 2003 to January 2004. In his treatment of Patient B, Respondent prescribed  
13 Methdone, HCL, or Methodose, a form of Methodone, a controlled substance, as follows:

| <u>Date</u> | <u>Medication</u> | <u>Quantity</u> | <u>Dosage</u> |
|-------------|-------------------|-----------------|---------------|
| 14 1/27/03  | Methadone HCL     | 1080            | 10 mg         |
| 15 2/24/03  | Methadone HCL     | 1080            | 10 mg         |
| 16 3/21/03  | Methadone HCL     | 1080            | 10 mg         |
| 17 4/15/03  | Methadone HCL     | 1080            | 10 mg         |
| 18 5/12/03  | Methadone HCL     | 1080            | 10 mg         |
| 19 6/6/03   | Methadone HCL     | 1080            | 10 mg         |
| 20 6/30/03  | Methadose         | 1080            | 10 mg         |
| 21 7/23/03  | Methadone HCL     | 1080            | 10 mg         |
| 22 8/12/03  | Methadose         | 1080            | 10 mg         |
| 23 9/5/03   | Methadone HCL     | 1080            | 10 mg         |
| 24 9/26/03  | Methadone HCL     | 1080            | 10 mg         |
| 25 10/13/03 | Methodose         | 1080            | 10 mg         |
| 26 10/29/03 | Methodose         | 1800            | 10 mg         |
| 27 11/24/03 | Methadone HCL     | 1000            | 10 mg         |



Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

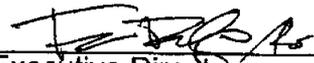
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**BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

IN THE MATTER OF THE COMPLAINT )  
AGAINST )  
GARY LUTZ, D.O. )  
RESPONDENT. )

Case No.: AD-04-1-327

Filed: 2-13-04

  
Executive Director

**EMERGENCY ORDER OF SUMMARY SUSPENSION OF LICENSE  
TO PRACTICE OSTEOPATHIC MEDICINE IN THE STATE OF NEVADA**

This matter having come before the Nevada State Board of Osteopathic Medicine at an emergency Board Meeting as an Agenda Item to consider the above entitled matter on February 13, 2004, and the Board having considered the Complaint and Request for Emergency Order of Summary Suspension filed against GARY LUTZ, D.O., (Respondent), and the Board having considered the Request for Summary Suspension and the relevant provisions of Chapter 633 of the Nevada Revised Statutes, Chapter 633 of the Nevada Administrative Code, and particularly NRS 633.511 and 633.591 of the Nevada Revised Statutes and NAC 633.450, and good cause appearing, the Board finds that the evidence presented shows the following:

I.

That GARY LUTZ, D.O., is licensed by the Nevada State Board of Osteopathic Medicine to practice medicine in the state of Nevada.

II.

That GARY LUTZ, D.O., has been charged in a Complaint duly filed with the Board and pursuant to NRS 633.511(1) with "unprofessional conduct" which includes engaging in any "professional conduct which is intended to deceive or which the board by regulation has determined is unethical and gross and repeated malpractice.

OHIO STATE MEDICAL BOARD

III.

That pursuant to NAC 633.350, a licensee engages in "unethical conduct" if he

FEB 23 2004

1 "prescribes a controlled substance in a manner or an amount that the board determines is  
2 excessive."

3 IV.

4 That NRS 633.511(4) provides that gross or repeated malpractice is grounds for  
5 disciplinary action.

6 V.

7 That NRS 633.071 defines "malpractice" as the failure on the part of an osteopathic  
8 physician to exercise the degree of care, diligence, and skill ordinarily exercised by  
9 osteopathic physicians in good standing in the community in which he practices.

10 VI.

11 That NRS 633.041 defines "gross malpractice" as malpractice where the failure to  
12 exercise the requisite degree of care, diligence and skill consists of :

- 13 1. . . .
- 14 2. Gross negligence;
- 15 3. Willful disregard of established medical procedures;
- 16 4. Willfull and consistent use of medical procedures, services or treatment  
17 considered by osteopathic physicians in the community to be inappropriate or  
18 unnecessary in the case where used.

19 VII.

20 Patient A, a patient of Respondent's died of a drug overdose, exact date of death is  
21 unknown but was last seen on December 28, 2003 and found dead and decomposing in her  
22 apartment on January 2, 2004. The patient was last seen by Respondent on December 12,  
23 2003 and last treated by Respondent on December 22, 2003. The Clark County Coroner's  
24 Autopsy Report by Gary D. Telgenhoff, M.S., D.O., Medical Examiner, dated January 3, 2004  
25 makes the following opinion: "Cause of Death: It is my opinion that the death of [Patient A] is  
26 due to acute, combined drug intoxication (amitriptyline, alprazolam). Manner of Death:  
27 Suicide." The blood screen conducted of the deceased resulted in the following:

28 Amitriptyline = 8,276 ng/ml; Noritriptyline = 1,714 ng/ml; Alprazolam = 100 mg;

1 Alpha-Hydroxyalprazolam = 100 ng/ml.

2 VIII.

3 On October 10, 2003, Respondent treated Patient A. At this examination, it was made  
4 known to Respondent that Patient A had suicidal ideation. In spite of such information,  
5 Respondent prescribed the following medications to Patient A:

| 6  | <u>Quantity</u> | <u>Medication</u> | <u>Dosage</u> |
|----|-----------------|-------------------|---------------|
| 7  | 15              | Triazolam         | .25mg dose;   |
| 8  | 120             | Morphine Sulfate  | 100 mg        |
| 9  | 150             | Endocet           | 650mg-10mg    |
| 10 | 90              | Amitriptyline     | 100mg         |

11 IX.

12 On or about December 12, 2003, Respondent learned about Patient A's attempted  
13 suicide, which required her to be hospitalized for intestinal error and subsequently treated at  
14 Southern Nevada Adult Mental Health Services.

15 X.

16 On or about December 12, 2003, Respondent treated Patient A and prescribed the  
17 following medications:

| 18 | <u>Quantity</u> | <u>Medication</u> | <u>Dosage</u> |
|----|-----------------|-------------------|---------------|
| 19 | 30              | Xanax             | 2mg           |
| 20 | 150             | Percocet          | 325mg         |
| 21 | 15              | Halcion           | .25mg         |

22 XI.

23 Respondent's medical records indicate that Patient A already had a prescription for  
24 Amitriptyline, which was prescribed on October 10, 2003, and refilled on December 17, 2003  
25 while another doctor put her on Zoloft. The Zoloft was prescribed by a psychiatrist from  
26 Southern Nevada Adult Mental Health Services for Patient A. There is no indication in the  
27 record that Respondent contacted or attempted to contact Patient A's psychiatrist to discuss  
28 the implications of prescribing additional narcotic medications

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**XII.**

Triazolam, Morphine Sulfate and Endocet are narcotics which are depressants. These medications were prescribed by Respondent on or about October 10, 2003 when Respondent was aware that Patient A had suicidal ideation and was depressed was malpractice. In prescribing said narcotics, Respondent failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and by prescribing the medication Respondent endangered the patient and committed gross malpractice.

**XIII.**

Xanax and Percocet, both controlled substances are depressants. The medication prescribed by Respondent on or about December 12, 2003 when Respondent was aware that Patient A had actually attempted suicide by intestinal error and was on antidepressant medication prescribed by her psychiatrist constitutes repeat and gross malpractice.

**XIV.**

Respondent prescribed medications without consultation with her psychiatrist and treated Respondent for depression, a patient known to have attempted suicide, without referring patient to a psychiatric specialist. Respondent prescribed depressants to a depressed person in quantities that could be dangerous to the patient knowing her suicidal tendency. Such conduct is malpractice.

**XV.**

Respondent repeatedly and grossly failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and by prescribing such medication Respondent endangered the patient. Such conduct constitutes repeated and gross malpractice and is grounds for disciplinary action pursuant to NRS 633.511(4).

**XVI.**

Respondent treated Patient B from January 2003 to January 2004. In his treatment of Patient B, Respondent prescribed Methdone, HCL, or Methodose, a form of Methodone, a

1 controlled substance, as follows:

| 2  | <u>Date</u> | <u>Medication</u> | <u>Quantity</u> | <u>Dosage</u> |
|----|-------------|-------------------|-----------------|---------------|
| 3  | 1/27/03     | Methadone HCL     | 1080            | 10 mg         |
| 4  | 2/24/03     | Methadone HCL     | 1080            | 10 mg         |
| 5  | 3/21/03     | Methadone HCL     | 1080            | 10 mg         |
| 6  | 4/15/03     | Methadone HCL     | 1080            | 10 mg         |
| 7  | 5/12/03     | Methadone HCL     | 1080            | 10 mg         |
| 8  | 6/6/03      | Methadone HCL     | 1080            | 10 mg         |
| 9  | 6/30/03     | Methadose         | 1080            | 10 mg         |
| 10 | 7/23/03     | Methadone HCL     | 1080            | 10 mg         |
| 11 | 8/12/03     | Methadose         | 1080            | 10 mg         |
| 12 | 9/5/03      | Methadone HCL     | 1080            | 10 mg         |
| 13 | 9/26/03     | Methadone HCL     | 1080            | 10 mg         |
| 14 | 10/13/03    | Methodose         | 1080            | 10 mg         |
| 15 | 10/29/03    | Methodose         | 1800            | 10 mg         |

16 **XVIII.**

17 At the quantity prescribed, the patient would take approximately 40 doses of medication  
18 per day. The amount of Methodose prescribed on 10/29/03 of 1800, the patient would take 60  
19 doses a day. Even if Methodone was prescribed for chronic pain, such amounts as  
20 prescribed are excessive.

21 **XIX.**

22 That RESPONDENT'S prescribing of a controlled substance is excessive and is a  
23 violation of NAC 633.350(6) and NRS 633.131(f)(1) and constitutes unprofessional conduct  
24 and is grounds for disciplinary action pursuant to NRS 633.511(1).

25 **XX.**

26 That the public health, safety, and welfare imperatively require action and summary  
27 suspension of GARY LUTZ, D.O.'s, license to practice medicine in the state of Nevada  
28 pending a hearing on the Complaint. That the continuing practice of medicine or the

1 continuing ability to practice medicine by GARY LUTZ, D.O., during the pendency of the time  
2 necessary for a hearing on this Complaint would endanger the health, safety, and welfare of  
3 his patients.

4 **WHEREFORE, IT IS ORDERED BY** the Nevada State Board of Osteopathic Medicine  
5 that the license of GARY LUTZ, D.O., to practice medicine in the state of Nevada is hereby  
6 summarily suspended pending proceedings on the Complaint on file herein or until further  
7 order of the Board.

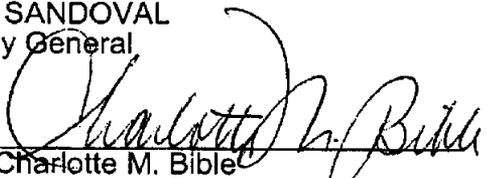
8 DATED this 13<sup>th</sup> day of February, 2004.

9 NEVADA STATE BOARD OF  
10 OSTEOPATHIC MEDICINE

11 By:   
12 RUDY MANTHEI, CHAIRMAN

13 Submitted by:

14 BRIAN SANDOVAL  
15 Attorney General

16 By:   
17 Charlotte M. Bible  
18 Chief Deputy Attorney General, Civil Division  
19 555 E. Washington Avenue, Suite 3900  
20 Las Vegas, Nevada 89101  
21 (702) 486-3102

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

28

OHIO STATE MEDICAL BOARD

FEB 23 2004

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT  
AGAINST  
GARY LUTZ, D.O.  
RESPONDENT.

Case No.: AD-04-1-327

Filed: 10-4-04

Executive Director

AMENDED COMPLAINT

Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, and by virtue of the authority vested in it by said chapter, the Investigative Board Member of the Nevada Board of Osteopathic Medicine, having a reasonable basis to believe that GARY LUTZ, D.O. hereinafter referred to as "Respondent," has violated the provisions of said chapter, hereby issues its formal Amended Complaint, stating the Investigative Board Member's charges and allegations, as follows:

1. That Respondent is licensed in active status to practice medicine in the state of Nevada, and at all times alleged herein, was so licensed by the Board of Osteopathic Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes.

2. That NRS 633.511(1) provides that unprofessional conduct is grounds for initiating disciplinary proceedings.

3. NRS 633.511(1) provides "Unprofessional conduct" includes:

(f) Engaging in any:

(1) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical;

(g) Administering, dispensing or prescribing any controlled substance or any dangerous drug as defined in chapter 454 of NRS, otherwise than in the course of legitimate professional practice or as authorized by law.

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

1 4. Pursuant to NAC 633.350, a licensee engages in unethical conduct if he:

2 1. Prescribes a controlled substance in a manner or an amount that  
3 the board determines is excessive.

4 5. NRS 633.511(4) provides that gross or repeated malpractice is grounds for  
5 disciplinary action.

6 6. NRS 633.071 defines "malpractice" as the failure on the part of an osteopathic  
7 physician to exercise the degree of care, diligence and skill ordinarily exercised by osteopathic  
8 physicians in good standing in the community in which he practices.

9 7. NRS 633.041 defines "gross malpractice" as malpractice where the failure to  
10 exercise the requisite degree of care, diligence and skill consists of :

11 1. ...

12 1. Gross negligence;

13 2. Willful disregard of established medical procedures;

14 3. Willful and consistent use of medical procedures, services, or treatment  
15 considered by osteopathic physicians in the community to be inappropriate or  
16 unnecessary in the case where used.

17 **COUNT ONE**

18 **(Patient A-Repeated or Gross Malpractice)**

19 8. The allegations set forth in paragraphs 1 through 7 are incorporated herein as if  
20 set out in full.

21 9. Patient A, a patient of Respondent's died of a drug overdose, exact date of  
22 death is unknown but was last seen on December 28, 2003 and found dead and decomposing  
23 in her apartment on January 2, 2004. The patient was last seen by Respondent on December  
24 12, 2003 and last treated by Respondent on December 22, 2003. The Clark County  
25 Coroner's Autopsy Report by Gary D. Telgenhoff, M.S., D.O., Medical Examiner, dated  
26 January 3, 2004 makes the following opinion: "Cause of Death: It is my opinion that the death  
27 of [Patient A] is due to acute, combined drug intoxication (amitriptyline, alprazolam). Manner  
28 of Death: Suicide."

1           10. On October 10, 2003, Respondent treated Patient A. At this examination it was  
2 made known to Respondent that Patient A had suicidal ideation. In spite of such information,  
3 Respondent prescribed the following medications to Patient A:

4

| Quantity | Medication       | Dosage       |
|----------|------------------|--------------|
| 15       | Triazolam        | 0.25 mg dose |
| 120      | Morphine Sulfate | 100mg        |
| 150      | Endocet          | 650mg-10mg   |
| 90       | Amitriptyline    | 100mg        |

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10           11. On or about December 8, 2003, Respondent learned about Patient A's  
11 attempted suicide which required her to be hospitalized for intestinal error and subsequently  
12 treated at Southern Nevada Adult Mental Health Services.

13           12. On or about December 12, 2003, Respondent treated Patient A and prescribed  
14 the following medications:

15

| Quantity | Medication | Dosage |
|----------|------------|--------|
| 30       | Xanax      | 2 mg   |
| 150      | Percocet   | 325 mg |
| 15       | Halcion    | .25 mg |

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21           13. Respondent's medical records indicate that Patient A already had a prescription  
22 for Amitriptyline, which was prescribed on October 10, 2003, and refilled on December 17,  
23 2003 while another doctor put her on Zoloft. The Zoloft was prescribed by a psychiatrist from  
24 Southern Nevada Adult Mental Health Services for Patient A. There is no indication in the  
25 record that Respondent contacted or attempted to contact Patient A's psychiatrist to discuss  
26 the implications of prescribing additional narcotic medications.

27           14. The medication found at Patient A's home after her death and inventoried by the  
28 Clark County Coroner's office in its Medication Activity Log on January 2, 2004 is as follows:

| Medication    | Rx Amount | Amount Left | Rx Date  | Physician     |
|---------------|-----------|-------------|----------|---------------|
| Amitriptyline | 90        | 0           | 12/17/03 | Dr. DO Lutz   |
| Alprazolam    | 90        | 49          | 6/3/03   | Dr. Gary Lutz |
| Hydrocodone   | 120       | 0           | 12/08/03 | Dr. Gary Lutz |
| Cephalexin    | 40        | 9           | 12/22/03 | Dr. Gary Lutz |
| Zoloft        | 13        | 2           | 12/17/03 | Dr. Rosenthal |
| Alprazolam    | 90        | 72.5        | 8/01/03  | Dr. Gary Lutz |
| Ambien        | 30        | 15.5        | 10/22/03 | Dr. Gary Lutz |
| Triazolam     | 15        | 0           | 12/17/03 | Dr. Gary Lutz |

15. The medication prescribed by Respondent on or about October 10, 2003 when Respondent was aware that Patient A had suicidal ideation and was depressed was malpractice. Triazolam, Morphine Sulfate and Endocet are narcotics which are depressants. In prescribing said narcotics, Respondent failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and by prescribing the medication Respondent endangered the patient and committed gross malpractice.

16. Xanax and Percocet are narcotics which are depressants. The medication prescribed by Respondent on or about December 12, 2003 when Respondent was aware that Patient A had actually attempted suicide by intestinal error and was on antidepressant medication prescribed by her psychiatrist constitutes repeat and gross malpractice.

17. Respondent prescribed medications without consultation with her psychiatrist and treated Respondent for depression without referring patient to a psychiatric specialist. Respondent prescribed depressants to a depressed person in quantities that could be dangerous to the patient knowing her suicidal tendency.

18. Respondent repeatedly and grossly failed to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the

1 community and by prescribing the medication Respondent endangered the patient. Such  
2 conduct constitutes repeated and gross malpractice.

3 19. The gross and repeated malpractice committed by Respondent, GARY LUTZ,  
4 D.O., is grounds for disciplinary action pursuant NRS 633.511(4).

5 **COUNT TWO**

6 **(Patient B-Excessive Prescribing)**

7 20. The allegations set forth in paragraphs 1 through 19 are incorporated herein as if  
8 set out in full.

9 21. Respondent treated Patient B from January 24, 2001 to February 12, 2004. In  
10 his treatment of Patient B, Respondent prescribed several controlled substances including  
11 Methadone, Methodose, Lortab and Oxycontin to Patient B.

12 22. The amounts of controlled substances as prescribed to Patient B are excessive.

13 23. That Respondent's prescribing of controlled substances to Patient B during the  
14 time period alleged above is excessive and is a violation of NAC 633.350(6) and NRS  
15 633.131(f)(1) and constitutes unprofessional conduct and is grounds for disciplinary action  
16 pursuant to NRS 633.511(1).

17 **COUNT THREE**

18 **(Patient B-Repeated or Gross Malpractice)**

19 24. The allegations set forth in paragraphs 1 through 7 and 21 through 23 are  
20 incorporated herein as set out in full.

21 25. During the period of treatment of Patient B from January 2001 to February 2004,  
22 Respondent's prescribing of controlled substances, narcotics and other medications and the  
23 medical treatment provided to Patient B by Respondent evidences a failure to use the  
24 requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in  
25 good standing in the community and is malpractice. Gross or repeated malpractice is grounds  
26 for disciplinary action pursuant to NRS 633.511(4).

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**COUNT FOUR**

**(Patient C-Excessive Prescribing)**

26. The allegations set forth in paragraphs 1 through 7 are incorporated herein as set out in full.

27. Respondent treated Patient C from January 8, 2003 to January 20, 2004. In his treatment of Patient C, Respondent prescribed controlled substances including Actiq, hydrocodone, Xanax, Percocet, Oxycontin, Klonopin for Patient C.

28. That Respondent's prescribing of a controlled substance to Patient C during the time period alleged above is excessive and is a violation of NAC 633.350(6) and NRS 633.131(f)(1) and constitutes unprofessional conduct and is grounds for disciplinary action pursuant to NRS 633.511(1).

**COUNT FIVE**

**(Patient C-Repeated or Gross Malpractice)**

29. The allegations set forth in paragraphs 1 through 7 and 26 through 28 are incorporated herein as set out in full.

30. During the period of treatment of Patient C from January 8, 2003 to January 20, 2004, Respondent's prescribing of controlled substances and other medications to Patient C and the medical treatment of Patient C by Respondent evidences a failure to use the requisite degree of care, diligence or skill ordinarily exercised by osteopathic physicians in good standing in the community and is malpractice. Gross or repeated malpractice is grounds for disciplinary action pursuant to NRS 633.511(4).

**COUNT SIX**

**(Patient D-Excessive Prescribing)**

31. The allegations set forth in paragraphs 1 through 7 are incorporated herein as set out in full.

32. Respondent treated Patient D from May 7, 2001 to December 12, 2003. In his treatment of Patient D, Respondent prescribed controlled substances including Percodan, Percocet, Lortab, Klonopin, Oxycontin, Actiq for Patient D.



**COUNT NINE**

**( Summary Suspension)**

1  
2  
3 41. The allegations set forth in paragraphs 1 through 40 are incorporated herein as if  
4 set out in full.

5 42. That the public health, safety, and welfare imperatively require action and  
6 summary suspension of GARY LUTZ, D.O.'s, license to practice medicine in the state of  
7 Nevada pending a hearing on the Complaint. That the continuing practice of medicine or the  
8 continuing ability to practice medicine by GARY LUTZ, D.O., during the pendency of the time  
9 necessary for a hearing on this Complaint would endanger the health, safety, and welfare of  
10 his patients.

11 WHEREFORE, the Investigative Member of the Board of Osteopathic Medicine prays  
12 as follows:

13 1. That the Nevada State Board of Osteopathic Medicine schedule an emergency  
14 hearing and affirmatively find that the public health, safety, and welfare imperatively require  
15 emergency action and summarily suspend Respondent's license to practice Osteopathic  
16 Medicine in the state of Nevada pending a hearing on the Complaint pursuant to NRS  
17 633.591;

18 2. That the Nevada State Board of Osteopathic Medicine conduct a hearing on this  
19 Complaint as provided by statute;

20 3. That, pursuant to NRS 633.651, Respondent, GARY LUTZ, D.O. be publicly  
21 reprimanded and/or the license of Respondent, GARY LUTZ, D.O., be revoked, suspended,  
22 limited to a specified branch of osteopathic medicine, or placed on probation with conditions  
23 and terms as the Nevada State Board of Osteopathic Medicine may deem just and proper and  
24 which are not inconsistent with law;

25 ...

26 ...

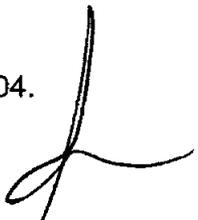
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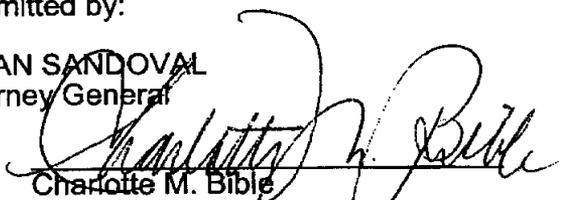
4. That RESPONDENT, GARY LUTZ, D.O., be ordered to pay reasonable attorney's fees and costs of the investigation and the administrative and disciplinary proceedings.

DATED this 29 day of September, 2004.

By:   
GARY MONO, D.O.,  
Investigating Member of the  
Nevada Board of Osteopathic Medicine

Submitted by:

BRIAN SANDOVAL  
Attorney General

By:   
Charlotte M. Bible  
Chief Deputy Attorney General  
555 E. Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
(702) 486-3102

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

**INTERIM AGREEMENT  
BETWEEN  
GARY RAY LUTZ, D.O.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

**OHIO STATE MEDICAL BOARD**

APR 12 2004

This Interim Agreement is entered into by and between Gary Ray Lutz, D.O. (Dr. Lutz), and the State Medical Board of Ohio (Ohio Board), the agency of the State of Ohio charged with enforcing R.C. Chapter 4731.

Dr. Lutz enters into this Consent Agreement being fully informed of his rights under R.C. 119., including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

**BASIS FOR ACTION**

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Ohio Board is empowered by R.C. 4731.22(B), to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. Dr. Lutz, Ohio Board license No. 34-003249, is currently licensed to practice osteopathic medicine and surgery in Ohio, subject to the probationary terms, conditions and limitations of an Ohio Board Order, effective November 16, 1998, which was based upon the Findings of Fact of two violations of R.C. 4731.22(B)(11), "plea[s] of guilty to, or a judicial finding[s] of guilt of, \* \* \* misdemeanor[s] committed in the course of practice." A copy of that Order is attached hereto and incorporated herein.
- C. Dr. Lutz states that he is currently licensed to practice osteopathic medicine and surgery only in Ohio and West Virginia. Further, Dr. Lutz admits that he also holds a Nevada license to practice osteopathic medicine and surgery, but that such license is currently suspended, as detailed in paragraph D. below.
- D. Dr. Lutz admits that, on or about February 13, 2004, the Nevada State Board of Osteopathic Medicine (Nevada Board) notified him that it had filed an Emergency Order of Summary Suspension of his license to practice osteopathic medicine in the State of Nevada, a copy of which is attached hereto and incorporated herein.

The Emergency Order stated, in pertinent part:

\* \* \*

That the public health, safety, and welfare imperatively require action and summary suspension of GARY LUTZ, D.O.'s license to practice in the State of Nevada pending a hearing on the Complaint. That the continuing practice of medicine or the continuing ability to practice medicine by GARY LUTZ, D.O. during the pendency of the time necessary for a hearing on this complaint would endanger the health, safety, and welfare of his patients.

**WHEREFORE IT IS ORDERED** by the Nevada State Board of Osteopathic Medicine that the license of GARY LUTZ, D.O., to practice medicine in the state of Nevada is hereby summarily suspended pending proceedings on the Complaint on file herein or until further order of the board. [*Emphasis in the original*]

\* \* \*

Dr. Lutz further admits that the Emergency Order of Summary Suspension constitutes grounds for action against his Ohio medical license pursuant to Section 4731.22(B)(22), Ohio Revised Code.

- E. Dr. Lutz states that he has submitted a request to the Ohio Board seeking a release from the probationary terms imposed by the Board's November 16, 1998 Board Order referenced in paragraph B. above, and attached hereto. That request is currently pending.

### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, Dr. Lutz knowing and voluntarily agrees with the Ohio Board to the following terms, conditions and limitations:

#### **Continuation of Probation**

1. Dr. Lutz shall remain subject to the probationary terms, conditions and limitations imposed by the November 16, 1998 Ohio Board Order, as subsequently modified by the Board, except that, where those terms conflict with the terms of this Consent Agreement, Dr. Lutz shall comply with the terms of this Consent Agreement. Dr. Lutz and the Ohio Board agree that his pending request for release from probation will not be addressed for the duration of this interim agreement.

2. Dr. Lutz agrees to notify the Ohio Board in writing at least ten days prior to any return to Ohio, identifying the address or addresses at which he will stay in Ohio, his purpose for returning to Ohio, and the length of time he will remain in Ohio.

### **Practice Limitation**

3. Dr. Lutz agrees not to practice osteopathic medicine and surgery in any form in Ohio.

### **Required Reporting by Licensee**

4. Within thirty days of the effective date of this Consent Agreement, Dr. Lutz shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Lutz further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Lutz shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
5. Within thirty days of the effective date of this Consent Agreement, or as otherwise determined by the Board, Dr. Lutz shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of staff at each hospital where he has privileges or appointments. Further, Dr. Lutz shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

### **FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the Ohio Board, Dr. Lutz appears to have violated or breached any term or condition of this Interim Consent Agreement, the Ohio Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Lutz has violated any term, condition or limitation of this Interim Consent Agreement, Dr. Lutz agrees that the violation, as alleged, also constitutes clear and

convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to R.C. 4731.22(G).

### **DURATION AND MODIFICATION OF TERMS**

This Interim Consent Agreement shall remain in effect until either of the following occurs:

- A. A final resolution on the merits of the Emergency Order of Summary Suspension currently pending before the Nevada Board is reached, and based upon that resolution, the Ohio Board enters a Final Order following issuance of a notice of opportunity for hearing;
- B. The Ohio Board determines, after a final resolution of the pending Nevada action, that no further action is warranted, and notifies Dr. Lutz of that determination in writing.

Dr. Lutz shall not seek modification of the terms, conditions and limitations of this Consent Agreement.

### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

Dr. Lutz acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, R.C. Chapter 119.

Dr. Lutz hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

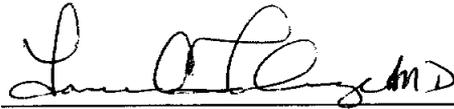
This Consent Agreement shall be considered a public record as that term is used in R.C. 149.43. Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

Dr. Lutz acknowledges that his social security number will be used if this information is so reported and agrees to provide his/her social security number to the Board for such purposes.

**EFFECTIVE DATE**

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

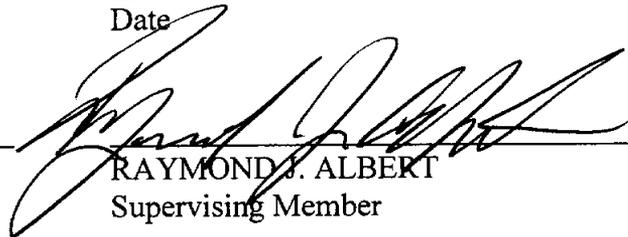
  
\_\_\_\_\_  
GARY R. LUTZ, D.O.

  
\_\_\_\_\_  
LANCE A. TALMAGE, M.D.  
Secretary

15-4-9-04  
Date 2:44 PM PST.

4-14-04  
Date

\_\_\_\_\_  
Attorney for Dr. Lutz

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

\_\_\_\_\_  
Date

4/15/04  
Date

  
\_\_\_\_\_  
CHARLES A. WOODBECK  
Enforcement Attorney

4/13/04  
Date

Enclosures

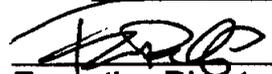
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**BEFORE THE NEVADA STATE  
BOARD OF OSTEOPATHIC MEDICINE**

IN THE MATTER OF THE COMPLAINT )  
AGAINST )  
GARY LUTZ, D.O. )  
RESPONDENT. )

Case No.: AD-04-327

Filed: 4-11-05

  
Executive Director

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER REVOCATING MEDICAL LICENSE**

This matter came on for hearing on March 8 and 9, 2005, before Rudy Manthei, D.O., Chairman, and members of the Nevada State Board of Osteopathic Medicine ("Board"), noticed in accordance with Nevada's Open Meeting laws and NRS and NAC Chapters 633. The investigating member of the Board, Dr. Gary Mono, was represented by Charlotte Bible, Chief Deputy Attorney General, and Deanne Rymarowicz, Deputy Attorney General. Respondent, Gary Lutz, D.O., was represented by John V. Spilotro, Esq. The Board's findings, conclusions of law, and order, as well as a discussion of the testimony and evidence presented, are set forth as follow:

**Statement of the Case**

A Complaint was filed with the Board against Gary Lutz, D.O., on or about February 12, 2004 concerning two patients. On February 13, 2004, the medical license of Dr. Lutz was suspended pursuant to an emergency action by the Board. On or about October 4, 2004, an Amended Complaint was filed against Dr. Lutz, concerning a total of four patients, alleging malpractice, excessive prescribing of controlled substance, and falling below the community standard of care and treatment of patients for a Doctor of Osteopathic medicine.

Prior to the presentation of the case, Dr. Lutz, through counsel, admitted all allegations of the Amended Complaint concerning Patients B, C, and D. (Transcript (hereafter "Tr.") of March 8, 2005 hearing, p. 6.) Therefore, Counts 2, 3, 4, 5, 6, and 7 of the Amended Complaint were admitted.

Discussion of Testimony and Evidence

1  
2           The Investigating Member presented two witnesses in support of the Amended  
3 Complaint; namely, Dr. Robert Kessler, as an expert witness, and John Hambrick as  
4 investigator for the Board. Dr. Kessler testified in detail concerning Dr. Lutz's care and  
5 treatment of Patients A, B, C, and D; and the medical records concerning Patients A, B, C,  
6 and D were offered into evidence. Such records were relied upon during Dr. Kessler's  
7 examination and cross-examination.

8           Concerning Patient A, Dr. Kessler testified that this patient's medical records indicated  
9 that the patient expressed suicidal ideology; yet, Dr. Lutz failed to refer the patient to a  
10 psychiatrist or a medical facility (Tr. 3-8-05, p. 20-3), although he did talk to Patient A about a  
11 previously attempted suicide. It was Dr. Kessler's opinion that Dr. Lutz over-prescribed  
12 medication for this patient as well, without adequate workup. Ultimately, this patient  
13 committed suicide. Dr. Kessler also expressed his opinion that the care and treatment  
14 rendered by Dr. Lutz to Patient A did not meet the standard of care ordinarily exercised by  
15 osteopathic physicians in good standing in this community. (Tr. 3-8-05, p. 27.)

16           On cross-examination, Dr. Kessler did agree that other physicians were also  
17 prescribing medication for this patient, and such was evident from the autopsy report. Dr.  
18 Kessler also admitted that he has seen situations where a patient is losing insurance and had  
19 prescriptions refilled at an earlier date while coverage was still available. (Tr. 3-8-05, p. 82.)  
20 The Board also questioned Dr. Kessler about Patient A, the possibility that the patient was  
21 selling drugs (Tr. 3-8-05, p. 125, 127), the requirement that a patient enter into a contract  
22 concerning controlled substance, and the notations made when additions are made to a  
23 medical record.

24           Concerning Patient B, Dr. Kessler expressed his opinion that Dr. Lutz over-prescribed  
25 for this patient as well. The medications prescribed included, but are not limited to, OxyFast,  
26 Lortab, OxyContin, Norco, Morphine, Methadone, Soma, Dilaudid, and Dexedrine (Tr. 3-8-05,  
27 p. 28-30), without an adequate workup. Dr. Kessler also noted that this patient was instructed  
28 to utilize a different pharmacy to apparently avoid the pharmacist from noticing any over-

1 prescribing and/or too frequent of filling prescriptions. (Tr. 3-8-05, p. 38-9.) According to Dr.  
2 Kessler, the maximum dosage of Tylenol is 4,000 milligrams; and that the most common  
3 cause of drug overdose is due to Tylenol as it causes liver damage. (Tr. 3-8-05, p. 39.)  
4 Although most physicians try to keep the Tylenol dosage to less than 3,000 milligrams per  
5 day, this patient was receiving approximately 3,600 milligrams per day. (Tr. 3-8-05, p. 40.)  
6 Inadequate workup and/or examination of this patient were also noted by Dr. Kessler (Tr. 3-8-  
7 05, p. 41); and in his opinion, the care and treatment of this patient fell below the appropriate  
8 standard (Tr. 3-8-05, p. 45-6).

9 On cross-examination, Dr. Kessler was questioned whether this second pharmacy may  
10 be the result of a change in insurance carrier.

11 Concerning Patient C, Dr. Kessler testified that over-prescribing was noted in this  
12 patient's records as well. For example, Dr. Kessler noted that this patient was prescribed  
13 Actiq, Hydrocodone, Soma, Zanax, Percocet, OxyContin, Tenuate, Phentermine, Zoloft,  
14 Lexapro, Klonopin, Mobic, Provigil, Lortab, Ambien, and Valium (Tr. 3-8-05, p. 48-50). This  
15 witness was of the opinion that Dr. Lutz engaged in over-prescribing medication for this  
16 patient, without proper documentation of the pain source; and that the care and treatment of  
17 this patient fell below the standard of care for an osteopathic physician (Tr. 3-8-05, p. 56).

18 Concerning Patient D, Dr. Kessler noted the following prescribed medications: Lortab,  
19 Klonopin, Desyrel, Dyazide, Soma, Percocet, Methadone, Bextra, Arthrotec, Lexapro, Benicar,  
20 Viagra, AndroGel, Ritalin, Neurontin, Actiq, Wellbutrin, Dexedrine, and Vicodin (Tr. 3-8-05, p.  
21 57-9). Dr. Kessler expressed concern that this patient was a forklift driver while under such  
22 heavy medication (Tr. 3-8-05, p. 60). Dr. Kessler was also critical of Dr. Lutz in his failure to  
23 do a physical examination and the inadequacy of the history from this patient (Tr. 3-8-05, p.  
24 61). Dr. Kessler expressed his concern that this patient was also receiving "up to 5,000  
25 milligrams of Tylenol a day" as he believes "Four thousand is a toxic dose . . . ." (Tr. 3-8-05,  
26 p. 62.) Several other examples of over-prescribing were provided by Dr. Kessler, as well as  
27 his opinion that there were several examples of "rapid escalations" in the dosages being  
28 prescribed. (Tr. 3-8-05, p. 64.) The medical records for this patient also indicated that he

1 stated that he felt like "committing suicide because of the pain." (Tr. 3-8-05, p. 66.) Dr. Lutz,  
2 however, apparently did not refer this patient to either a medical institution or another  
3 physician for this suicidal ideation. In summary, Dr. Kessler testified that Dr. Lutz's care of  
4 this patient fell below the standard of care required and that Dr. Lutz over-prescribed  
5 medication for this patient. (Tr. 3-8-05, p. 66-7.)

6 John Hambrick testified concerning his investigation into the allegations raised  
7 regarding Dr. Lutz, his obtaining documentation from the State of Ohio (Exhibits F and G), and  
8 his dealings with the federal Drug Enforcement Administration ("DEA"). As a matter of fact,  
9 Mr. Hambrick obtained the medical records on Patients A, B, C, and D from the DEA who had  
10 received them directly from Dr. Lutz. Mr. Hambrick testified further that the DEA provided him  
11 with photocopies of prescriptions written by Dr. Lutz while suspended (Tr. 3-9-05, p. 156), and  
12 photocopies of the same were offered as evidence. Dr. Lutz was suspended by the Board of  
13 February 13, 2004. The prescriptions were dated between February 28 or February 26 and  
14 March 1<sup>st</sup>. Mr. Hambrick also testified that he did not believe that Dr. Lutz informed the Board  
15 of the agreement made with the State of Ohio licensing board (Tr. 3-9-05, p. 177).

16 Dr. Lutz presented correspondence from Dr. Steven Lampinen as evidence that Dr.  
17 Lutz should not have his license revoked (Defendant's Exhibit 1). All exhibits offered to the  
18 Board were admitted into evidence (Tr. 3-9-05, p. 186).

19 Closing arguments were allowed, rather than post-hearing briefs from the parties.

#### 20 FINDINGS OF FACT

21 Based upon the record of the proceedings, including but not limited to the testimony  
22 and exhibits offered, the Board finds:

23 1. The medical records obtained from the DEA pertaining to Patients A, B, C, and D do  
24 contain proof of over-prescribing of medications to those patients. Records pertaining to other  
25 patients of Dr. Lutz are not before this Board and were not considered.

26 2. Dr. Robert Kessler testified that Dr. Lutz over-prescribed for Patients A, B, C, and D;  
27 and Dr. Kessler is knowledgeable as an expert as to the standard of care in the practice of  
28 Osteopathic medicine.

1           3. The Board is mandated to license and monitor Osteopathic physicians in this State  
2 to protect the public health and safety, and to protect the general welfare of the people of this  
3 state. NRS 633.151.

4           4. Malpractice is defined in NRS 633.071 as the failure of an Osteopathic physician to  
5 exercise the degree of care, diligence, and skill ordinarily exercised by Osteopathic physicians  
6 in good standing in the community in which he practices.

7           5. Gross malpractice is defined in NRS 633.041, as where the failure of an  
8 Osteopathic physician to exercise the requisite degree of care, diligence, or skill (1) is in willful  
9 disregard of established medical procedures; (2) is gross negligence; and (3) is the willful and  
10 consistent use of procedures, services, or treatment that the osteopathic physician community  
11 deems inappropriate and/or unnecessary.

12           6. Over-prescribing medications for Patients A, B, C, and D is malpractice as well as  
13 gross malpractice, and are grounds for disciplinary action by this Board.

14           7. The care and treatment rendered to Patients A, B, C, and D fell below the standard  
15 of care for Osteopathic physicians in this community, and are grounds for disciplinary action  
16 by this Board.

17           8. The care and treatment rendered to Patients A, B, C, and D included medical  
18 procedures, services, and/or treatment which were inappropriate, inadequate, and/or  
19 unnecessary, and are grounds for disciplinary action by this Board.

20           9. By Dr. Lutz's acknowledgment, through counsel, the allegations contained in the  
21 Amended Complaint pertaining to Patients B, C, and D were admitted, and are grounds for  
22 discipline.

23           10. Dr. Lutz continued to prescribe medication for patients while his medical license  
24 was suspended.

25           11. Pursuant to NRS 633.651, this Board has the authority to: place a physician on  
26 probation, administer a public reprimand, limit a physician's practice, suspend a physician's  
27 license, or revoke the medical license of a physician practicing osteopathic medicine.



Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

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12. Based upon the credible testimony and exhibits offered in this matter, disciplinary action in this matter is appropriate pursuant to NRS 633.511.

13. Although NRS 633.651 presents a number of different disciplinary actions, due to Dr. Lutz's disregard of his suspension, the medical license of Dr. Gary Lutz should be revoked pursuant to NRS 633.651.

14. Should any conclusion be more properly construed as a finding of fact, may it be so deemed.

**DECISION AND ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The medical license of Dr. Gary Lutz is hereby revoked.
2. Attorneys' fees and costs are awarded to the Board for bringing this disciplinary action. The Investigating Board Member and his counsel are hereby ordered to serve and file an application with this Board setting forth the amounts claimed, allowing Dr. Lutz to either agree or oppose the amount claimed, within 10 days of receipt of the application, and this Board retains jurisdiction to rule on such issue.

DATED THIS 6 day of April, 2005.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By:  for  
Rudy Manthei, Chairman



# 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/)

October 14, 1998

Gary Ray Lutz, D.O.  
840 E. David Road  
Kettering, OH 45429

Dear Doctor Lutz:

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 October 14, 1998, 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 233 840 123  
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL RECEIPT NO. Z 233 840 124  
RETURN RECEIPT REQUESTED

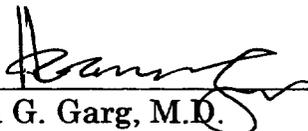
David P. Williamson, Esq.  
CERTIFIED MAIL RECEIPT NO. Z 233 840 125  
RETURN RECEIPT REQUESTED

*Mailed 10/16/98*

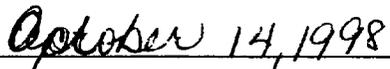
CERTIFICATION

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 October 14, 1998, 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 Gary Ray Lutz, 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)

  
\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

GARY RAY LUTZ, D.O.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on October 14, 1998.

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:

1. The certificate of Gary Ray Lutz, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Lutz's certificate is SUSPENDED for an indefinite period of time, but not less than six months.
2. The Board shall not consider reinstatement of Dr. Lutz's certificate to practice unless all of the following minimum requirements have been met:
  - a. Dr. Lutz shall submit an application for reinstatement, accompanied by appropriate fees.
  - b. Dr. Lutz shall obey all federal, state and local laws; all rules governing the practice of osteopathic medicine and surgery in Ohio; and all terms of probation imposed by the courts in Case No. 96CRB03044 and Case No. 98-40002.

- c. Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Lutz shall commence appropriate psychiatric treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by a psychiatrist approved in advance by the Board. Prior to the initial assessment, Dr. Lutz shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist. Within ten (10) days after the completion of the initial assessment, Dr. Lutz shall cause a written report to be submitted to the Board from the approved psychiatrist, which report shall include:
  - i. A detailed plan of recommended psychiatric treatment based upon the psychiatrist's informed assessment of Dr. Lutz's current needs; and
  - ii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
- d. Dr. Lutz shall provide the Board with acceptable documentation evidencing compliance with the plan of psychiatric treatment on a quarterly basis, or as otherwise directed by the Board.
- e. Dr. Lutz shall appear in person for interviews before the full Board or its designated representative within three months of the date in which this Order becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Lutz's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Lutz shall immediately submit to the Board a written request to be notified of his next scheduled appearance.
- f. Dr. Lutz shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and

all parties that provide treatment or evaluation for Dr. Lutz's psychiatric and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. Dr. Lutz further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- g. Dr. Lutz shall maintain participation in an sexual addiction rehabilitation program, such as SAA or SLAA, no less than two times per week, unless otherwise directed by the Board. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Lutz shall submit acceptable documentary evidence of continuing compliance with this program.
- h. Dr. Lutz shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
- i. Upon submission of his application for reinstatement, Dr. Lutz shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board indicating that Dr. Lutz's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Each report shall describe with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Lutz's practice.
- j. In the event that Dr. Lutz has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

3. Upon reinstatement, Dr. Lutz's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
  - a. Dr. Lutz shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
  - b. Dr. Lutz shall obey all federal, state and local laws; all rules governing the practice of osteopathic medicine and surgery in Ohio; and all terms of probation imposed by the courts in Case No. 96CRB03044 and Case No. 98-40002.
  - c. Dr. Lutz shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

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

- d. Dr. Lutz shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. Dr. Lutz shall continue to receive psychiatric treatment, if recommended prior to reinstatement, with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month. The

sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Lutz shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Lutz shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Lutz's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Lutz's quarterly declaration.

- f. Dr. Lutz shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Lutz's psychiatric and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. Dr. Lutz further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.
- g. Dr. Lutz shall maintain participation in an sexual addiction rehabilitation program, such as SAA or SLAA, no less than two times per week, unless otherwise directed by the Board. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Lutz shall submit acceptable documentary evidence of continuing compliance with this program.
- h. Dr. Lutz shall maintain, in each minor patient's medical record, a statement signed by a parent of that minor patient, verifying that Dr. Lutz has advised the parent, in writing, as follows:

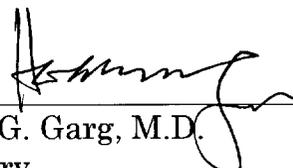
The State Medical Board of Ohio has placed Dr. Lutz's certificate to practice osteopathic medicine and surgery in Ohio on probation, based on the fact that Dr. Lutz had provided pornographic materials to a thirteen year old male against the direct order of the child's parent.

Further, Dr. Lutz shall make his patient records available for review by an agent of the Board upon request in order to facilitate verification of Dr. Lutz's compliance with this requirement.

- i. Within thirty days reinstatement, Dr. Lutz shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Lutz has privileges or appointments. Further, Dr. Lutz shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Lutz applies for or obtains privileges or appointments.
  - j. If Dr. Lutz violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Lutz's certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Lutz's certificate will be fully restored.

This Order shall become effective thirty days from the date of mailing of notification of approval by the Board. In the thirty day interim, Dr. Lutz shall not undertake the care of any patient not already under his care.

(SEAL)

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

October 14, 1998  
Date

STATE MEDICAL BOARD  
OF OHIO  
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**REPORT AND RECOMMENDATION  
IN THE MATTER OF GARY RAY LUTZ, D.O.**

The Matter of Gary Ray Lutz, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on July 22, 1998

**INTRODUCTION**

I. Basis for Hearing

A. By letter dated May 13, 1998, the State Medical Board of Ohio [Board] notified Gary Ray Lutz, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board's action was based on the following allegations:

1. On or about March 24, 1997, in the Municipal Court of Vandalia, Ohio, Dr. Lutz was found guilty of disorderly conduct in violation of Section 2917.11(A), Ohio Revised Code, a misdemeanor of the fourth degree. The acts underlying this conviction were that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the October 1996 issue of Penthouse magazine. Dr. Lutz was serving as the team physician of a high school football team at the time of the transaction.
2. On or about January 13, 1998, in the Common Pleas Court of Miami County, Ohio, Juvenile Division, Dr. Lutz was found guilty of contributing to the unruliness of a child in violation of Section 2919.24(A), Ohio Revised Code, a misdemeanor of the first degree. The acts underlying this conviction were that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the March 1996 issue of Penthouse Variations magazine at his office.

The Board alleged that the judicial findings of guilt 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.” Accordingly, the Board advised Dr. Lutz of his right to request a hearing in this matter. (State's Exhibit 1).

B. On June 10, 1998, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Lutz. (State's Exhibit 2).

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II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by James M. McGovern, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers and David Williamson, Esqs.

**EVIDENCE EXAMINED**

I. Testimony Heard

- A. Presented by the State
  - 1. Mother of Patient 1
  - 2. Gary Ray Lutz, D.O., as if on cross-examination
  - 3. Karen Beck
  - 4. Detective Stephen Caudell
- B. Presented by the Respondent
  - 1. Andrew Gabriel, D.O.
  - 2. Gregory G. Behrens
  - 3. Carlo Benvenuto
  - 4. Eula Head
  - 5. Gary Ray Lutz, D.O.

II. Exhibits Examined

- A. Presented by the State
  - 1. State's Exhibits 1-5: Procedural exhibits. (Note: State's Exhibit 5 is a copy of the Patient Key which is sealed to protect patient confidentiality.)
  - 2. State's Exhibit 6: Copy of October 1996 issue of Penthouse magazine. (171 pp.) (Note: this exhibit will be available at the Board offices for Board Member review.)
  - 3. State's Exhibit 7B: Certified copies of documents from the Vandalia Municipal Court in *State of Ohio v. Gary R. Lutz*, Case No. 96CRB03044-A. (3 pp.)
  - 4. State's Exhibit 7C: Certified copy of the March 24, 1997, Transcript of Proceedings in *State of Ohio v. Gary R. Lutz*, Case No. 96CRB03044. (7 pp.)

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5. State's Exhibit 8: Copies of documents maintained by the Randolph Township Police Department regarding Dr. Lutz. (15 pp.) (Note: Exhibit sealed to protect patient confidentiality)
6. State's Exhibit 9: The March 1996 issue of Penthouse Variations magazine. (146 pp.) (Note: this exhibit will be available at the Board offices for Board Member review.)
7. State's Exhibit 9A: Photocopy of the March 1996 issue of Penthouse Variations magazine. (146 pp.)
8. State's Exhibit 10: Prosecutor's Reporting Form regarding *State of Ohio v. Gary R. Lutz*, Case No. 98-40002, in the Common Pleas Court of Miami County, Ohio, Juvenile Division. (3 pp.)
9. State's Exhibit 11: Copies of Section 2917.11, Ohio Revised Code, disorderly conduct, and Section 2919.24, Ohio Revised Code, contributing to unruliness or delinquency of a child. (2 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Letters of support for Dr. Lutz from various patients. (23 pp.)
2. Respondent's Exhibit B: Letters of support for Dr. Lutz from peers and colleagues. (12 pp.)
3. Respondent's Exhibit C-1: July 18, 1998, letter to Dr. Lutz from Edward J. Witte, M.S./CCDC-111; and Stephen W. Pearce, Psy.D.
4. Respondent's Exhibit C-2: Copy of July 20, 1998, letter to Kevin P. Byers, Esq., from the Miami County Municipal Court Services, Troy, Ohio.
5. Respondent's Exhibit D-G: Procedural exhibits.
6. Respondent's Exhibit H: Copy of two undated newspaper articles regarding Dr. Lutz.

C. Post-Hearing Admissions to the Record

1. Respondent's Exhibit I: Copies of facsimile messages from Mr. Byers to the Attorney Hearing Examiner regarding Dr. Lutz's patient records. (3 pp.)

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2. Board Exhibit A: August 26, 1998, Entry setting forth a schedule for Dr. Lutz to file medical records and for the State to file objections, if any.
3. Respondent's Exhibit J: A packet of documents including Dr. Lutz's psychological records, a letter from Dr. Lutz's treating psychiatrist, and signed attendance slips from meetings Dr. Lutz attended. (45 pp.) (Note: Exhibit sealed to protect confidentiality).
4. State's Exhibit 12: Copy of State's Request for Telephone Conference. (2 pp.)

### PROCEDURAL MATTERS

At hearing, the parties agreed to hold the hearing record open in order that Dr. Lutz might submit medical records from his treating psychiatrist and psychologist. Subsequent to post hearing negotiations, Respondent submitted some of the records on August 28, 1998. The State had been allowed until September 4, 1998, to file objections to the admission of such records. (Respondent's Exhibits I and J, Board Exhibit A). Instead, on September 4, 1998, the State filed a request for a telephone conference to discuss the relevance of the documents submitted by Respondent. (State's Exhibit 12). The State's motion is denied.

Respondent's Exhibit J contains records from Dr. Lutz's treating psychologist, a letter from his treating psychiatrist, and attendance records from eight SAA meetings. The records from the treating psychologist are barely legible, and the letter from the treating psychiatrist does not provide significant detail regarding the issues relevant to this matter. Nevertheless, although only marginally probative, the Attorney Hearing Examiner has decided to admit the documents to the record for the Board Members' review.

### SUMMARY OF THE EVIDENCE

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

1. Gary Ray Lutz, D.O., obtained a medical degree from the Kansas City College of Osteopathic Medicine and Surgery in 1979. The following year, Dr. Lutz completed a one year rotating internship at Grandview Hospital in Dayton, Ohio. Thereafter, he served for two years in the public health service. In 1982, Dr. Lutz purchased a private practice in West Milton, Ohio. Since 1982, Dr. Lutz has maintained a solo private practice at that location. Dr. Lutz stated that he is board certified in Family Medicine. (Transcript [Tr.] at 58-59).

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2. On or about March 24, 1997, in the Municipal Court of Vandalia, Ohio, Dr. Lutz was found guilty of disorderly conduct in violation of Section 2917.11(A), Ohio Revised Code, a misdemeanor of the fourth degree. (State's Exhibits [St. Exs.] 7B, 7C). The conviction was based on the fact that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the October 1996 issue of Penthouse magazine. When Dr. Lutz provided the magazine to Patient 1, Dr. Lutz was serving as the team physician for Northmont High School. (St. Ex. 8).
3. On or about January 13, 1998, in the Common Pleas Court of Miami County, Ohio, Juvenile Division, Dr. Lutz was found guilty of contributing to the unruliness of a child in violation of Section 2919.24(A)(2), Ohio Revised Code, a misdemeanor of the first degree. The acts underlying this conviction were that, at his office, Dr. Lutz provided Patient 1 with a copy of the March 1996 issue of Penthouse Variations magazine. (St. Ex. 10).
4. The mother of Patient 1 testified at hearing on behalf of the State. Patient 1's mother testified that she is a single parent raising two sons; Patient 1 is her younger son. Patient 1's mother stated that she first became familiar with Dr. Lutz when her older son was a freshman at Northmont High School. At that time, Dr. Lutz was the football team physician for the high school. Patient 1's mother stated that she chose Dr. Lutz as her family's physician because of his affiliation with the high school. (Tr. at 11-12). She also testified that Patient 1 had had leukemia when he was 5 years old. Patient 1 saw a specialist for his annual leukemia checkups, but Dr. Lutz was Patient 1's family physician. (Tr. at 13, 42-44).

Patient 1's mother testified that Patient 1 saw Dr. Lutz on April 17, 1996. Patient 1 was 13 years old at that time. After examining Patient 1, Dr. Lutz took Patient 1 to another area of his office. Patient 1's mother observed Dr. Lutz remove sample medications from cabinets and put them in a brown paper bag. She also saw Dr. Lutz put a magazine in the bag. Later, when Patient 1's mother retrieved the magazine, she discovered that it was a Penthouse Variations magazine. (Tr. at 14-15, 41, 45, 51-52, 55). Patient 1's mother testified that the magazine contained articles and photographs about "anal sex, oral sex, and threesomes," which she found to be offensive. (Tr. at 56-57).

Patient 1's mother stated that she confronted Dr. Lutz the following day. She told Dr. Lutz that she did not approve of Dr. Lutz giving the magazine to Patient 1, and instructed him not to do so again. She stated that Dr. Lutz had apologized, and had agreed not to do it again. Patient 1's mother stated that she had told Dr. Lutz that she would not attempt to prosecute him because she believed it had been a one-time occurrence. (Tr. at 16-18).

Patient 1's mother further testified that, the following September, she was attending a football game at Northmont High School. Her older son was playing football, and

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Dr. Lutz was serving as the team's physician. Shortly before the game started, Patient 1's mother observed Dr. Lutz walk over to Patient 1 and hand him a manila envelope. (Tr. at 19-21).

Patient 1's mother consulted Karen Beck, a teacher and coach at the school. Ms. Beck confirmed that she had seen Dr. Lutz give the envelope to Patient 1. When the envelope was later located, it contained a Penthouse magazine. Patient 1's mother and Ms. Beck notified officials of the school. That evening, Dr. Lutz was escorted off the football field and relieved of his duties at the school. (Tr. at 22-26).

Patient 1's mother stated that, later that evening, Dr. Lutz called her home. Patient 1 answered the telephone, and Patient 1's mother listened. She stated that Dr. Lutz apologized to Patient 1. Dr. Lutz further told Patient 1 that he had been wrong, and that providing the magazine to Patient 1 was "something a father should do." (Tr. at 28-29).

5. Karen Beck testified at hearing on behalf of the State. Among other things, Ms. Beck testified that she had seen Dr. Lutz hand a manila envelope to Patient 1 while standing on the sidelines of a football game at Northmont High School. She further testified that the magazine was Penthouse. (Tr. at 95-102, 114-115) (See also St. Ex. 8).
6. Dr. Lutz testified that he can not recall giving Patient 1 a copy of Penthouse Variations in his office. Dr. Lutz further testified that providing such a magazine to a minor patient is not a routine practice for him. Nevertheless, he did not deny that he had provided the magazine to Patient 1. (Tr. at 63-64, 170). Dr. Lutz later admitted that he had been aware that Patient 1 had, at least, seen such a magazine in his office. (Tr. at 200). Moreover, Dr. Lutz remembered that Patient 1's mother had confronted him in his office, and that she was not happy with Patient 1 having received the Penthouse Variations. Dr. Lutz stated that he had apologized and promised he "would not do it again," despite the fact that he could not recall having given the magazine to Patient 1. (Tr. at 65-67).

Dr. Lutz admitted that he kept copies of Penthouse Variations or Penthouse in his office at one time. He stated that there was a corner of his office into which he would throw pieces of mail that did not interest him. He further stated that a lot of people wander into that corner of his office and read "whatever they can get their hands on." At first, Dr. Lutz stated that a friend had given him a Christmas subscription to such a magazine; however, Dr. Lutz later provided confusing and inconsistent testimony as to how he had acquired the magazines. (Tr. at 66, 76-77, 171-172, 200).

Dr. Lutz acknowledged that he had provided a Penthouse magazine to Patient 1 at a football game at Northmont High School. Dr. Lutz explained that Patient 1 had asked him for the magazine. Dr. Lutz later stated that he had given the magazine to an intermediary rather than to Patient 1. When questioned, however, Dr. Lutz could not describe the intermediary because he "honestly didn't look." Dr. Lutz testified that the person had

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stated that he was a friend of Patient 1's. Nevertheless, Dr. Lutz admitted that he had intended to give the Penthouse magazine to Patient 1. (Tr. at 64, 69-70, 175-176).

Dr. Lutz testified that Patient 1 had requested the magazine on an earlier occasion. Dr. Lutz explained that he had decided to grant Patient 1's request because Patient 1 did not have a father figure. Therefore, providing Patient 1 with pornographic materials was an appropriate gesture from Dr. Lutz as a friend. Dr. Lutz further testified that he thought such materials would be helpful to Patient 1 as he entered adolescence, so that Patient 1 would "know and be able to ask questions intelligently. \* \* \*" Dr. Lutz stated that it had never occurred to him to provide Patient 1 with "an authoritative text on sexual education." (Tr. at 71-72, 75, 78-79).

Dr. Lutz further testified that he felt he had had a special friendship with Patient 1, compared to his relationship with other patients. Dr. Lutz stated that the relationship was special because Patient 1 had suffered from leukemia and because Patient 1's mother was "so protective, mother hennish" and was smothering Patient 1. (Tr. at 81-82).

Dr. Lutz testified that the medical records he maintains in his office for Patient 1 do not contain notations regarding Dr. Lutz's efforts to provide a sexual education to Patient 1. (Tr. at 199).

7. At hearing, Dr. Lutz reviewed the Penthouse and Penthouse Variations magazines he had provided to Patient 1. Regarding the Penthouse Variations, Dr. Lutz testified as follows:

This magazine actually portrays the real world, I see the first article is on anal sex. \* \* \* He sees the real world there. \* \* \* [I]t has a relatively graphic portrayal of what sex is in America at this point in time.

(Tr. at 194). In addition, Dr. Lutz referred to a photograph displaying two woman engaged in sexual activity. (See St. Ex. 6 at 40-41). Dr. Lutz testified that the photograph would help Patient 1 mature into adolescence because he would learn the location of a woman's vagina, clitoris, rectum, and ovaries. When asked to demonstrate the ovaries on the photograph, Dr. Lutz stated "Right there on either side, right and left lower quadrants." Nevertheless, Dr. Lutz agreed that there are better sources of anatomy available to him as a physician, but stated that "none [are] more graphic and depicted." (Tr. at 195-197).

At the same time, however, when asked if he thought that such a photograph was the best source of education for Patient 1, despite the fact that the photograph displayed two woman licking one another in the genitalia, Dr. Lutz answered "to be honest, I never really looked at that magazine, and I didn't know what was in [it]." (Tr. at 198).

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8. Dr. Lutz testified that, as a result of criminal sentencing, he has been required to see a court-appointed psychologist, Edward Witte, MS/CCDC-III. Dr. Lutz testified that he has been seeing Mr. Witte since April 1998. Dr. Lutz further stated that he is also required to attend weekly meetings of SAA [Sexual Addicts Anonymous]. Dr. Lutz testified that that Mr. Witte specializes in sex therapy and sexual addiction, along with other types of addiction. (Tr. at 91-94, 201).

In a letter written to Dr. Lutz for Board review, Mr. Witte stated as follows:

[Y]ou have been open and honest in facing your problems that have led up to your sharing inappropriate sexual material with a minor. You are completing all assignments that I have given you in therapy as well as you have been introspective and honest about your personal history that may have led up to your inappropriate sexual behavior.

I believe that your continued therapy will give you greater insight and understanding, as well as motivation and proper planning, in order to avoid any reoccurrence of any behavior that would be endangering your patients.

(Tr. at 201; St. Ex. C1).

Regarding Mr. Witte's comments, Dr. Lutz testified as follows:

I've listened to his explanations and worked through the problem, and I don't wholeheartedly agree with it. I have learned a lot from him, and I have learned a lot from the other people in the group and of the makings up of why some people in my practice have major problems. I do not think that I'm a sexual deviant. I have tried to be open and honest with him, and he construes about everything as a sexual addiction. You can nebulously answer and it's a sexual addiction. I don't believe that I have a terrible sexual addiction.

(Tr. at 202). Dr. Lutz further testified that he is participating in a 12-step program for sexual addicts. He stated, however, that if he does not fully cooperate, he will be reported to the court and he will go to jail. (Tr. at 203).

9. When asked what he had learned from these events, Dr. Lutz testified as follows:

It was incredibly stupid in this day and climate, as far as seeing it and going against the wishes the second time. First time, I swear, I don't know. I honestly don't remember that.

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What else in hindsight? I've certainly learned that the rules of the nineties, which is don't offend any special interest groups, keep my mouth shut, and be a lot more professional. I never would have done any of this or the situations to cause this reflection back on myself.

I've been extremely upset with myself for being so stupid and doing it to the point of jeopardizing my license and, two - - maybe it's one. I let myself down as something that people put on a pedestal. And I never really realized before now to what degree people respect physicians. Unfortunately it was pointed out by [my attorney] that there are different standards set and people march to a different tune and it's a higher calling than the average Joe Blow who would have gotten away with this with a laugh and a chuckle, whatever.

(Tr. at 179-180).

10. Dr. Lutz presented character witnesses who testified in his behalf. Andrew Harry Gabriel, D.O., testified that he has been practicing osteopathic medicine in the same community as Dr. Lutz for approximately ten years. Dr. Gabriel stated that Dr. Lutz is an ethical and compassionate physician. He further testified that he does not believe that Dr. Lutz acted with malicious intent when he provided Patient 1 with pornographic magazines. (Tr. at 138-145).

Gregory Behrens testified that he is a teacher and athletic trainer for Northmont City Schools. Mr. Behrens testified that he has never seen Dr. Lutz interact in an inappropriate fashion with any student at Northmont schools. Mr. Behrens further testified that Dr. Lutz is his personal family physician. Mr. Behrens stated that he does not think it is inappropriate for a family physician to provide a minor patient with pornographic materials. Mr. Behrens did believe, however, that such behavior is inappropriate for one associated with a school. (Tr. at 145-151).

Carlo Benvenuto operates a restaurant which Dr. Lutz frequents. Dr. Lutz also serves as Mr. Benvenuto's family physician. Mr. Benvenuto stated that Dr. Lutz's convictions based on his providing pornographic materials to a minor patient do not cause him to have concerns about Dr. Lutz treating Mr. Benvenuto's children. Mr. Benvenuto later clarified his testimony, and stated that if Dr. Lutz had acted in the same manner toward Mr. Benvenuto's minor child, Mr. Benvenuto would allow Dr. Lutz to continue treating his child because either Mr. Benvenuto or his wife would be in the office during the patient contact. (Tr. at 152-160).

Eula Head testified that Dr. Lutz is her personal family physician. She testified that Dr. Lutz is professional and appropriate as a physician, despite the two misdemeanor

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convictions. Ms. Head stated that Dr. Lutz must have had a reason to do what he did. (Tr. at 161-169).

11. Dr. Lutz also presented letter of support written by patients, colleagues, lawyers, and a state senator. (Tr. at 181; Resp. Exs. A, B). Dr. Lutz testified that he provided each of the authors of the letters with information regarding the facts underlying the convictions, but that the information he provided varied with each individual. Dr. Lutz further testified that he did not inform the authors that Patient 1's mother had instructed him not to give her son pornographic materials. Dr. Lutz explained that he did not think that fact was an important part of the story. In addition, Dr. Lutz explained that he had omitted some of the information because it has been proven statistically that people will only read a one page letter. (Tr. at 189-190, 198). He further explained that:

The damage had been done. I had already been convicted. What more do you want? There's two convictions. I am in therapy. They all know I'm in therapy because I have to knock off early every Thursday to go through therapy for this and to the other meetings.

(Tr. at 189-190).

### FINDINGS OF FACT

1. On or about March 24, 1997, in the Municipal Court of Vandalia, Ohio, Dr. Lutz was found guilty of disorderly conduct in violation of Section 2917.11(A), Ohio Revised Code, a misdemeanor of the fourth degree. The acts underlying this conviction were that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the October 1996 issue of Penthouse magazine. Dr. Lutz was acting as a high school football team physician at the time of the transaction.
2. On or about January 13, 1998, in the Common Pleas Court of Miami County, Ohio, Juvenile Division, Dr. Lutz was found guilty of contributing to the unruliness of a child in violation of Section 2919.24(A), Ohio Revised Code, a misdemeanor of the first degree. The acts underlying this conviction were that Dr. Lutz provided Patient 1, a thirteen-year-old, with a copy of the March 1996 issue of Penthouse Variations magazine at his office.
3. There was no evidence presented to support a finding that Dr. Lutz derived or hoped to derive sexual gratification from his interactions with Patient 1.

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### CONCLUSIONS OF LAW

The judicial findings of guilt regarding of Gary Ray Lutz, D.O., constitute "plea[s] of guilty to, or a judicial finding[s] of guilt of, \* \* \* misdemeanor[s] committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

\* \* \* \* \*

Dr. Lutz committed a serious transgression when he provided Patient 1 with pornographic magazines, especially when he did so against the direct order of Patient 1's mother. It is significant, in reviewing Dr. Lutz's testimony, that Dr. Lutz does not seem to comprehend the gravity of his actions. Instead, he believes that his actions received a negative reaction largely because of special interest groups, "the rules of the nineties," and the high regard in which a physician is often held. At no time during his testimony did Dr. Lutz convey an awareness of the potential harm to Patient 1 and the well-being of Patient 1's family.

It was also significant that much of Dr. Lutz's testimony was not credible. First, Dr. Lutz consistently testified that he could not remember whether he gave Patient 1 the Penthouse Variations magazine that Patient 1 acquired in Dr. Lutz's office. Dr. Lutz could not remember, despite the fact that Patient 1's mother confronted him regarding the incident the following day. Further, Dr. Lutz apologized and promised he would not to do it again. Finally, in later testimony, Dr. Lutz admitted that Patient 1 had, at least, seen such a magazine in his office. In light of the events which followed shortly thereafter, it is difficult to believe that Dr. Lutz has no recollection of the incident.

Dr. Lutz's testimony was similarly incredible when he stated that he had given the Penthouse Variations magazine to an intermediary rather than to Patient 1 directly. First, Dr. Lutz's testimony was contradicted by an unbiased witness, Karen Beck, and by Patient 1's mother. Moreover, Dr. Lutz stated that he could not describe the intermediary because he hadn't really looked at him. Nevertheless, Dr. Lutz testified that he made the decision to give the magazine to Patient 1 only after seriously considering the possible consequences. In addition, only a few hours later, Dr. Lutz was publicly humiliated and removed from the field during a high school football game.

Dr. Lutz's testimony was also implausible when he stated that he had given Patient 1 Penthouse and Penthouse Variations in order to provide a lesson in anatomy. A physician who wishes to discuss anatomy with a minor patient has many more appropriate sources at his or her disposal. Dr. Lutz, however, not only relied on pornographic materials, he also referenced a photograph depicting two woman engaged in oral sexual activity, and claimed that it was a means for Patient 1 to learn the location of a woman's ovaries. Such reasoning is preposterous. Moreover, in later contradictory testimony, Dr. Lutz stated that he had not even been aware of the contents of the magazine which he had provided to Patient 1.

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Finally, it is also significant that Dr. Lutz's treating psychologist recommended that Dr. Lutz continue in therapy to better understand his conduct. The psychologist suggested that continued therapy would be appropriate to provide Dr. Lutz with "greater insight and understanding, as well as motivation and proper planning, in order to avoid any reoccurrence of behavior that would be endangering [to his] patients." Dr. Lutz, however, did not concur with the opinion of his psychologist. Moreover, Dr. Lutz's testimony suggested that he is participating in the SAA program simply as a means to avoid incarceration.

In conclusion, the evidence presented demonstrates that Dr. Lutz does not fully appreciate the impropriety of his behavior. In addition, Dr. Lutz's justification for his actions is neither reasonable nor credible. Finally, because there is some suggestion that Dr. Lutz may be suffering from sexual addictive tendencies, the Board is obliged to take precautions to assure that no patient is jeopardized should Dr. Lutz continue the practice of osteopathic medicine and surgery.

### **PROPOSED ORDER**

It is hereby ORDERED that:

1. The certificate of Gary Ray Lutz, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Lutz's certificate is SUSPENDED for an indefinite period of time, but not less than six months.
2. The Board shall not consider reinstatement of Dr. Lutz's certificate to practice unless all of the following minimum requirements have been met:
  - a. Dr. Lutz shall submit an application for reinstatement, accompanied by appropriate fees.
  - b. Dr. Lutz shall obey all federal, state and local laws; all rules governing the practice of osteopathic medicine and surgery in Ohio; and all terms of probation imposed by the courts in Case No. 96CRB03044 and Case No. 98-40002.
  - c. Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Lutz shall commence appropriate psychiatric treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by a psychiatrist approved in advance by the Board. Prior to the initial assessment, Dr. Lutz shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist. Within ten (10) days after the

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completion of the initial assessment, Dr. Lutz shall cause a written report to be submitted to the Board from the approved psychiatrist, which report shall include:

- i. A detailed plan of recommended psychiatric treatment based upon the psychiatrist's informed assessment of Dr. Lutz's current needs; and
  - ii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
- d. Dr. Lutz shall provide the Board with acceptable documentation evidencing compliance with the plan of psychiatric treatment on a quarterly basis, or as otherwise directed by the Board.
  - e. Dr. Lutz shall appear in person for interviews before the full Board or its designated representative within three months of the date in which this Order becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

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

- f. Dr. Lutz shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Lutz's psychiatric and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. Dr. Lutz further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.
- g. Dr. Lutz shall maintain participation in an sexual addiction rehabilitation program, such as SAA or SLAA, no less than two times per week, unless otherwise directed by the Board. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Lutz shall submit acceptable documentary evidence of continuing compliance with this program.



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appearance should have occurred, Dr. Lutz shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

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

e. Dr. Lutz shall continue to receive psychiatric treatment, if recommended prior to reinstatement, with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month. The sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Lutz shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Lutz shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Lutz's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Lutz's quarterly declaration.

f. Dr. Lutz shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Lutz's psychiatric and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. Dr. Lutz further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

g. Dr. Lutz shall maintain participation in an sexual addiction rehabilitation program, such as SAA or SLAA, no less than two times per week, unless otherwise directed by the Board. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Lutz shall submit acceptable documentary evidence of continuing compliance with this program.

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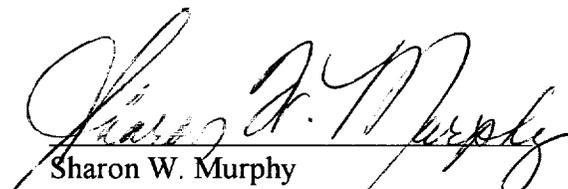
- h. Dr. Lutz shall maintain, in each minor patient's medical record, a statement signed by a parent of that minor patient, verifying that Dr. Lutz has advised the parent, in writing, as follows:

The State Medical Board of Ohio has placed Dr. Lutz's certificate to practice osteopathic medicine and surgery in Ohio on probation, based on the fact that Dr. Lutz had provided pornographic materials to a thirteen year old male against the direct order of the child's parent.

Further, Dr. Lutz shall make his patient records available for review by an agent of the Board upon request in order to facilitate verification of Dr. Lutz's compliance with this requirement.

- i. Within thirty days reinstatement, Dr. Lutz shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Lutz has privileges or appointments. Further, Dr. Lutz shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Lutz applies for or obtains privileges or appointments.
- j. If Dr. Lutz violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Lutz's certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Lutz's certificate will be fully restored.

This Order shall become effective thirty days from the date of mailing of notification of approval by the Board. In the thirty day interim, Dr. Lutz shall not undertake the care of any patient not already under his care.

  
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/

## EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 14, 1998

### REPORTS AND RECOMMENDATIONS

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

Dr. Buchan 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: Harold Blumberg, M.D.; Michael L. Herman, M.D.; Waymon D. Jerkins, D.P.M.; Gary Ray Lutz, D.O.; Robert Starr, M.D.; Usha Sudindranath, M.D.; Felix A. Wickremasinghe, M.D.; and Robert A. Williams, M.D. A roll call was taken:

|            |                |       |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert     | - aye |
|            | Dr. Bhati      | - aye |
|            | Dr. Heidt      | - aye |
|            | Dr. Somani     | - aye |
|            | Dr. Egner      | - aye |
|            | Mr. Browning   | - aye |
|            | Ms. Noble      | - aye |
|            | Dr. Stienecker | - aye |
|            | Dr. Garg       | - aye |
|            | Dr. Steinbergh | - aye |
|            | Dr. Buchan     | - aye |

Dr. Buchan 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. Heidt      | - aye |
|            | Dr. Somani     | - aye |
|            | Dr. Egner      | - aye |
|            | Mr. Browning   | - aye |
|            | Ms. Noble      | - aye |
|            | Dr. Stienecker | - aye |
|            | Dr. Garg       | - aye |
|            | Dr. Steinbergh | - aye |

Dr. Buchan - aye

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

Dr. Buchan 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.

.....

GARY RAY LUTZ, D.O.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GARY RAY LUTZ, D.O. MS. NOBLE SECONDED THE MOTION.**

.....

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

|       |                |           |
|-------|----------------|-----------|
| VOTE: | Mr. Albert     | - abstain |
|       | Dr. Bhati      | - aye     |
|       | Dr. Heidt      | - aye     |
|       | Dr. Somani     | - aye     |
|       | Dr. Egner      | - aye     |
|       | Mr. Browning   | - aye     |
|       | Ms. Noble      | - aye     |
|       | Dr. Stienecker | - aye     |
|       | Dr. Garg       | - abstain |
|       | Dr. Steinbergh | - aye     |
|       | Dr. Buchan     | - aye     |

The motion carried.



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

May 13, 1998

Gary Ray Lutz, D.O.  
840 E. David Road  
Kettering, OH 45429

Dear Doctor Lutz:

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

- (1) On or about March 24, 1997, in the Municipal Court of Vandalia, Ohio, Criminal Division, you were found guilty of disorderly conduct in violation of Section 2917.11(A), Ohio Revised Code, a misdemeanor of the fourth degree. The acts underlying this conviction were that you provided Patient 1, a thirteen-year-old, (as identified on the attached Patient Key-Key confidential and not subject to public disclosure) with a copy of the October 1996 issue of "Penthouse" magazine on or about September 6, 1996, at a football game where you were the team doctor. Patient 1 was associated with the football team at the time.
- (2) On or about January 13, 1998, in the Common Pleas Court of Miami County, Ohio, Juvenile Division, you were found guilty of contributing to the unruliness of a child in violation of Section 2919.24(A), Ohio Revised Code, a misdemeanor of the first degree. The acts underlying this conviction were that you provided Patient 1, a thirteen-year-old, with a copy of the March 1996 issue of "Penthouse Variations" magazine at your office on or about April 17, 1996.

The judicial findings of guilt, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

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.

*Mailed 5/14/98*

Lutz, Gary Ray, D.O.

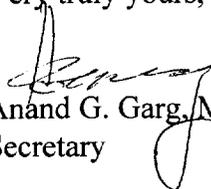
Page 2

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Anand G. Garg, M.D.  
Secretary

AGG/bjm

Enclosures

CERTIFIED MAIL #P 152 983 073  
RETURN RECEIPT REQUESTED