

The Supreme Court of Ohio

FILED

MAY 26 2004

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Edward J. Urban, D.O.,
Appellant,

Case No. 04-378

v.

The State Medical Board of Ohio,
Appellee.

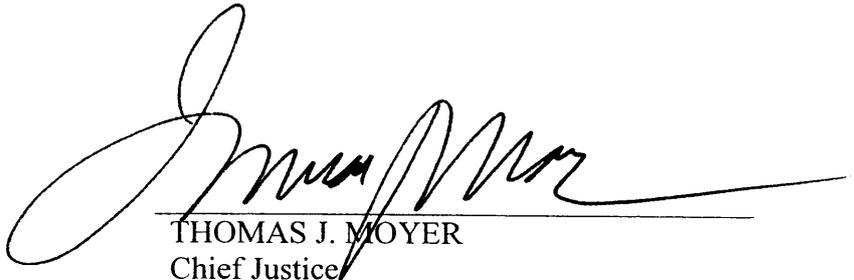
ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case.

COSTS:

Docket Fee: \$40.00, paid by Benesch, Friedlander, Coplan & Aronoff, L.L.P.

(Franklin County Court of Appeals; No. 03AP426)



THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

FILED

APR 14 2004

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Edward J. Urban, D.O.,
Appellant,
v.
The State Medical Board of Ohio,
Appellee.

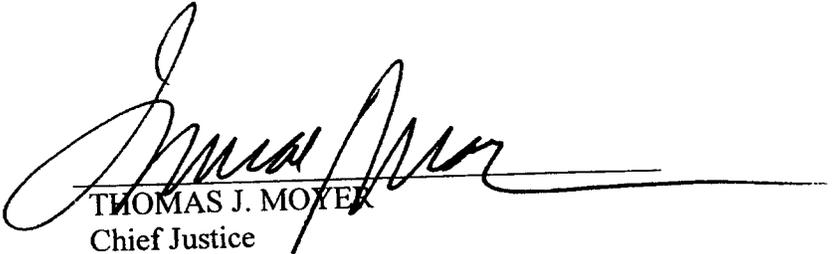
Case No. 04-378

ENTRY

This cause is pending before the Court as a discretionary appeal. Upon consideration of appellant's motion for stay of enforcement of judgment and administrative order pending appeal,

IT IS ORDERED by the Court that the motion for stay be, and hereby is, denied.

(Franklin County Court of Appeals; No. 03AP426)


THOMAS J. MOYER
Chief Justice

13385812

FILED
COURT OF APPEALS
FRIDAY

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

04 JAN 28 PM 3:15
CLERK OF COURTS

Edward J. Urban, D.O., :
Appellant-Appellant, :
v. :
The State Medical Board of Ohio, :
Appellee-Appellee. :

HEALTH & HUMAN
No. 03AP-426
FEB 02 2004
(REGULAR CALENDAR)
SERVICES SECTION

JOURNAL ENTRY

Appellant's January 23, 2004 motion for reconsideration of this court's January 22, 2004 journal entry denying appellant's motion for a continued stay is denied.

Cynthia C. Lazarus

Judge Cynthia C. Lazarus, P.J.

Michael H. Watson

Judge Michael H. Watson

Lisa L. Sadler

Judge Lisa L. Sadler

DWS.

STATE MEDICAL BOARD
OF OHIO
2004 FEB -2 A 10:21

ON COMPUTER 12

15381613

FILED
COURT OF APPEALS
FRANKLIN COUNTY OHIO

04 JAN 22 PM 3:06

CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Edward J. Urban, D.O.,

HEALTH & HUMAN

Appellant-Appellant,

JAN 26 2004

v.

SERVICES SECTION No. 03AP-426

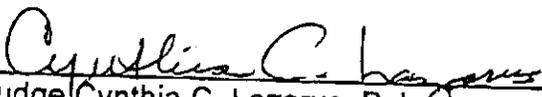
The State Medical Board of Ohio,

(REGULAR CALENDAR)

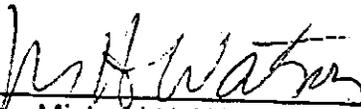
Appellee-Appellee.

JOURNAL ENTRY

Appellant's January 16, 2004 motion for continued stay of enforcement of judgment and administrative order and/or for injunction pending appeal is denied.



Judge Cynthia C. Lazarus, P.J.



Judge Michael H. Watson



Judge Lisa L. Sadler

STATE MEDICAL BOARD
OF OHIO

2004 JAN 26 A 10:45



FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

04 JAN 13 PM 12:53

CLERK OF COURTS
OHIO STATE MEDICAL BOARD

JAN 22 2004

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Edward J. Urban, D.O., :

Appellant-Appellant, :

v. :

The State Medical Board of Ohio, :

Appellee-Appellee. :

No. 03AP-426
(C.P.C. No. 01CVF-12-12353)
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on January 13, 2004, appellant's assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs assessed against appellant.

LAZARUS, P.J., WATSON & SADLER, JJ.

By Cynthia C. Lazarus
Judge Cynthia C. Lazarus, P.J.

[Cite as *Urban v. Ohio State Med. Bd.*, 2004-Ohio-104.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Edward J. Urban, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 03AP-426
The State Medical Board of Ohio,	:	(C.P.C. No. 01CVF-12-12353)
Appellee-Appellee.	:	(REGULAR CALENDAR)

O P I N I O N

Rendered on January 13, 2004

Benesch, Friedlander, Coplan & Aronoff, LLP, N. Victor Goodman, Ronald House and C. David Paragas, for appellant.

Jim Petro, Attorney General, and Rebecca J. Albers, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

LAZARUS, P.J.

{¶1} Appellant, Edward J. Urban, D.O., appeals from the March 20, 2003 decision and April 1, 2003 judgment entry of the Franklin County Court of Common Pleas affirming the State Medical Board of Ohio's ("medical board") December 12, 2001 order permanently revoking appellant's license to practice medicine and surgery in Ohio. For the reasons that follow, we affirm the decision of the trial court.

{¶2} Appellant obtained his medical degree in 1982 from the Chicago College of Osteopathic Medicine. Appellant is medical board certified in family and general practice. In 1983, appellant began practicing with another physician in Cortland, Ohio. Appellant's practice included delivering babies, pediatrics, geriatrics, sports medicine, pain management, and orthopedics. Appellant's facilities included an on-site laboratory and radiology unit.

{¶3} Appellant was a solo practitioner for 17 years, but at times employed other physicians and hired temporary physicians when he went on vacation. Appellant also employed a licensed practical nurse ("LPN").

{¶4} On September 3, 1999, appellant was indicted in the Franklin County Court of Common Pleas with two counts of tampering with evidence, based upon the alteration by appellant of subpoenaed patient medical records, and five counts of Medicaid fraud, based upon the false and misleading statements and representations made by appellant in billing Medicaid for services that were not medically necessary and for family planning services performed by an LPN.

{¶5} In September 2000, appellant's case was tried before a jury. On January 25, 2001, appellant was found guilty of two felony counts of tampering with evidence and two felony counts and one misdemeanor count of Medicaid fraud. The trial court sentenced appellant to suspended sentences for the felony convictions of fraud, imposed a fine, community service, restitution, and costs. Appellant was sentenced to one year incarceration on each count of tampering with evidence, to run concurrently and also imposed a fine. Appellant timely appealed his conviction and this court, on

March 28, 2002, affirmed the decision of the trial court. *State v. Urban* (Mar. 28, 2002), Franklin App. No. 01AP-239.

{¶6} The medical board, in a letter dated February 14, 2001, notified appellant that it proposed taking disciplinary action against appellant's license to practice medicine based on the January 25, 2001 conviction. The medical board alleged that appellant's conduct underlying the finding of guilt constituted a violation of R.C. 4731.22(B)(5) and that the judicial finding of guilt violated R.C. 4731.22(B)(9) and/or 4731.22(B)(11).

{¶7} On August 21, 2001, the matter was heard before a hearing examiner of the medical board. The hearing examiner thoroughly reviewed and considered all exhibits and transcripts of testimony from appellant's criminal trial. On December 12, 2001, the medical board issued an order permanently revoking appellant's certificate to practice osteopathic medicine and surgery in the state of Ohio for violating R.C. 4731.22(B)(5).

{¶8} Appellant filed an administrative appeal in the Franklin County Court of Common Pleas. The trial court concluded that there was reliable, probative and substantial evidence to support the decision of the medical board and affirmed the order of the medical board permanently revoking appellant's license. It is from this entry that appellant appeals, assigning the following as error:

ASSIGNMENT OF ERROR NO. 1

The Court Below Erred In Affirming The Board's Order Revoking Appellant's License To Practice Medicine Because The Order Is Not Supported By Reliable, Probative And Substantial Evidence And Is Not In Accordance With Law, And Because The Court Gave The Board Deference To Which It Was Not Entitled.

ASSIGNMENT OF ERROR NO. 2

The Court Below Erred In Finding That The Board Did Not Err In Its Refusal To Permit Appellant To Introduce Mitigation Evidence Directed To Issues On Which The Board Wrongly Permitted The State To Introduce Substantive Evidence And Directed To Issues Which The Board Found Crucial In Its Report.

ASSIGNMENT OF ERROR NO. 3

The Court Below Erred In Failing To Find That The Board Cannot Employ Evidentiary Standards That Are More Stringent Than Evidentiary Standards Employed By Courts of Law.

ASSIGNMENT OF ERROR NO. 4

The Court Below Erred In Finding That It Had No Authority To Review Evidence That The Board's Penalty Was Grossly Disproportionate To The Penalties Imposed By The Board In Similar Cases And That, As A Result, The Board's Action Was Violative Of Dr. Urban's Right To Due Process.

ASSIGNMENT OF ERROR NO. 5

The Court Below Erred In Finding That The Board's Permanent Revocation Of Dr. Urban's License With No Possibility Of Reapplication Is Not Violative Of Fundamental Due Process And The Ohio And United States Constitution.

ASSIGNMENT OF ERROR NO. 6

The Court Below Erred In Failing To Find That A Judicial Finding Of Guilt Under R.C. 2921.12(A) And R.C. 2913.40(B) Does Not, As Necessarily Found By The Board, Mandate A Finding Of A Violation Under R.C. 4731.22(B)(5) And That The Substantive Evidence Does Not Support Such A Finding.

ASSIGNMENT OF ERROR NO. 7

The Court Below Erred In Failing To Find That The Board Abused Its Discretion Because It Should Have Stayed Its Proceedings Pending Disposition Of Appeal Of Dr. Urban's Conviction.

{¶9} In his first assignment of error, appellant argues that the medical board's order was not supported by reliable, probative, and substantial evidence and that the trial court erred in affirming the medical board's decision to permanently revoke his license to practice medicine and surgery.

{¶10} Under the standard of review in appeals from the medical board, the court of common pleas must affirm the medical board's order if the order is "supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12. In *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571, the Ohio Supreme Court defined the evidence required by R.C. 119.12 as:

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

{¶11} The standard of review for the court of appeals in appeals of medical board orders from the court of common pleas, however, is abuse of discretion. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Moreover, when reviewing an order from the medical board, the court must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619.

{¶12} In this case, the board determined that appellant violated R.C. 4731.22(B)(5)¹, which states:

(B) The board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

* * *

(5) Soliciting patients or publishing a false, fraudulent, deceptive, or misleading statement.

{¶13} The issue before this court is to determine whether the trial court abused its discretion in affirming the medical board's decision to permanently revoke appellant's license to practice osteopathic medicine and surgery in Ohio. For the following reasons, also discussed in greater detail in assignments of error two through seven, we hold that the trial court did not abuse its discretion.

{¶14} Appellant was convicted of tampering with evidence and Medicaid fraud. The board reviewed exhibits presented by the state and appellant, along with the trial transcripts from appellant's criminal trial. At appellant's criminal trial, a number of witnesses testified for the state, including physicians, members of appellant's staff, a patient of appellant's, government investigators, and employees. The trial court concluded that the evidence was sufficient to support a conclusion that the conduct underlying appellant's criminal convictions involved appellant "publishing a false, fraudulent, deceptive, or misleading statement" in violation of R.C. 4731.22(B)(5) in effect prior to March 9, 1999.

¹ In effect prior to March 9, 1999.

{¶15} The trial court is bound to uphold the order of the board if it is supported by reliable, probative, and substantial evidence and is in accordance with the law. The trial court did not act arbitrarily in doing so in this case. Appellant's first assignment of error lacks merit and is not well taken.

{¶16} Appellant's second and third assignments of error are interrelated and will be addressed together. Appellant argues that the medical board denied him a full and fair hearing when it prohibited him from introducing mitigating evidence pertaining to his sanctions. At the hearing, appellant attempted to introduce, through excerpts of the criminal trial transcript, mitigating factors of the absence of prior disciplinary action, absence of dishonest or selfish motive, full and free disclosure to the medical board, remorse, absence of adverse impact of misconduct on others, and absence of willful and reckless misconduct. Appellant contends that while the state ambushed him by introducing the entire 2,233 page criminal transcript as rebuttal evidence, he was prohibited from providing mitigation evidence directed to issues in the transcript.

{¶17} Appellant further argues that the medical board refused to hear testimony from his staff member regarding a conversation she overheard regarding the alleged alteration of subpoenaed medical records. Appellant contends that the medical board must hear all mitigation evidence in cases of revocation. Appellant is incorrect. The medical board "*may* consider aggravating and mitigating circumstances in deciding what penalty to impose." State Medical Board of Ohio, Disciplinary Guidelines, Appendix B: Aggravating and Mitigating Factors. (Emphasis added.)

{¶18} Additionally, the traditional rules of evidence are relaxed in administrative hearings. *Haley v. Ohio State Dental Bd.* (1982), 7 Ohio App.3d 1; Ohio Adm.Code 4731-

13-25 states that "[t]he 'Ohio Rules of Evidence' may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling." Accordingly, we do not find that it was error for the medical board to not allow the testimony in this case. As the Ohio Supreme Court noted in *Ohio Assn. of Pub. School Emp., AFSCME, AFL-CIO v. Lakewood City School Dist. Bd. of Edn.* (1994), 68 Ohio St.3d 175, 180 "[t]he purpose of due process is to protect substantial rights. It does not mandate particular procedures in every case."

{¶19} Furthermore, appellant was aware at the July 27, 2001 pre-trial conference that, if he attempted to introduce excerpts from the criminal transcript, then the state could ask to have the whole transcript introduced. (July 27, 2001 Tr. 8.) The hearing examiner also informed appellant that it is his "right to show mitigating factors are present." (Tr. 12.) A review of the record and transcripts reveals that, in addition to testifying before the medical board, appellant was given ample opportunity to present mitigating evidence in an attempt to disprove his convictions.

{¶20} The report and recommendation of the August 21, 2001 hearing revealed that the medical board acknowledged that it heard testimony from appellant, examined exhibits submitted by both appellant and the state, and reviewed and considered the transcripts of the criminal proceedings. These items contained the evidence and testimony regarding the mitigating factors put forth by appellant. Accordingly, we find that the trial court did not abuse its discretion in concluding that the order of the medical board was supported by reliable, probative and substantial evidence and was otherwise in accordance with the law. As such, appellant's second and third assignments of error lack merit and are not well-taken.

{¶21} In his fourth assignment of error, appellant contends that the sanction imposed on him was grossly disproportionate to sanctions in other cases, and the trial court erred in not modifying the medical board's disproportionate sanction.

{¶22} Once reliable, probative, and substantial evidence is found to support an order by the medical board, then the reviewing court may not modify a sanction authorized by statute. *Henry's Café, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233. See, also, *Hale v. Ohio State Veterinary Med. Bd.* (1988), 47 Ohio App.3d 167 (in considering the appropriateness of a sanction, the trial court is limited to determining whether the sanction is within the range of acceptable choices). Even if this court were inclined to be more lenient towards appellant, it could not modify a sanction imposed by the medical board as long as the penalty is one permitted under R.C. 4731.22(B)(5). The medical board has the right to permanently revoke appellant's license if the circumstances warrant permanent revocation. *Bouquett v. Ohio State Med. Bd.* (1997), 123 Ohio App.3d 466, 472-473; *Roy v. Ohio State Med. Bd.* (1995), 101 Ohio App.3d 352. The statute clearly provides for the possible penalty of license revocation for the infractions with which appellant was charged, and, accordingly, will not be disturbed by this court. As such, appellant's fourth assignment of error is not well-taken.

{¶23} In his fifth assignment of error, appellant argues that the permanent license revocation under R.C. 4731.22(L) violated his due process rights and the Ohio and United States Constitutions because the medical board failed to provide appellant with the opportunity to respond to the medical board's charges.

{¶24} R.C. 4731.22(L) provides:

When 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.

{¶25} Due process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings. *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App.3d 680, 688. "However, due process is a flexible concept and calls for such procedural safeguards as the particular situation demands." *Id.* at 688-689, citing *Cleveland Bd. of Educ. v. Loudermill* (1985), 470 U.S. 532, 545, 105 S.Ct. 1487, 1495. In *Korn v. Ohio State Medical Bd.* (1988), 61 Ohio App.3d 677, 684, this court addressed what procedural due process requires in an administrative hearing: "The fundamental requirement of procedural due process is notice and hearing, that is, an opportunity to be heard." "Procedural due process also embodies the concept of fundamental fairness." *Sohi v. Ohio State Dental Bd.* (1998), 130 Ohio App.3d 414, 422. Additionally, this court indicated in *Korn* that "[n]otice and hearing are necessary to comply with due process in an administrative proceeding which revokes an individual's license to practice profession." *Id.* at 684. Similarly, the Eighth District has noted that "[d]ue process mandates that prior to an administrative action which results in a deprivation of an individual's liberty or property, the governmental agency must afford that individual reasonable notice and opportunity to be heard." *Alcover v. Ohio State Med. Bd.* (Dec. 10, 1987), Cuyahoga App. No. 54292. (Emphasis sic.)

{¶26} First, appellant's due process argument is unpersuasive. On February 14, 2001, appellant received notice of the charges against him and was also informed of his right to request a hearing on the matter. In a letter dated March 1, 2001, appellant filed a written request for a hearing. At the August 21, 2001 hearing, appellant had ample opportunity to be heard.

{¶27} Secondly, the medical board, based on appellant's four felony convictions and one misdemeanor conviction committed in the course of his practice, had within its discretion the power to permanently revoke appellant's license to practice medicine and surgery in Ohio. Appellant was informed in the February 14, 2001 notice that whether or not he requested a hearing, the medical board can take action pursuant to R.C. 4731.22(L). Appellant had failed to demonstrate how R.C. 4731.22(L) is unconstitutional as applied to him. As such, appellant's fifth assignment of error is not well-taken and lacks merit.

{¶28} In his sixth assignment of error, appellant argues that a judicial finding of guilt under R.C. 2921.12(A) and 2913.40(B) does not mandate a finding of a violation under R.C. 4731.22(B)(5). Appellant maintains that with no substantive evidence presented to prove that appellant made a "false, misleading, deceptive or misleading statement" there can be no violation of R.C. 4731.22(B)(5) and that this court must reverse the judgment of the trial court permanently revoking his license. We disagree.

{¶29} Appellant was convicted of violating R.C. 2921.12(A)(1), tampering with evidence, which provides:

No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:

(1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation[.]

{¶30} At the August 21, 2001 hearing, appellant testified that while he did not destroy patient records, nor erase any information, he admitted to making additions to the subpoenaed patient records one to two years after he wrote notes in their files. (Tr. 182-189, 231-233.) As such, appellant's conduct underlying the finding of guilty under R.C. 2921.12(A)(1) violated R.C. 4731.22(B)(5).

{¶31} Appellant was also convicted of violating R.C. 2913.40(B), Medicaid fraud, which provides that "[n]o person shall knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the medical assistance program." The evidence reviewed by the board revealed that appellant often billed Medicaid for tests performed at his laboratory that were not ordered by the examining physician, that lab tests were routinely ordered by an LPN prior to a medical examination, that appellant and his staff made additions to charts adding diagnosis and other information to support tests ordered by the staff, and that appellant billed Medicaid for services performed by his LPN, when Medicaid procedures required that those services were payable only when performed by a registered nurse, physician's assistant, or a physician. Appellant published "false, fraudulent, deceptive, or misleading statement[s]" in an attempt to obtain reimbursement from Medicaid. As such, appellant's conduct underlying the finding of guilty under R.C. 2913.40(B) violated R.C. 4731.22(B)(5).

{¶32} Appellant's convictions of tampering with evidence and Medicaid fraud provide a sufficient bases for finding a violation of R.C. 4731.22(B)(5) as it relates to "false, fraudulent, deceptive, or misleading statement[s]." As such, appellant's sixth assignment of error lacks merit and is not well-taken.

{¶33} In his seventh and final assignment of error, appellant contends that the trial court erred in failing to find that the medical board was required to stay the administrative proceedings pending the disposition of appellant's criminal matter. Appellant maintains that with the board bringing charges against him, he was forced to testify on his own behalf and incriminate himself in violation of the Fifth Amendment to the United States Constitution.

{¶34} The trial court found the hearing examiner was not required to continue the hearing based upon the disposition of appellant's criminal case. This court recently held, in *Walker v. Ohio State Med. Bd.* (Feb. 21, 2002), Franklin App. No. 01AP-791, that:

This court found in *Tedeschi [v. Grover]* (1988), 39 Ohio App.3d 109] that the Fifth Amendment protection against compulsory, self-incriminating testimony does not extend to prohibit civil litigation while the possibility of criminal prosecution exists. *Id.*, paragraph one of the syllabus. Thus, we found in *Tedeschi* the trial court did not abuse its discretion in refusing to grant a continuance based on defendant's claim of Fifth Amendment privilege when the defendant was under investigation by a federal grand jury for various infractions of the United States Code.

{¶35} The Ohio Supreme Court also noted that a stay or continuance of a civil trial is not required pending an appeal from a conviction and sentence in a criminal case merely because the possibility exists that the criminal case could be reversed and remanded for trial. *State ex rel. Verhovec v. Mascio* (1998), 81 Ohio St.3d 334. As such,

the medical board did not abuse its discretion by not dismissing the action against appellant or staying the proceedings pending the disposition of the criminal appeal. The trial court did not act arbitrarily in affirming the decision of the medical board. Accordingly, appellant's seventh assignment of error lacks merit and is not well-taken.

{¶36} Based on the foregoing, appellant's assignments of error are overruled and the decision of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

WATSON and SADLER, JJ., concur.

14293111

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

03 MAY -2 PM 2:51

CLERK OF COURTS

Edward J. Urban, D.O., :

Appellant-Appellant, :

v. :

No. 03AP-426

The State Medical Board of Ohio, :

(REGULAR CALENDAR)

Appellee-Appellee. :

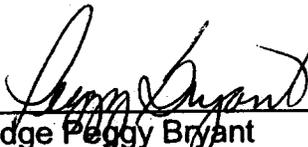
HEALTH & HUMAN

MAY 06 2003

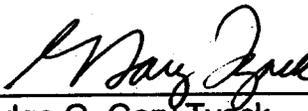
JOURNAL ENTRY

SERVICES SECTION

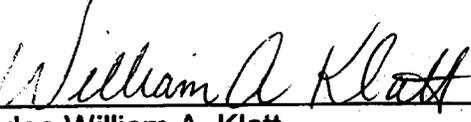
Appellant's April 29, 2003 motion for a stay of execution of the December 12, 2001 order of the State Medical Board of Ohio pending appeal in this court is granted conditioned upon appellant posting with the clerk of the trial court a supersedeas or cash bond in the amount of \$8,000.



Judge Peggy Bryant



Judge G. Gary Tyack



Judge William A. Klatt

cc: Clerk, Court of Appeals
Clerk, Civil Division



ON COMPUTER 12

03APE04-- 426

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

EDWARD J. URBAN, D.O. ,

Appellant,

vs.

THE STATE MEDICAL BOARD OF OHIO,

Appellee.

)
)
)
)
)
)
)
)
)
)

Case No. 01CVF-12-123

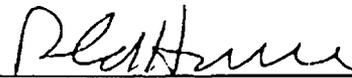
Judge Miller

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
03 APR 29 PM 3:46
CLERK OF COURTS

APPELLANT EDWARD J. URBAN, D.O.'S NOTICE OF APPEAL

Notice is hereby given that Appellant, Edward J. Urban, D.O., appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District from the final judgment entered in this action on April 1, 2003 and attached hereto as Exhibit A.

Respectfully submitted,



OF COUNSEL:

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

N. Victor Goodman (0004912)
C. David Paragas (0043908)
Ronald L. House (0036752)
Benesch Friedlander Coplan
& Aronoff LLP
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Telephone No. (614) 223-9300
Facsimile No. (614) 223-9330

Attorneys for Appellant
Edward J. Urban, D.O.

HEALTH & HUMAN

MAY - 2 2003

SERVICES SECTION

FILED
COURT OF APPEALS
FRANKLIN CO., OHIO
03 APR 29 PM 3:53
CLERK OF COURTS

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2003, a true and correct copy of the foregoing document was served by regular U.S. Mail mail, postage prepaid, upon:

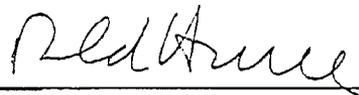
Rebecca J. Albers
Assistant Attorney General
State Office Tower
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428



Ronald L. House (0036752)

I hereby certify that on this 30th day of April, 2003, a true and correct copy of the foregoing document was served via hand delivery and regular U.S. Mail ordinary mail, postage prepaid, upon:

Rebecca J. Albers
Assistant Attorney General
State Office Tower
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428



Ronald L. House (0036752)

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

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

EDWARD J. URBAN, D.O.,)
)
 Appellant,)
)
 vs.)
)
 THE STATE MEDICAL BOARD OF OHIO,)
)
 Appellee.)

2003 APR 30 AM 8:59

CLERK OF COURTS

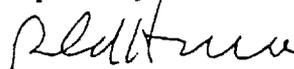
CASE NO. 03APE-04-426

APPELLANT EDWARD J. URBAN, D.O.'S MOTION TO EXPEDITE HEARING
ON MOTION FOR STAY OF ENFORCEMENT OF JUDGMENT AND
ADMINISTRATIVE ORDER UNDER APP. R. 7 AND R.C. 2505.09
AND/OR FOR INJUNCTION PENDING APPEAL

Appellant Edward J. Urban, D.O. ("Appellant") respectfully requests that this Court expedite the hearing on his April 29, 2003 Motion for Stay of Enforcement of Judgment and Administrative Order under App. R. 7 and R.C. 2505.09 and/or for Injunction Pending Appeal ("Motion for Stay") upon the ground that the effect of the judgment below is to cause the Order of revocation of Appellee The State Medical Board of Ohio to become enforceable. As a result, Appellant is presently prohibited from practicing his profession and he cannot provide needed medical services to his patients.

Counsel for Appellant hand-delivered his Motion for Stay upon counsel for Appellee on April 29, 2003.

Respectfully submitted,



N. Victor Goodman (0004912)
C. David Paragas (0043908)
Ronald L. House (0036752)
Benesch Friedlander Coplan
& Aronoff LLP
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Telephone No. (614) 223-9300
Facsimile No. (614) 223-9330
Attorneys for Appellant
Edward J. Urban, D.O.

HEALTH & HUMAN
MAY - 2 2003
SERVICES SECTION

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

HEALTH & HUMAN

MAY - 2 2003

EDWARD J. URBAN, D.O.,)
)
 Appellant,)
)
 vs.)
)
 THE STATE MEDICAL BOARD OF OHIO,)
)
 Appellee.)

CASE NO. _____

SERVICES SECTION
CLERK OF COURTS
03 APR 29 PM 3:56
COURT OF APPEALS
FRANKLIN CO. OHIO
FILED

APPELLANT'S MOTION FOR STAY OF ENFORCEMENT OF JUDGMENT AND
ADMINISTRATIVE ORDER UNDER APP. R. 7 AND R.C. 2505.09
AND/OR FOR INJUNCTION PENDING APPEAL

Pursuant to App. R. 7(A) and R.C. 2505.09, Appellant Edward J. Urban, D.O. ("Dr. Urban") respectfully moves for issuance of a stay of enforcement of the judgment of the court below and of Appellee The State Medical Board of Ohio's ("Board") December 12, 2001 Order ("Order") permanently revoking his license to practice medicine in the State of Ohio. In the alternative, this Court should enjoin enforcement of the Board's Order pending appeal.

The court below suspended the enforcement of the Board's Order pending its disposition of Dr. Urban's appeal therefrom. Dr. Urban, as a result, was able to continue his medical practice while he exercised his appellate remedies. By judgment filed April 1, 2003, the court below overruled Dr. Urban's appeal from the Board's Order. By its terms, the court's suspension of the Order terminated. However, the suspension of enforcement of the Board's Order should remain in place while Dr. Urban exercises his appellate rights herein.

As necessarily found by the court below under R.C. 119.12 when it suspended enforcement of the Board's Order, undue hardship will result from enforcement of the Board's Order pending determination of Dr. Urban's appeal and the health, safety and welfare of the

public will not be threatened by continued suspension of the Order. The reasons for continued suspension of the enforcement of the Board's Order are no less compelling today and this Court should suspend or enjoin enforcement of the Board's Order pending disposition of this appeal.

It is not practicable to apply for a continued suspension of the Order in the court below because R.C. 119.12 prevents a court of common pleas from continuing a suspension of a Board Order for more than fifteen (15) months after the filing of a notice of appeal and the relevant time frame has passed. The court below therefore could not continue its suspension of the Order. As set forth herein, this Court is not so prohibited and a suspension of the Order should be entered herein.

A Memorandum in Support is attached hereto.

Respectfully submitted,



N. Victor Goodman (0004912)

C. David Paragas (0043908)

Ronald L. House (0036752)

Benesch Friedlander Coplan

& Aronoff LLP

88 East Broad Street, Suite 900

Columbus, Ohio 43215

Telephone No. (614) 223-9300

Facsimile No. (614) 223-9330

Attorneys for Appellant

Edward J. Urban, D.O.

MEMORANDUM IN SUPPORT

A. Procedural Posture.

Dr. Urban has been a family practitioner for approximately 20 years in the small community of Cortland, Ohio in Trumbull County, Ohio. He is a highly-skilled practitioner in

an underserved part of the state and provides medical services and treatment to all in need who enter his office. His practice thrived and he served many indigent Medicaid patients, a fact that brought the attention of State authorities.

As a result of an investigation into Dr. Urban's records that lasted years, Dr. Urban was charged and convicted in the Franklin County Court of Common Pleas of allegedly overbilling Medicaid \$8,308.15 over a three year period and allegedly altering records after they were subpoenaed.

As a result of the conviction, on February 14, 2001, the Board proceeded with disciplinary action by issuing a notice of opportunity for hearing against Dr. Urban under R.C. 4731.22(B). After a hearing in which the Board committed numerous substantive and procedural errors, the Board issued its December 12, 2001 Order that permanently revoked Dr. Urban's license to practice medicine in Ohio based solely upon the criminal conviction. By its terms, the Board's Order of revocation was immediately enforceable.

On December 14, 2001, Dr. Urban filed his Chapter 119 administrative notice of appeal to the court below. After a hearing on December 17, 2001, the court granted Dr. Urban's Emergency Motion for Suspension of Administrative Order Pending Appeal. The trial court's Order ("Suspension Order") suspended execution and operation of the Board's Order "pending the final disposition of Appellant's appeal therefrom and final disposition of the criminal appeal upon which the Board's Order is based."¹ Dr. Urban was thus able to continue practice and to serve his patients during his appeal.

Because Dr. Urban's parallel criminal appeal of the conviction to this Court was overruled on March 28, 2002, the Board moved the court below to vacate its Suspension Order.

¹ A copy of the Suspension Order is attached hereto as Exhibit A.

By Decision and Judgment Entry filed June 26, 2002, the court below granted the Board's request and vacated the Suspension Order.

Dr. Urban sought relief from the court's vacation of the Suspension Order and after another hearing on July 3, 2002, the court reimposed its suspension of the Board's Order ("Second Suspension Order"). The Court's Second Suspension Order states, in part, that the Board's Order "permanently revoking Edward J. Urban's license to practice medicine in Ohio is suspended until this court renders its decision in the administrative appeal . . ." ²

By Judgment Entry filed April 1, 2003, the trial court overruled Dr. Urban's assignments of error and denied his appeal. Dr. Urban now appeals from the trial court's judgment. As set forth in his assignments of error filed herewith, Dr. Urban intends to raise multiple substantive and procedural errors in this appeal that will ultimately result in remanding this matter to the Board to conduct its proceedings in accordance with law. However, in the meantime, this Court should suspend or enjoin enforcement of the Board's Order and of the judgment of the court below to permit Dr. Urban to continue serving his patients.

B. This Court Has The Power To Stay The Board's Order And Should Do So Until Disposition Of This Appeal.

In administrative appeals, R.C. 119.12 provides, in part, that:

In the case of an appeal from the state medical board or state chiropractic board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order.

Twice, the court below found the above predicates for issuance of a stay, at a hearing on December 17, 2001 and again at a hearing on July 3, 2002. Further, R.C. 119.12 provides that: "If an appeal is taken from the judgment of the court and the court has previously granted a

² A copy of the July 9, 2002 Second Suspension Order is attached hereto as Exhibit B.

suspension of the agency's order as provided in this section, such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated."

Dr. Urban has timely appealed the judgment of the court below. Under the requirements of R.C. 119.12, the court below already granted a suspension of the Board's Order of revocation. Accordingly, Dr. Urban is entitled to have the suspension order remain in "full force and effect until the matter is finally adjudicated." In Giovanetti v. Ohio State Dental Bd. (1991), 63 Ohio App.3d 262, 265, an administrative appeal of a Dental Board order, the court explained:

The obvious interpretation of the foregoing portion of R.C. 119.12 is that if a suspension of an order is initially granted by the court of common pleas and a timely notice of appeal is filed from the judgment of the court of common pleas, then the original suspension of the order of the dental board shall continue in effect until completion of the appellate process.

Under R.C. 119.12 and Giovanetti, the timely filing of an appeal is the only action that Dr. Urban must take in order that the Court's suspension order remain in full force and effect.

However, another lingering issue must be brought to the Court's attention. R.C. 119.12 also provides:

Notwithstanding any other provision of this section, any order *issued by a court of common pleas* suspending the effect of an order of the state medical board or state chiropractic board that limits, revokes, suspends, . . . a certificate issued by the board . . . shall terminate not more than fifteen months after the date of the filing of a notice of appeal in the court of common pleas, or upon the rendering of a final decision or order in the appeal by the court of common pleas, whichever occurs first. (Emphasis added.)

While the *court of common pleas* cannot extend *its* suspension of the Board's Order beyond fifteen months after the filing of a notice of appeal, there is no such limitation on the power of *this Court* to suspend or enjoin the Board's Order. Such power is found in the inherent

power of this Court, by App. R. 7, by R.C. 2505.09 and also by implication from R.C. 119.12 itself.

When the General Assembly has seen fit to limit the authority of *this Court* to suspend enforcement of an agency's order under R.C. 119.12, it has done so. For instance, R.C. 119.12 provides that a court of common pleas may suspend an order of the liquor control commission for only six months after the filing of the record. With respect to the power of a *court of appeals*, R.C. 119.12 states "[a] court of appeals shall not issue an order suspending the effect of an order of the liquor control commission that extends beyond six months after the date on which the record . . . is filed . . ." Thus, when the General Assembly intends to limit the power of courts of appeals to suspend agency orders, it has done so. It has *not* so limited the power of courts of appeals to suspend the orders of the Board.

That R.C. 119.12 specifically limits the power of a *court of common pleas* to suspend the Board's Order to only fifteen months but *is silent* as to the power of a *court of appeals* to continue the suspension reveals the legislature's intent that this Court may continue a stay of the Board's Order. Indeed, R.C. 119.12 supports the proposition that once a stay is issued by a trial court, a court of appeals must leave the stay in effect pending disposition of the appeal.

Moreover, that R.C. 119.12 specifically and clearly limits the power of courts of appeal to suspend orders of the liquor control commission but does *not* so limit the power of courts of appeal to suspend orders of the Board reveals the General Assembly's intent that this Court may, in fact, suspend or enjoin the Board's Order pending this appeal.³

³ This Court has on at least one occasion issued a stay of a Medical Board's order of revocation well past the fifteen month stay permitted by a court of common pleas. See Vaughn v. The State Medical Board of Ohio (Nov. 30, 1995), Franklin App. No. 95APE05-645, unreported. (Exhibit C, attached hereto).

C. R.C. 119.12 Requires Continuance Of The Stay Of The Board's Order.

R.C. 119.12 provides that “[i]f an appeal is taken from the judgment of the court [of common pleas] and the court has previously granted a suspension of the agency’s order as provided in this section, such suspension shall not be vacated until the matter is finally adjudicated.”

In granting its Suspension Order, the court of common pleas below necessarily found, as required by R.C. 119.12, that there would be an unusual hardship to Dr. Urban from execution of the Board’s Order and that the health, safety, and welfare of the public would not be threatened by such suspension.

Having satisfied the predicate requirements of suspension of the Board’s Order, Dr. Urban is now entitled to further suspension of the Order as such suspension must “not be vacated and shall be given full force and effect until the matter is finally adjudicated.”

D. The Health, Safety, And Welfare Of The Public Will Not Be Threatened By Suspension Of The Board's Order And Unusual Hardship Will Befall Dr. Urban From Execution Of The Board's Order.

The court below has already determined after two (2) hearings the existence of the two conditions for issuance of a suspension of the Board’s Order.

(a) Suspension Of The Board's Order Will Not Threaten The Health, Safety and Welfare Of The Public.

As found by the court below, continued suspension of the Board’s Order will not threaten the health, safety and welfare of the public. Prior to these proceedings, Dr. Urban’s career spanning almost two decades was unblemished. Dr. Urban’s long-standing commitment is to

provide high quality medical care to a patient pool consisting in substantial numbers of poor and indigent patients in a rural, underserved area of the state.⁴

Conversely, the health, safety and welfare of the public will be jeopardized if this Court does not continue suspension of the Board's Order. Dr. Urban operates only at one location in Cortland, Ohio. Without Dr. Urban's services, his patients will likely be forced to search for medical services many miles away - if they are able to arrange for transportation. Not only will imposition of the Board's Order have severe consequences for Dr. Urban, but they will have a severe impact on his patients.

In anticipation of the Board's contention that continued suspension of the Order will threaten the health, safety and welfare of the public, Dr. Urban notes that if the Board seriously believed Dr. Urban to be a threat to the public it could have summarily suspended him at any time under R.C. 4731.22(G). That it did not do so reveals the fallacy of any argument that Dr. Urban poses a threat to the public. Indeed, the decisions of the court below on two occasions to suspend the Board's Order permitted Dr. Urban to continue serving his patients without issue.

(b) **Dr. Urban Will Endure Unusual Hardship If The Stay Is Not Continued.**

Dr. Urban has already shown to the court below at two hearings that he will experience undue hardship should the Board's Order not be suspended. The "undue hardship" that will befall Dr. Urban is no less today than it would have been had the court below not suspended the Order. Permitting the Board's professional death sentence at this time to destroy the practice he has taken years to build before he has a chance to fully exercise his appellate rights is inimical to the fairness that must pervade this process every step of the way.

⁴ Attached hereto as Exhibit D is Dr. Urban's affidavit in further support of satisfaction of the predicates of R.C. 119.12 for suspension of the Board's Order should this Court be inclined to receive additional evidence.

Failure to continue to the suspension of an agency's orders while one exercises one's appellate remedies would have a chilling effect on the rights of respondents in administrative proceedings to be fairly heard and to have a meaningful right of appeal. By taking away one's profession before appellate remedies are exercised a respondent's reason to continue pursuit of the appeal are severely diminished, a result not lost on the Board. Unlike a court proceeding, the nature of an administrative proceeding, like the one conducted by the Board herein, does not provide an accused practitioner with a full panel of substantive and procedural protections. Such protections are available in large part after-the-fact by way of an administrative appeal to seek court redress to review the administrative agency's proceedings. When the result of such a proceeding is a professional death sentence, the practitioner should be permitted to fully exercise his appellate remedies while continuing his practice in the absence of compelling reasons otherwise. Unless the administrative agency's order is suspended pending appeal, a respondent like Dr. Urban may lose his livelihood prior to a full review of the proceedings conducted by an administrative agency.

Before allowing the destruction of his professional practice that has taken years to build and to prevent severe hardship on Dr. Urban, his staff, patients and surrounding community – all unnecessary if his appeal is successful - Dr. Urban respectfully requests a suspension of the Board's Order pending this appeal and of the judgment of the court below.

E. A Suspension Bond Is Unnecessary.

In the instant case, this Court should find that no bond is necessary to provide adequate security to the Board, inasmuch as this case does not involve an appeal from a monetary judgment or similar economic relief. Accordingly, no supersedeas bond is warranted for the

protection of the Board pending appeal. Therefore, this Court should grant Dr. Urban a suspension of the Order under App. R. 7 and R.C. 2505.09.

CONCLUSION

For the foregoing reasons, Dr. Urban respectfully requests that this Court suspend or enjoin enforcement of the Board's Order and stay the judgment of the court below pending this appeal.

Respectfully submitted,



N. Victor Goodman (0004912)

C. David Paragas (0043908)

Ronald L. House (0036752)

Benesch Friedlander Coplan

& Aronoff LLP

88 East Broad Street, Suite 900

Columbus, Ohio 43215

Telephone No. (614) 223-9300

Facsimile No. (614) 223-9330

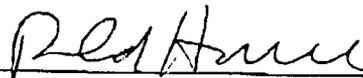
Attorneys for Appellant

Edward J. Urban, D.O.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2003, a true and correct copy of the foregoing document was served by regular U.S. Mail ordinary mail, postage prepaid, upon:

Rebecca J. Albers
Assistant Attorney General
State Office Tower
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428



Ronald L. House (0036752)

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

EDWARD J. URBAN, D.O.,

Appellant,

vs.

THE STATE MEDICAL BOARD OF OHIO,

Appellee.

FINAL APPEALABLE ORDER

: Case No. 01CVF-12-12353

: JUDGE MILLER

TERMINATION NO. 16
BY [Signature]

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S
DECEMBER 12, 2001 ORDER PERMANENTLY REVOKING
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the December 12, 2001, Order of the State Medical Board of Ohio which permanently revoked Appellant, Edward J. Urban, D.O.'s license to practice osteopathic medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on March 19, 2003, and filed on March 20, 2003, which decision is incorporated by reference as if fully rewritten herein, it is hereby.

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the December 12, 2001, Order of the State Medical Board in the matter of Edward J. Urban, D.O., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

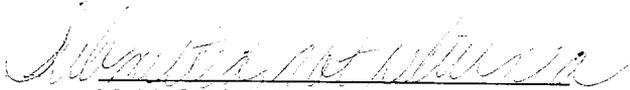
Date

JUDGE NODINE MILLER

JUDGE NODINE MILLER

FILED
CLERK OF COURTS-CV
03 APR -1 PM 4:02
FRANKLIN COUNTY, OHIO

APPROVED:



N. VICTOR GOODMAN, ESQ.
RONALD HOUSE, ESQ.
C. DAVID PARAGAS, ESQ.
Benesch, Friedlander, Coplan & Aronoff, LLP
88 East Broad Street
Columbus, Ohio 43215-3506
(614) 223-9300
(614) 223-9330 Facsimile

JIM PETRO (0022096)
Attorney General



REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
(614) 466-8600
(614) 466-6090 Facsimile

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

FINAL APPEALABLE ORDER

EDWARD J. URBAN, D.O.,

]

CASE NO. 02CVF-12-12353

APPELLANT,

]

JUDGE MILLER

vs.

]

STATE MEDICAL BOARD OF OHIO,

]

APPELLEE.

]

TERMINATION NO. 10
BY [Signature]

DECISION ON THE MERITS OF ADMINISTRATIVE APPEAL

Rendered this 19th day of March, 2003.

MILLER, J.

The instant action comes before the Court upon an administrative appeal filed by Appellant, Edward J. Urban, from an order issued by Appellee, State Medical Board of Ohio ("Board"). The order was issued on December 12, 2001. In that order, the Board revoked Appellant's license for violating R.C. 4731.22(B)(5). Specifically, Appellant was convicted of two felony counts of Tampering with Evidence (R.C. 2921.12) and two felony counts of Medicaid Fraud (R.C. 2913.40) and one misdemeanor count of Medicaid Fraud.

Appellant has set forth several assignments of error. Appellee has filed its Brief and Appellant has filed a Reply Brief. The record of proceedings has also been filed. The Court will therefore address the substantive issues raised in this appeal.

CLERK OF COURTS

2003 MAR 20 PM 1:53

CLERK OF COURTS
FRANKLIN COUNTY, OHIO

This Court's review of a decision of an administrative agency, such as the Board, is governed by R.C. 119.12 and the multitude of cases addressing that section. The most often cited case is that of *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E.2d 1265. The *Conrad* decision states that in an administrative appeal filed pursuant to R.C. 119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law. The Court states that "in undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive."

The Court in *Conrad* further states that "where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order. Thus, where a witness' testimony is internally inconsistent, or is impeached by evidence of a prior inconsistent statement, the court may properly decide that such testimony should be given no weight. Likewise, where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order."

The *Conrad* case has been cited with approval numerous times. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591 noted *Conrad* and stated that although a review of applicable law is *de novo*, the reviewing court should defer to the agency's factual findings. See *Pons v. State Medical Board* (1993), 66 Ohio St.3d 619.

The Board identified three statutory violations. They were enumerated under R.C. 4731.22, which provides in part as follows:

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

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

Appellant sets forth several assignments of error in its brief. They are as follows:

A. The Board's Decision To Revoke Dr. Urban's Certificate To Practice Medicine, As Opposed To Any Lesser Sanction Is Not Supported By Reliable, Probative And Substantial Evidence. Is Not In Accordance With The Law, And Constitutes An Abuse Of The Board's Discretion.

B. The Sanction Recommended Against Dr. Urban, Permanent Revocation, Is Grossly Disproportionate To Sanctions In Other Cases Before This Board And, As Such Is Violative Of Dr. Urban's Right To Due Process And Equal Protection.

C. The Hearing: Before The Board's Hearing: Examiner Was Conducted Improperly And In Violation Of Dr. Urban's Due Process Rights.

D. The Board Violated Dr. Urban's Due Process Rights In Failing To Provide Him A Full Opportunity To Respond To An Impartial Board.

E. The Board's Permanent Revocation Of Dr. Urban's License With No Possibility Of Reapplication Is Violative Of Fundamental Due Process And The Ohio And United States Constitutions.

F. A Judicial Finding of Guilt Under R.C. 2921.12(A) and R.C. 2913.40(8) Does Not, As Found By The Board. Mandate A Finding Of A Violation Under R.C. 4731.22 (B)5.

G. O.A.C. 4731-13-24 Is Unconstitutional Insofar As It Mandates That a Judicial Finding Of Guilt Is Conclusive Proof Of Commission Of All Elements Of A Crime.

H. The Record Must Include The Medical Record Exhibits from The Criminal Trial.

I. The Board Abused Its Discretion In Failing To Stay Its Proceedings Pending Disposition Of Appeal Of His Conviction.

Appellee maintains that the Board's order is supported by reliable, probative and substantial evidence. Appellee contends that no error exists with respect to the admission of the criminal trial transcript in rebuttal as the offer was proper and that Appellant had the opportunity to offer mitigating evidence. Appellee contends that the patient records could have been offered by Appellant to the Hearing Examiner but were not. The Board was therefore entitled to reject their later proffer. Appellee contends that R.C. 4731.22(L) allows the permanent revocation of a medical license and case law supports its constitutionality, citing *Roy v. Ohio State Medical Bd.*, (1992), 80 Ohio App. 3d 675, 610 N.E.2d 562,

later proceedings same case, *Roy v. Medical Bd*, (1995), 101 Ohio App. 3d 352, 655 N.E.2d 771. Appellee further responds that the Board's actions were not premised upon the Ohio Administrative Code (OAC), but rather on the applicable revised code sections cited above. Appellee also cites *In re Vaughn* (November 30, 1995), Franklin App.No. 95APE05-645, Discretionary appeal not allowed, *In re Vaughn*, 75 Ohio St. 3d 1449, 663 N.E.2d 330 (1996) for support of its position that there was no denial of equal protection. Lastly, Appellee offers that the Board was not required to stay the administrative proceedings pending the criminal appeal and cites to the case of *Walker v. State Med. Bd. of Ohio* (February 21, 2002), Franklin County App. No. 01AP-791.

Appellant's reply offers several separate responses. Appellant declares that the sanction levied by the Board is grossly disproportionate if viewed in context with the sanction levied upon other doctors in cases with similar conduct. Appellant also advances that the Board ignored its own guidelines in weighing factors in aggravation and mitigation of the penalty. Appellant believes that the Board should have accepted further mitigating evidence in light of the admission of the transcript of the criminal case. Appellant also contends that he was not given a full opportunity to offer mitigating evidence before the Hearing Examiner or the Board. In this same vein, Appellant contends that he did not receive a full opportunity for a hearing. Appellant further asserts that permanent revocation is not proper under the instant circumstances and that the Board improperly used the criminal convictions as mandating a finding of violation of R.C. 4731.22(B)(5).

As stated above, this Court is not granted the authority to ameliorate the penalty levied against a practitioner by the Board if there is reliable, probative and substantial

evidence supporting a violation. The Tenth District Court of Appeals has consistently held that the trial court is without authority to reweigh the severity of penalty imposed by administrative bodies, such as the Board. See *Garwood v. State Med. Bd. of Ohio*, (May 5, 1998), Franklin App. No. 97APE10-1325, discretionary appeal not allowed in (1998), 83 Ohio St. 3d 1429, 699 N.E.2d 945. Permanent revocation is a choice given to the Board and will not be interfered with on appeal absent other reversible error. *Roy v. Ohio State Medical Bd.*, supra, followed by *Borromeo v. State Med. Bd.* (June 1, 2000), Franklin County App. No. 99AP-1219.

Appellant has premised one portion of his argument on a claim of disparate treatment of his offenses as compared with those levied upon five other physicians. As the record in the instant matter will bear out, appeals from the Board may be voluminous, may rest upon various issues, and have specific facts unique to each. If this Court were to adopt Appellant's position that it was an abuse of discretion for the Board to adopt a less stringent penalty in this matter because of consideration of those other proceedings, then the Court would in fact be attempting to usurp the Board of its statutory authority. The Board, having considered the facts of those other cases and rendered decisions upon them, is in a far superior position than this Court to determine the egregiousness of a particular set of circumstances. Appellee has cited *In re Vaughn*, supra, in support of the position that equal protection has been afforded Appellant and that the Board should be the ultimate decision maker when balancing penalties as they relate to separate cases and doctors.

Appellant has asserted that it was error to admit the entire 2233 page transcript of the criminal trial. It is claimed that this was a technique to ambush Appellant. This assertion is undermined by the record of the pre-trial conference held before the Hearing Examiner on July 27, 2001. Pages 4 through 15 of that pre-trial focused specifically on whether the state might introduce the entire criminal transcript, and Appellant through counsel was clearly alerted that the state might chose to do so. It was also offered at that meeting that Appellant was seeking to have the hearing delayed in order to have finality on the criminal appeal. The Hearing Examiner specifically informed Appellant that he had the right to offer mitigating evidence. Appellant now contends that he was not given the full opportunity for a hearing. The record of the hearing from August 21, 2001, belies Appellant's contention that he lacked the opportunity to offer mitigating evidence as to the charges. It is also concluded that if any error existed with respect to submission of the entire transcript, such error was harmless. As has been agreed throughout the appeal, Appellant has acknowledged his conviction and has sought to mitigate the charges. Admission of the transcript does not constitute reversible error. The Court finds the same rationale applicable for failure to admit the patient records. Although the Hearing Examiner asked for and was told by the Assistant Attorney General that the records would be provided¹, the Court has failed to find them as part of the certified record. Nevertheless, this failure does not rise to reversible error in light of the submission of the entire criminal transcript and the finding of guilt as to the charges.

¹ See record of proceedings transcript page 276-277.

Appellant testified at the hearing as well as a medical assistant, Ms. Campana Hamilton; a secretary Ms. Elder; and Appellant's wife, who was also a certified medical assistant. Throughout the hearing, the attorney for the Board objected to "relitigation" of the criminal charges. Nevertheless, the Hearing Examiner, in most instances, allowed counsel for Appellant to continue with evidence adduced for the purpose of mitigation.² While there were a few occasions during which the Hearing Examiner admonished that the parties were not there to retry the criminal charges, the record on the whole reflects that Appellant was given substantial latitude in presenting his case.

Appellant submits that the penalty of the Board is "a professional death sentence" and is grossly disproportionate to the sanctions levied in other cases. It must first be observed that the criminal trial court judge imposed a one year jail term for the malfeasance by Appellant. It has already been noted that the Court will not engage in the type of scrutiny requested by Appellant as to other medical board actions as to other physicians. The Hearing Examiner examined and distinguished those actions. Whether there were details from those cases not considered is not such a matter that denies Appellant equal protection, nor denies him due process. As was remarked earlier, each case must stand upon its own set of attendant circumstances.

Appellant has propounded that he had a right to make further offers to the Board for consideration. The Court has found that he had a full opportunity to present evidence before the Hearing Examiner, who was delegated to the task of

² The transcript of the hearing reflects two of such instances at pages 150 to 151 and 170.

taking and considering such evidence. The Court finds no error in the Board's refusal to reopen and consider further evidence or argument by Appellant.

It has already been addressed that the Board has the right to permanently revoke a physician's license if it is concluded that the circumstances warrant permanent revocation. See *Bouquett v. Ohio State Med. Bd.* (1997), 123 Ohio App. 3d 466, 472-473, 704 N.E.2d 583, see also *Roy* and *In re Vaughn*, supra.

Appellant advances that a finding of guilt in the felony and misdemeanor case does not mandate a finding of a violation of R.C. 4731.22(B)(5). While there may be circumstances in which such an argument might be envisioned as correct, such an argument withers in the face of the facts of the instant action. Conviction for charges of medicaid fraud and tampering with evidence provide sufficient bases for finding a violation of R.C. 4731.22(B)(5) as it relates to false, fraudulent, deceptive, or misleading statements.

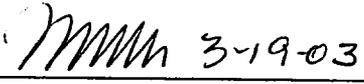
A review of the Hearing Examiner's Report and Recommendation does not support Appellant's assigned error that the Board relied upon OAC 4731-13-24. Throughout the administrative process, the Board relied upon statutory provisions, such as R.C. 4731.22, and not upon the administrative code.

The Court in *King v. State Med. Bd.* (Jan. 28, 1999), Franklin App. No. 98AP-570, determined that it was not mandatory for the Board to use its guidelines in consideration of the penalty to be imposed. The Court held that statutory parameters should guide the Board and the guidelines were not formulated under the Board's rulemaking authority. That case was followed by *Clayman v. State Med. Bd.* (1999), 133 Ohio App. 3d 122, 726 N.E.2d 1098,

which also concluded that evidence as to other disciplinary proceedings would not bind the Board in a given action, but rather each case was unique as to the underlying facts and considerations.

Appellant presents the issue of his Fifth Amendment Rights as they relate to the criminal action and appeals and requested stay of the Board proceedings. The Court is cognizant of the disadvantage to Appellant under such circumstances. The Court is also cognizant of the lack of any authority to find that denial of a stay of proceedings is an abuse of discretion. The legislature could see fit to examine this issue and grant the right to a stay or some other type of relief. This Court is unwilling to engage in what would be rule-making and therefore go beyond the ambit of judicial review. See *Walker v. State Med. Bd. of Ohio*, supra.

After review of the record of proceedings, arguments of counsel, and applicable case law, the Court must conclude that there is reliable, probative and substantial evidence to support the decision of the Board. There is no substantive evidence of abuse of discretion or error of law. The Court does not find the errors asserted by Appellant to be well-taken. The order of the Board permanently revoking Appellant's physician license is therefore **AFFIRMED**. Counsel for Appellee shall prepare and submit a Judgment Entry pursuant to Local Rule 25.01.

 3-19-03

Judge Nodine Miller

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

EDWARD J. URBAN, D.O.,

Appellant,

vs.

THE STATE MEDICAL BOARD OF OHIO,

Appellee.

FINAL APPEALABLE ORDER

: Case No. 01CVF-12-12353

: JUDGE MILLER

TERMINATION NO. 10
BY [Signature]

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S
DECEMBER 12, 2001 ORDER PERMANENTLY REVOKING
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the December 12, 2001, Order of the State Medical Board of Ohio which permanently revoked Appellant, Edward J. Urban, D.O.'s license to practice osteopathic medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on March 19, 2003, and filed on March 20, 2003, which decision is incorporated by reference as if fully rewritten herein, it is hereby.

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the December 12, 2001, Order of the State Medical Board in the matter of Edward J. Urban, D.O., is hereby AFFIRMED. Costs to Appellant

IT IS SO ORDERED.

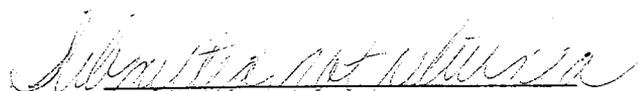
Date

JUDGE NODINE MILLER

JUDGE NODINE MILLER

FILED
IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
03 APR - 1 PM 4:02
CLERK OF COURTS - CV

APPROVED:



N. VICTOR GOODMAN, ESQ.
RONALD HOUSE, ESQ.
C. DAVID PARAGAS, ESQ.
Benesch, Friedlander, Coplan & Aronoff, LLP
88 East Broad Street
Columbus, Ohio 43215-3506
(614) 223-9300
(614) 223-9330 Facsimile

JIM PETRO (0022096)
Attorney General



REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
(614) 466-8600
(614) 466-6090 Facsimile

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
02 JUL -9 PM 4: 15
CLERK OF COURTS - CS

EDWARD J. URBAN, D.O., :

Appellant, :

v. :

Case No. 01CVF-12-12353

STATE MEDICAL BOARD OF OHIO, :

JUDGE MILLER

Appellee. :

:

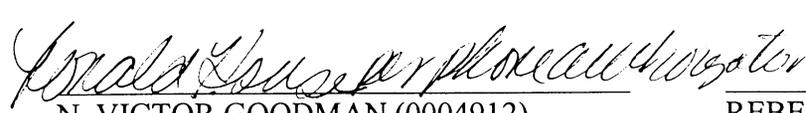
**ENTRY SUSPENDING THE DECEMBER 12, 2001 ORDER
OF THE STATE MEDICAL BOARD PERMANENTLY REVOKING
EDWARD J. URBAN'S LICENSE TO PRACTICE MEDICINE**

Rendered this _____ day of July, 2002.

This matter came before the Court on July 3, 2002. The matters before the Court are Appellant's July 1, 2002 Emergency Motion for Reconsideration of the Court's June 26, 2002 Decision and Judgment Entry Granting Motion to Vacate The Court's December 17, 2001 Order of Suspension, Appellee, State Medical Board of Ohio's Memorandum in Opposition filed July 1, 2002, and Appellant's Reply filed July 2, 2002. It is hereby **ORDERED** that the December 12, 2001 Order of the State Medical Board permanently revoking Edward J. Urban's license to practice medicine in Ohio is suspended until this Court renders its decision in the administrative appeal, Edward J. Urban, D.O. v. The State Medical Board, Case No. 01CVF-12-12353.

JUDGE NODINE MILLER
JUDGE N. MILLER

APPROVED:

N. VICTOR GOODMAN (0004912)
DAVID PARAGAS (0043908)
RONALD HOUSE (0036752)
Benesch, Friedlander, Coplan & Aronoff, LLP
88 E. Broad Street, Suite 900
Columbus, Ohio 43215
(614) 223-9338
(614) 223-9330 Facsimile

Attorneys for Edward J. Urban, D.O.

REBECCA J. ALBERS (0059203)
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
(614) 466-6090 Facsimile

Attorney for the State Medical Board

JUN 28 2002

SERVICES SECTION

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

EDWARD J. URBAN, D.O., :
Appellant, :
vs. : Case No. 01CVF12-12353
THE STATE MEDICAL BOARD, : Judge Miller
OF OHIO, :
Appellee. :

**Decision and Judgment Entry Granting
the Motion to Vacate the
December 17, 2001 Order of Suspension
And
February 12, 2002 Order Staying the
Briefing Schedule filed by the Appellee,
State Medical Board of Ohio,
on April 3, 2002**

2002 JUN 26 PM 4:30
CLERK OF COURTS
COMMUNICATIONS SECTION

Rendered this 16th day of June, 2002.

MILLER, J.

On December 14, 2002, the Appellant, Edward J. Urban, D.O. ("Urban"), filed this appeal from a decision by the Appellee, State Medical Board of Ohio ("Medical Board"), permanent revoking his license to practice osteopathic medicine and surgery in the State of Ohio. On December 17, 2001, Urban filed a Motion for Suspension of Administrative Order Pending Appeal. Urban had appealed the underlying criminal conviction to the 10th District Court of Appeals. On the same day, the Medical Board filed a Memorandum in Opposition to the stay. The Court entered an Order suspending the Medical Board's order, pending appeal, on December 17, 2001.

On February 6, 2002, Urban filed a Motion for Stay of Briefing Schedule and Non-Oral Hearing Date Pending Appeal which the Court granted on February 11, 2002. In his Motion, Urban argues that "the disposition of the criminal appeal will determine what, if any, issues will be briefed and determined in this matter."

On March 28, 2002, the 10th District Court of Appeals rendered its unanimous decision in *State v. Urban* affirming the decision of the trial court. On April 3, 2002, the Medical Board filed a Motion to Vacate the December 17, 2001 Order of Suspension and February 12, 2002 Order Staying the Briefing Schedule. On April 17, 2002, Urban filed a Memorandum in Opposition.

In his Memorandum in Opposition, Urban argues that the Order issued by this Court suspending the Order of the Medical Board is in full force and effect until "the final disposition of Appellant's appeal therefrom and final disposition of the criminal appeal upon which the Board's Order is based." Further, he argues that the Order suspending the briefing schedule is also valid until final disposition of the criminal appeal.

First, this Court's Order suspending the briefing schedule does NOT defer termination of the stay until a final disposition of the criminal case. Therefore, this Court's Order entered on February 12, 2002, is hereby rescinded and held for naught. The case will move forward pursuant to the following schedule:

Filing of Record	July 22, 2002
Dispositive Motions	August 5, 2002
Filing of Record, if extension granted	August 12, 2002
Filing of Appellant's Brief	September 9, 2002

Filing of Appellee's Brief

September 23, 2002

Filing of Appellant's Reply Brief

October 7, 2002

Second, the December 17, 2001, Order signed by the Court suspending the Order of the Medical Board, which pertinent part is quoted above, was drafted by Urban. It was never the intention of this Court to stay the Board's Order until Urban had exhausted all possible appeals. It was the intention of this Court, in agreeing to Urban's requested stay of the Medical Board's Order, to move forward after a decision from the 10th District Court of Appeals. If both Orders are read together, it is quite clear that this case was going to proceed following a decision on the appeal of the underlying criminal conviction. The Court of Appeals rendered its decision on March 28, 2002, a decision affirming the trial court. This Court has carefully reviewed the decision by the Court of Appeals and rescinds its December 17, 2001, Order staying the Order of the Medical Board, and holds same for naught. The Motion filed by the Medical Board on April 3, 2002, is here granted.

IT IS SO ORDERED.



JUDGE NODINE MILLER

COPIES TO:

C. David Paragas
Ronald L. House
Attorney for Appellant

Rebecca J. Albers
Attorney for Appellee

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

EDWARD J. URBAN, D.O.

Appellant,

vs.

THE STATE MEDICAL BOARD OF OHIO

Appellee.

TERMINATION NO. 17
BY *[Signature]*

Case No. 01CVF-12-12353

JUDGE MILLER

ENTRY

This matter came on upon Appellant's Motion for Stay of Briefing Schedule and Non-Oral Hearing Date. The Court finds the motion well-taken as disposition of the criminal appeal will determine what, if any, issues will be briefed and determined in this matter. It is therefore ORDERED that the Briefing Schedule and Non-Oral Hearing Date as set forth in the Clerk's Original Case Schedule is hereby stayed.

JUDGE NODINE MILLER

JUDGE MILLER

cc:

C. David Paragas, Esq./Ronald L. House, Esq.
Attorneys for Appellant

Rebecca J. Albers, Esq., Assistant Attorney General
Attorney for Appellee

2002 FEB 15 A 10: 21

STATE MEDICAL BOARD
OF OHIO

CLERK OF COURTS - CV
02 FEB 12 11:11:24
FRANKLIN CO. OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

EDWARD J. URBAN, D.O. :

ENTRY
NUNC PRO TUNC

It has come to the attention of the undersigned that the Entry of Order in the above captioned matter dated December 12, 2001, and mailed to Edward J. Urban, D.O., on December 13, 2001, contained an administrative error. Specifically, the Order was inadvertently signed by Anand G. Garg, M.D., Secretary, instead of Anant R. Bhati, M.D., Acting Secretary.

By my signature below, I hereby affirm that the Entry of Order dated December 12, 2001 and mailed to Edward J. Urban, D.O., on December 13, 2001, signed by Anand G. Garg, M.D., Secretary, is the Entry of Order as approved by the Board on December 12, 2001.



Anant R. Bhati, M.D.
Acting Secretary

1-9-02

Date

C. -17' 01 (MON) 16:45

BENESCH FRIEDLANDER

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO

01 DEC 17 PM 4:02

CLERK OF COURTS-CV

EDWARD J. URBAN, D.O.

Appellant,

vs.

THE STATE MEDICAL BOARD OF OHIO

Appellee.

Case No. 01CVF-12-12353

Judge Miller

**ORDER SUSPENDING ORDER
OF THE STATE MEDICAL
BOARD OF OHIO PENDING APPEAL**

This matter came before the Court on Appellant's Motion for Suspension of Administrative Order Pending Appeal, by which Appellant seeks to suspend the operation of Appellee's Order (the "Board's Order") of December 12, 2001, pending the disposition of the Appellant's appeal therefrom and pending disposition of the criminal appeal upon which the Order is based. A copy of the Board's Order that is the subject of this Order is attached as Exhibit "A".

Upon consideration of Appellant's Motion and the file, it is hereby ORDERED that Appellant's Motion for Suspension of Administrative Order Pending Appeal is hereby GRANTED. It is further ORDERED that the execution and operation of the Board's Order is hereby suspended pending the final disposition of Appellant's appeal therefrom and final disposition of the criminal appeal upon which the Board's Order is based.

IT IS SO ORDERED

Date: _____

Judge Miller

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD
OF OHIO

2002 JAN -3 P 1:13

EDWARD J. URBAN, D.O.
171 Chestnut Lane
Chagrin Falls, Ohio 44022-4193

Appellant,

vs.

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

Appellee.

01 CV F 12 1 23 53
Case No. _____

Judge: _____

NOTICE OF APPEAL



Notice is hereby given that Appellant Edward J. Urban, D.O. ("Dr. Urban"), hereby appeals to the Court of Common Pleas of Franklin County, Ohio, from the Entry of Order ("the Order") of Appellee State Medical Board of Ohio ("the Board"), dated December 12, 2001. Appellant's Notice of Appeal, a copy of which is attached hereto and incorporated herein, was filed with the State Medical Board of Ohio on December 14, 2001. A copy of the Order appealed from, which was mailed by the Board to Appellant on December 12, 2001, is attached to the Notice of Appeal as Exhibit "A".

Respectfully submitted,



N. Victor Goodman (0004912)
C. David Paragas (0043908)
Ronald L. House (0036752)
Benesch Friedlander Coplan & Aronoff LLP
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Telephone: (614) 223-9338
Facsimile: (614) 223-9330
Attorneys for Appellant Edward J. Urban, D.O.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2001 DEC 14 PM 4:02
CLERK OF COURTS-CV

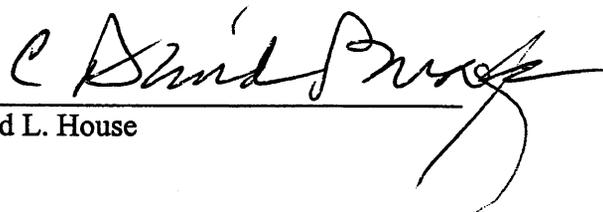
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2001, a true and correct copy of the foregoing Notice of Appeal was served by telefax and by U.S. Mail, postage prepaid, upon:

Rebecca J. Albers
Assistant Attorney General
State Office Tower
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428

and served by U.S. mail, postage prepaid upon:

The Ohio State Medical Board
77 South High Street, 17th Floor
Columbus, Ohio 43266-0315



Ronald L. House

STATE MEDICAL BOARD
OF OHIO
2002 JAN - 3 P 1:13

BEFORE THE
OHIO STATE MEDICAL BOARD

STATE MEDICAL BOARD
OF OHIO

2002 JAN -3 P 1:13

IN RE: : (Notice of Opportunity for Hearing
: Issued February 14, 2001)
THE MATTER OF :
EDWARD J. URBAN, D.O. : Attorney Hearing Examiner
: R. Gregory Porter

NOTICE OF APPEAL

Notice is hereby given that Appellant Edward J. Urban, D.O. ("Dr. Urban"), hereby appeals to the Court of Common Pleas of Franklin County, Ohio, from the Entry of the Order ("the Order") of Appellee State Medical Board of Ohio ("the Board"), dated December 12, 2001. A copy of the Order appealed from, which was mailed by the Board to Appellant on December 12, 2001, is attached hereto as Exhibit "A".

Under the subject order, the Board, *inter alia*, "permanently revoked" Dr. Urban's certificate to practice osteopathic medicine and surgery in the State of Ohio. Dr. Urban asserts that the Order is not supported by reliable, probative and substantial evidence, and is not in accordance with law, for at least the following reasons:

1. The Board's decision to revoke Dr. Urban's certificate, as opposed to invoking any lesser sanction, is not supported by reliable, probative and substantial evidence, is not in accordance with the law, and constitutes an abuse of the Board's discretion.
2. The Board erred by impermissibly permitting the State to introduce into the record extensive evidence of individual patient treatment while prohibiting Dr. Urban from doing the same.
3. The Board erred by permitting the State to introduce rebuttal evidence consisting of the entire 2233 pages of the criminal trial transcript without requiring the State to specifically point out what evidence such transcript was intended to rebut.

2001 DEC 14 P 3:45

STATE MEDICAL BOARD
OF OHIO

4. The Board erred by permitting the State to try its case-in-chief in its rebuttal case.
5. The Board erred by failing to permit Dr. Urban to fully and adequately respond to the State's "rebuttal" evidence.
6. The Board erred by including the entirety of the criminal trial transcript in the record but not the exhibits on which much of the transcript are based.
7. The Board erred by refusing to permit Dr. Urban to introduce evidence relating to the underpinnings of the judicial findings of guilt in order to provide evidence of mitigation.
8. The Board erred by basing its decision on the substantive facts underlying Dr. Urban's criminal conviction without providing Dr. Urban with the opportunity to rebut its version of the underlying facts.
9. The Board erred by basing its decision and relying upon matters beyond the scope of the Notice of Opportunity for Hearing in violation of Dr. Urban's due process rights
10. The Board erred by finding that Dr. Urban violated R.C. 4731.22(B)(5) by the mere fact of a judicial finding of guilt under R.C. 2921.12(A), and R.C. 2913.40(B).
11. The Board's penalty is grossly disproportionate to the penalties imposed by the Board in similar cases and, as such, is violative of Dr. Urban's right to due process.
12. The Board erred to Dr. Urban's prejudice in denying Dr. Urban's motion to stay all proceedings pending the outcome of his criminal appeal in Franklin County Court of Appeals App. No. 01AP239.
13. Ohio Revised Code Section 4731.22(H) does not provide a constitutionally viable remedy to licensees who are parties to administrative agency disciplinary proceedings during the pendency of criminal proceedings against them.
14. Ohio Revised Code Section 4731-13-24 is unconstitutional insofar as it purports to mandate that a judicial finding of guilt is conclusive proof of the commission of elements of a crime when the crime, as statutorily defined, encompasses multi-faceted, disjunctive elements that are not necessary for a judicial finding of guilt.

STATE MEDICAL BOARD
OF OHIO
2002 JAN - 3 P 1:13

15. The Board erred in failing to permit a continuance of the hearing pursuant to 4731-13-06(C) because disposition of Dr. Urban's appeal of the criminal conviction upon which the Board proceeding is based provides reasonable cause to continue the hearing.

16. The Board's Sanction of "permanent" revocation of an occupational license violates state law and the Ohio and United States Constitutions.

17. Section 4731.22 of the Ohio Revised Code constitutes an impermissible delegation of authority to the Board in that it authorizes the Board to revoke, suspend or limit a medical certificate without criteria or standards to guide or control the agency's discretion.

18. The Board failed to comply with the procedural requirements of Chapter 119 and 4731 of the Ohio Revised Code, thereby violating Dr. Urban's statutory rights and his constitutional rights of due process and equal protection.

19. The Hearing Examiner and the Board erred in misapplying the rules of evidence and, as a result, prevented Dr. Urban from presenting evidence relevant and material to the issues.

Dr. Urban reserves the right to supplement the bases for this appeal.

WHEREFORE, Dr. Urban requests:

1. An oral hearing in the subject appeal as provided by R.C. 119.12;
2. Reversal, vacation or modification of the subject Order for the reasons set forth above;
3. Compensation for fees in accordance with R.C. 119.12 and R.C. 2335.99; and

STATE MEDICAL BOARD
OF OHIO
2002 JAN -3 P 1:13

4. Such other relief as in law or in equity as Dr. Urban may be entitled.

Respectfully submitted,

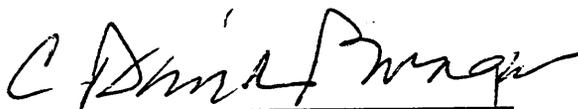


C. David Paragas (0043908)
Ronald L. House (0036752)
Benesch Friedlander Coplan & Aronoff LLP
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Telephone: (614) 223-9338
Facsimile: (614) 223-9330
Attorneys for Appellant Edward J. Urban, D.O.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal has been served by telefax and by ordinary U.S. Mail, postage prepaid, this 14th day of December, 2001, upon:

Rebecca J. Albers
Assistant Attorney General
State Office Tower
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428



Ronald L. House

STATE MEDICAL BOARD
OF OHIO
2002 JAN -3 P 1:14

BEFORE THE STATE MEDICAL BOARD OF OHIO STATE MEDICAL BOARD
OF OHIO

2002 JAN -3 P 1:14

IN THE MATTER OF

*

*

EDWARD J. URBAN, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 12, 2001.

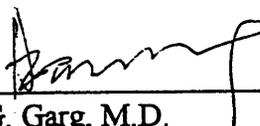
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

1. The motion of Edward J. Urban, D.O., to dismiss the Board's allegations concerning violation of Section 4731.22(B)(5), Ohio Revised Code, is DENIED.
2. The certificate of Dr. Urban 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)



Anand G. Garg, M.D.
Secretary

December 12, 2001

Date

EXHIBIT

tabbies

A



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

December 12, 2001

Edward J. Urban, D.O.
2950 Greenville Road
P. O. Box 307
Cortland, OH 44410

Dear Doctor Urban:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 12, 2001, 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 a Notice of Appeal with the State Medical Board of Ohio and 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

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5147 2033
RETURN RECEIPT REQUESTED

Cc: C. David Paragas and Ronald L. House, Esqs.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5147 2026
RETURN RECEIPT REQUESTED

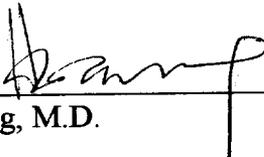
Mailed 12-13-01

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 December 12, 2001, 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 Edward J. Urban, 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.

(SEAL)



Anand G. Garg, M.D.
Secretary

December 12, 2001

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

EDWARD J. URBAN, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 12, 2001.

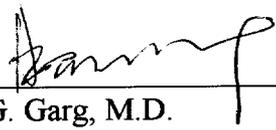
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

1. The motion of Edward J. Urban, D.O., to dismiss the Board's allegations concerning violation of Section 4731.22(B)(5), Ohio Revised Code, is DENIED.
2. The certificate of Dr. Urban 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)



Anand G. Garg, M.D.
Secretary

December 12, 2001

Date

2001 NOV -6 P 1: 24

**REPORT AND RECOMMENDATION
IN THE MATTER OF EDWARD J. URBAN, D.O.**

The Matter of Edward J. Urban, D.O., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on August 21, 2001.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 14, 2001, the State Medical Board of Ohio [Board] notified Edward J. Urban, D.O., that it had proposed to take disciplinary action against his certificate based on the following allegations:

“(1) On or about January 25, 2001, in the Franklin County Court of Common Pleas, [Dr. Urban was] found guilty, following a trial by jury, of two felony counts of violation of Section 2921.12(A)(1), Ohio Revised Code, Tampering with Evidence, based upon [his] alteration of patient medical records that were subpoenaed by the Ohio Attorney General and the State Medical Board of Ohio in the course of their investigations of [Dr. Urban’s] medical practice. Further, [Dr. Urban was] found guilty of two felony counts and one misdemeanor count of violation of Section 2913.40(B), Ohio Revised Code, Medicaid Fraud, based upon the false and misleading statements and representations [Dr. Urban] made in billing Medicaid for services that were not medically necessary and for family planning services.”

The Board alleged that the conduct underlying the finding of guilt constitutes “‘publishing a false, fraudulent, deceptive, or misleading statement,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.”

The Board further alleged that the judicial finding of guilt constitutes “‘[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,’ as that clause is used in Section 4731.22(B)(9), Ohio Revised Code; [and/or] ‘[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor committed in the course of practice,’ as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.”

2001 NOV -6 P 1: 24

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

B. On March 9, 2001, Dr. Urban filed a written hearing request. (State's Exhibit 1B)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.

B. On behalf of the Respondent: Ronald L. House, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

The State presented no witnesses

B. Presented by the Respondent

1. Jeannette Campana Hamilton
2. Karen Elder
3. Marcia Urban
4. Edward J. Urban, D.O.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1W: Procedural exhibits.
2. State's Exhibit 2: Copy of an Indictment from the Franklin County Court of Common Pleas filed in *State of Ohio v. Edward J. Urban*, Case No. 99CR 09-4745 [*State v. Urban*]. [Note: Portions of this document were redacted at hearing by agreement of the parties.]
3. State's Exhibit 3: Certified copy of the Judgment Entry from *State v. Urban*.

2001 NOV -6 P 1: 24

4. State's Exhibits 4 and 4A through 4L: Copies of a certification and trial transcripts from *State v. Urban*. [Note: The name of Dr. Urban's acquitted co-defendant was redacted from State's Exhibits 4A through 4L prior to the hearing. Further note that these exhibits have been sealed to protect patient confidentiality.]

B. Presented by the Respondent

1. Respondent's Exhibits 1 through 54: Letters of support for Dr. Urban. [Note: These exhibits have been sealed to protect patient confidentiality.]
2. Respondent's Exhibits 55 through 62: Excerpts of testimony offered in *State v. Urban*. [Note: These exhibits have been sealed to protect the confidentiality of Dr. Urban's acquitted co-defendant.]
3. Respondent's Exhibit 63: Transcript of a stipulation between the State and Dr. Urban offered in *State v. Urban*.
4. Respondent's Exhibit 64: Copy of the Board's January 11, 1995, Policy and Positions concerning breast, pelvic, and papanicolau examinations.
5. Respondent's Exhibit 68: Excerpt from a Consent Agreement Between Anthony G. Polito, D.P.M., and the State Medical Board of Ohio.
6. Respondent's Exhibit 70: Copy of Dr. Urban's Standard Operating Procedures.
7. Respondent's Exhibit 71: Dr. Urban's curriculum vitae.
8. Respondent's Exhibit 73: Photograph of Dr. Urban's office.
9. Respondent's Exhibit 74: Copy of a December 4, 2000, Affidavit of Marcia Urban. [Note: Paragraphs 5 through 7 of this document have been redacted. The Hearing Examiner marked the unredacted copy as Respondent's Exhibit 79 post hearing, which will be held as a proffered exhibit for the Respondent.]
10. Respondent's Exhibits 75 through 78: Copies of the Certification, Entry of Order, Report and Recommendation, Board meeting minutes, and notices of opportunity for hearing for Gregory Charles Brant, D.O.; Gregory X. Boehm, M.D.; Elliot L. Neufeld, D.O.; and Lawrence L. Young III, D.O.

2001 NOV -6 P 1:24

- C. The following exhibits are admitted on the motion of the Hearing Examiner:
1. Board Exhibit A: August 28, 2001, Entry extending the period of time for holding the hearing record open until September 21, 2001.
 2. Board Exhibit B: September 21, 2001, Respondent's Submission of Exhibits 75 Through 78.

PROFFERED EXHIBITS

The following exhibits were neither admitted to the hearing record nor considered, but are being sealed and held as proffered material for the Respondent:

- I. Respondent's Exhibit 72: Copy of December 4, 2000, Affidavit of Edward J. Urban, D.O.
- II. Respondent's Exhibit 79: Unredacted copy of Respondent's Exhibit 74.

PROCEDURAL MATTERS

- I. At the request of the parties, the record in this matter was held open until September 4, 2001, for the submission of additional evidence. At the request of the State, this date was later extended to September 21, 2001.
 - A. At hearing, the State offered as rebuttal evidence the transcript of the trial and sentencing from *State v. Urban*. (See State's Exhibits 4A through 4L, above.) The Hearing Examiner admitted State's Exhibit 4A through 4L to the record over the objection of the Respondent. At the request of the Respondent, the State agreed to obtain and submit copies of the exhibits admitted in *State v. Urban* for consideration along with the transcript of testimony. However, during a September 19, 2001, telephone conference among Counsel for the State, Counsel for the Respondent, and the Hearing Examiner, Counsel for the State informed the Hearing Examiner that the criminal trial exhibits were quite voluminous, and consisted of nineteen boxes of documents. The Hearing Examiner concluded, in the interest of administrative economy, that it would not be necessary for the State to copy and submit the trial exhibits at that time. The Hearing Examiner informed counsel that, following his review of State's Exhibits 4A through 4L, the Hearing Examiner would determine which exhibits, if any, from *State v. Urban* needed to be copied and submitted for consideration in this matter.

2001 NOV -6 P 1: 25

Following a review of State's Exhibits 4A through 4L, the Hearing Examiner determined that the transcript of the proceedings in *State v. Urban* is understandable, and that no copies of the exhibits are needed.

- B. At the hearing, the Respondent requested admission of Respondents Exhibits 65, 66, 67, and 69, which were excerpts from the Reports and Recommendations for Gregory X. Boehm, M.D.; Gregory Charles Brant, D.O.; Elliot L. Neufeld, D.O.; and Lawrence L. Young III, D.O. The State objected to the admission of these exhibits because they did not include the final orders as determined by the Board. The Hearing Examiner agreed to allow the Respondent an opportunity to submit copies of the relevant entries of order. These items were timely submitted, and are admitted to the record as Respondent's Exhibits 75 through 78. Further, inasmuch as the documents submitted as Respondent's Exhibits 65, 66, 67, and 69 are included in Respondent's Exhibits 75 through 78, Respondent's Exhibits 65, 66, 67, and 69 are deemed to be withdrawn.

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. Edward J. Urban, D.O., testified that he had obtained his medical degree in 1982 from the Chicago College of Osteopathic Medicine, which was followed by one year of internship at Warren General Hospital, Warren, Ohio. Moreover, Dr. Urban testified that he is Board certified in family practice and in general practice. Finally, Dr. Urban testified that he was licensed to practice medicine in Ohio and in North Carolina in 1983, and that his North Carolina license is currently inactive. (Respondent's Exhibit [Resp. Ex.] 71; Hearing Transcript [Tr.] at 119-123, 128-129)

Dr. Urban testified that, in 1983, he began practicing with another physician in Cortland, Ohio. Dr. Urban further testified that he opened a solo practice in Cortland in late 1984 or in 1985, and that he continues to practice at that location. Dr. Urban further testified that his patient volume grew "at a phenomenal rate" over a very short period of time. Moreover, Dr. Urban testified that, with the exception of having employed a physician who worked for him for approximately six months, he has been a solo practitioner for 17 years. (Tr. at 125, 129-131)

2. Dr. Urban testified that his scope of practice was very wide, and included delivering babies, pediatrics, geriatrics, sports medicine, pain management, and orthopedics.

Dr. Urban further testified that his practice has evolved to include subspecialties in pain management, manipulation, and “alternative health care type services.” Moreover, Dr. Urban stated that the alternative health care services included “some tanning issues, some health care. I promote more health, vitamins. I promote more of the basic issues, along with pain management.” Finally, Dr. Urban testified that, in addition to his full-time practice, he volunteers at Two North Park, a drug and alcohol rehabilitation center. (Tr. at 124-127)

3. Dr. Urban testified that he has invested a large sum of money into expanding the physical facilities and equipment in his office. Dr. Urban testified that he has expanded his office building from 2,000 square feet to 5,000 square feet, and invested in technology such as diagnostic ultrasound, x-ray, echocardiography, and mammography. Dr. Urban noted that his office’s mammography screens are read by a radiologist. Dr. Urban further testified that he invested in this equipment because he felt he had an obligation to do so in order to serve his patients:

It seemed like these things were thrust upon me, that if I don’t do it, I’m doing something wrong. I don’t want to say it was a burden, but it felt like an obligation, something I needed to do. I thought it was appropriate. I thought it was a great thing to have.

(Tr. at 132-138)

Dr. Urban testified that his office is located in a “[v]ery rural” area. Dr. Urban further testified that the nearest other physician is about seven miles away, and the closest hospital is about twenty miles away. (Tr. at 139)

Dr. Urban testified that his patient mix in the 1980s and 1990s consisted of approximately 40 to 60 percent Medicaid patients and approximately 20 percent Medicare patients, with the rest being privately insured patients. (Tr. at 139-140)

Dr. Urban testified that he has never before had any disciplinary action taken against his license. Dr. Urban further stated that he has never been sued for medical malpractice. (Tr. at 129)

Dr. Urban's Criminal Conviction

4. On September 3, 1999, an Indictment was filed in the Franklin County Court of Common Pleas charging Dr. Urban with two counts of violating Section 2921.12(A)(1), Ohio Revised Code, Tampering with Evidence; and five counts of violating Section 2913.40(B), Ohio Revised Code, Medicaid Fraud. (State’s Exhibit [St. Ex.] 2)

5. In September 2000, Dr. Urban's criminal case was tried before a jury in the Franklin County Court of Common Pleas. A number of witnesses testified for the prosecution, including physicians, members of Dr. Urban's staff, one patient of Dr. Urban's, and government investigators and employees. Several physicians who had worked as *locum tenens* in Dr. Urban's office, as well as one physician who had been briefly employed by Dr. Urban, testified at the criminal trial. The physician testimony elicited during the criminal trial included the following:

Testimony of Debra K. Cooper, D.O.

- a. Debra K. Cooper, D.O., testified that she had obtained her medical degree in 1994 from the Ohio University College of Osteopathic Medicine. After completing her internship and one year of family practice residency, Dr. Cooper worked for a time in *locum tenens* positions. During this period, Dr. Cooper worked as a *locum tenens* for Dr. Urban on several occasions. (St. Ex. 4B at 410-416)

Dr. Cooper testified that when she saw patients at Dr. Urban's office, tests had already been performed on those patients prior to her having seen the patients. Dr. Cooper stated that such tests included x-rays, EKGs, pulmonary function tests, and urinalysis. She stated that these tests had been performed based upon written protocols that Dr. Urban had established. Dr. Cooper testified that she does not believe that the tests that were routinely ordered by Dr. Urban's staff were medically necessary. Moreover, Dr. Cooper testified:

Because I was concerned about being asked to interpret tests and make medical decisions about testing that I did not order, I arranged with the staff that if I wanted the test ordered I would put it in my handwriting. And if it wasn't in my handwriting, then it was stuff that they were under—or asked to order under that protocol or authorized to order under that protocol, it was not my doing.

(St. Ex. 4B at 416-422)

Dr. Cooper testified concerning the medical record for Patient 58, who had visited Dr. Urban's office on August 19, 1996, and was seen by Dr. Cooper. Dr. Cooper stated that the patient had presented with complaints of headaches, not sleeping well, sweating, and nausea. Dr. Urban's staff had noted the patient's pulse, respiration, and blood pressure. In addition, Dr. Cooper stated that the following tests had been performed prior to her seeing the patient: pelvic ultrasound [pelvic US], pulmonary function test [PFT], clean-catch urinalysis [CUA], hepatic profile, complete blood count [CBC], thyroid test, "ANA", "RA", and "GGTP." Dr. Cooper further testified that she had not ordered any of those tests. However, Dr. Cooper also testified, "I think some of them are probably justified in this case, you know, with an ANA and a rheumatoid

2001 NOV -6 P 1: 25

factor and complete thyroid blood factor I might have ordered those.” (St. Ex. 4B at 424-428) [Note: Medical records for the patients at issue during the criminal trial were not made part of the Board hearing record.]

Dr. Cooper testified that she had made the following diagnoses on August 19, 1996: fatty liver, depression, anxiety, and chronic cephalgia. However, Dr. Cooper testified that additional diagnoses of asthma, pelvic pain, hepatomegaly, and hypothyroid had also been entered in the patient chart for that date, and that Dr. Cooper had not made those diagnoses. (St. Ex. 4B at 428-429)

Dr. Cooper testified that she again saw Patient 58 on September 16, 1996. Dr. Cooper testified that, at that time, the following tests had been performed: CUA, CBC, electrolytes, HgbA1c, renal panel, and theophylline level. However, Dr. Cooper further testified that the only test that she had ordered was for the theophylline level. (St. Ex. 4B at 432-433)

Dr. Cooper testified concerning other patients that she saw while working as *locum tenens* for Dr. Urban. This testimony included the following:

- i. Patient 82, service date August 21, 1996. Dr. Cooper testified that a KUB (an abdominal x-ray), CBC, renal profile, and electrolytes were performed, but had not been ordered by Dr. Cooper. Further, Dr. Cooper diagnosed gallbladder disease, hemorrhoids, and constipation probably secondary to prenatal vitamins; however, a diagnosis of urinary tract infection [UTI] had been added by someone else to Dr. Cooper’s diagnoses. (St. Ex. 4B at 434-436)
- ii. Patient 39, service date August 22, 1996. Dr. Cooper testified that CUA, sinus x-ray, EKG and rhythm, cultures (the exact nature of which Dr. Cooper was unaware), CBC, renal profile, electrolytes, “hepatic,” HgbA1c, and “CEA” were performed. Dr. Cooper testified that the only test that she had ordered was the CEA. Dr. Cooper testified that she had diagnosed sinusitis, insulin-dependent diabetes, and chronic UTI. Dr. Cooper further testified that diagnoses of cardiac arrhythmia and hepatomegaly had been added by someone else to her diagnoses. (St. Ex. 4B at 436-438)
- iii. Patient 48, service date August 22, 1996. Dr. Cooper testified that CUA, CBC, erythrocyte sedimentation rate [ESR] (a measure for inflammation in the body), electrolytes, and amylase (a test to evaluate for inflammation of the pancreas) were performed. Dr. Cooper testified that she had ordered none of those tests, and that she had seen the patient only for shoulder and elbow strain. Dr. Cooper further testified that her diagnosis was shoulder and elbow strain, but that additional diagnoses of abdominal pain and hyperlipidemia had been added by someone else. (St. Ex. 4B at 438-440)

- iv.* Patient 63, service date September 17, 1996. Dr. Cooper testified that CBC, “hepatic,” electrolytes, and antistreptolysin [ASO] tests had been performed. Dr. Cooper further testified that she had ordered none of those tests. Moreover, Dr. Cooper testified that she had seen the patient for low-back pain, and diagnosed lumbosacral strain. Finally, Dr. Cooper testified that additional diagnoses in the patient chart for upper respiratory infection [URI], abdominal pain, hepatomegaly, and anemia had not been made by her. (St. Ex. 4B at 446-448)
- v.* Patient 195, service date September 17, 1996. Dr. Cooper testified that CUA, HCG (a pregnancy test), and sinus x-rays had been performed. Dr. Cooper further testified that she had ordered none of those tests. In addition, Dr. Cooper testified that her diagnosis on that date had been pharyngitis. Moreover, Dr. Cooper testified that an additional diagnosis of sinusitis appears in the chart for that visit, but that she had not made that diagnosis. (St. Ex. 4B at 448-449)
- vi.* Patient 10, service date October 7, 1996. Dr. Cooper testified that a urine pregnancy test, lumbar spine x-ray, vaso spec (a measure of blood flow through the legs), CBC, hepatic profile, amylase, renal profile, electrolytes, rheumatologic tests, and ASO had been performed. Dr. Cooper further testified that she had ordered none of those tests. In addition, Dr. Cooper testified that she had diagnosed uterine fibroids, endometriosis, family history of lupus, fluid retention, chronic pain, and irritable bowel syndrome on that date. Moreover, Dr. Cooper testified that additional diagnoses contained in the chart are URI, hepatomegaly, and leg pain, but that those diagnoses had been added by someone else. Finally, Dr. Cooper testified that “Back” had also been added to her diagnosis of chronic pain, but that she believed that that had been a clarification of her diagnosis for coding purposes, rather than an additional diagnosis. (St. Ex. 4B at 453-455)
- vii.* Patient 23, service date October 7, 1996. Dr. Cooper testified that an EKG with rhythm strip, chest x-ray [CXR], CBC, electrolytes, amylase, and gravidex (a pregnancy test) had been performed. Dr. Cooper further testified that the only test that she had ordered was the gravidex. Dr. Cooper testified that her diagnosis had been birth control, postpartum, with a note that the patient had recently given birth and was an adolescent who may be at risk for psychosocial problems. Moreover, Dr. Cooper testified that additional diagnoses contained in the chart are cardiac arrhythmia, anemia, abdominal pain, and amenorrhea, but that these diagnoses had been added by someone else. Finally, Dr. Cooper testified that amenorrhea would not be a concern for a patient who had given birth four weeks earlier. (St. Ex. 4B at 455-457)
- viii.* Patient 89, service date October 8, 1996. Dr. Cooper testified that urinalysis, CXR, EKG, CBC, hepatic profile, renal profile, CEA, ASO, Lyme disease, and

2001 NOV -b P 1: 25

HIV tests had been performed. Dr. Cooper further testified that she had not ordered any of those tests. In addition, Dr. Cooper testified that the patient had complained of cough, stuffy nose, body aches, and a lump on the right foot. Moreover, Dr. Cooper testified that she had diagnosed bunion on right great toe, sacroiliac dysfunction, and URI. Finally, Dr. Cooper testified that additional diagnoses of anemia, flu syndrome, chest pain, UTI, and hepatocellular disease had been added by someone else. (St. Ex. 4B at 459-460)

- ix. Patient 128, service date October 8, 1996. Dr. Cooper testified that a CBC and chemistry panel had been performed, but that she had ordered neither of those tests. Dr. Cooper further testified that she had seen the patient for a wound check—the patient had a laceration of his right fifth finger. Dr. Cooper noted in the chart that the wound was healing and that the sutures were intact. Moreover, Dr. Cooper testified that the additional diagnosis of anemia that appears in the chart had been added by someone else. (St. Ex. 4B at 460-462)
- b. Dr. Cooper testified that, while she was working in Dr. Urban's office, a member of Dr. Urban's staff had approached her and asked what diagnoses would be appropriate for some tests that had been performed on a patient. Dr. Cooper stated that "it was very difficult because I didn't order the tests[.]" Moreover, Dr. Cooper testified that most of the time she did not give the staff a diagnosis for tests that she did not order. Further, Dr. Cooper had expressed concern to members of Dr. Urban's staff regarding tests that had been ordered before she saw a patient, and about being asked to give diagnoses for tests that she did not order. Finally, Dr. Cooper testified that she had informed a member of Dr. Urban's staff that "we were all going to go to jail if we weren't careful." (St. Ex. 4C at 486-491)
- c. Dr. Cooper testified regarding concerns that she had had with Dr. Urban's office procedures:

[T]ests were being ordered that I did not order, diagnoses were being made that had no relevance to that particular office visit where I was in charge and my license and my conduct was on the line, and those diagnoses were written into the chart by someone else in order to try to legally justify laboratory and diagnostic tests that may or may not have been necessary depending on who your expert witness was. But I can tell you that, in my opinion, for that particular office visit for what I saw the patient for, I did not feel that they were necessary.

(St. Ex. 4C at 525-526) Dr. Cooper further testified that when she expressed her concern to Dr. Urban's staff they did not respect her wishes, and continued to order tests without her authorization. (St. Ex. 4C at 526-527)

STATE MEDICAL BOARD
OF OHIO
2001 NOV -6 P 1:25

- d. Dr. Cooper testified that, while she was working in Dr. Urban's office, she had observed Dr. Urban dictating in some patient files. Dr. Cooper further testified that Dr. Urban

explained to me that some of his charts were being audited by the State Medical Board. He didn't explain to me why, but he said that when charts are audited by the State Medical Board that the State Medical Board gives the physicians an opportunity to make sure that the charts are in order before they come and review them.

(St. Ex. 4C at 485-486)

- e. Dr. Cooper testified that with the exception of the testing issue she found Dr. Urban's staff to be professional, well-trained, and competent. Dr. Cooper further testified that they seemed concerned about the patients and proud of their operation. (St. Ex. 4C at 555-556)

Testimony of Theodore R. Treiber, M.D.

- f. Theodore R. Treiber, M.D., testified that from October 20 through 24, 1997, he had performed physician services as a *locum tenens* at Dr. Urban's office. (St. Ex. 4C at 562-568) Dr. Treiber's testimony concerning patient care during his time at Dr. Urban's office included the following:
- i. Patient 102, service date October 23, 1997. Dr. Treiber testified that the patient came in to have her blood pressure checked. Dr. Treiber testified that his diagnoses of hypertension and diabetes mellitus are in the chart; however, additional diagnoses of UTI and lower back pain had been added above his initials but were not made by him. Further, Dr. Treiber testified that he did not order an "echography retroperitoneal B-scan complex" for this patient. (St. Ex. 4C at 569-575)
- ii. Patient 73, service date October 23, 1997. Dr. Treiber testified that he did not order a urinalysis, albumin serum, bilirubin, phosphatase alkaline, transaminase alanine amino, automated CBC, spirometry, rhythm ECG 1 to 3 leads, microbe ident, or nucleic acid probe for this patient. Dr. Treiber further testified that the last time he had seen the chart there was no indication that those tests had been performed. Dr. Treiber further testified that his diagnoses had been depression and tightness in the neck. Moreover, Dr. Treiber testified that the additional diagnoses of pancreatitis, chronic cervical myositis, vaginitis trichomonas, candidiasis, and chest pain that appear in the chart had not been made or written by him. (St. Ex. 4C at 575-583)

2001 NOV -6 P 1: 26

- iii.* Patient 89, service date October 23, 1997. Dr. Treiber testified that the chart indicated that the patient's complaints had been, "Didn't fill Cedax prescription and for checkup." Dr. Treiber further testified that, although they were documented in the chart at the time of the criminal trial, he did not write "Bilateral mammogram" or "EKG rhythm" in the chart, that he did not order those tests, and that he did not believe that those items were in the chart when he last saw it. Nevertheless, Dr. Treiber testified that, based on other notes in the chart, the mammogram had evidently been planned for that date and was appropriate. (St. Ex. 4C at 583-590)

Dr. Treiber testified that he had noted in the chart for that visit that the patient's lungs were clear, "heart normal size, rate, rhythm, no murmurs or megaly." Dr. Treiber further testified, however, that a dictation by Dr. Urban gave physical examination and objective findings for this patient on that service date and states "[a]uscultation shows the heart to have irregular rate and rhythm. Lungs are essentially clear." Moreover, Dr. Treiber testified that Dr. Urban had not been in the office with him on that date. Finally, Dr. Treiber testified, "[A]ll I can say is what I found, and I can't say what [Dr. Urban] found, and I don't know how he could not be in the office and know those things." (St. Ex. 4C at 590-594)

Dr. Treiber testified that diagnoses contained in the chart for October 23, 1997, that state "breast hypoplasia and cardiac arrhythmia" had not been rendered by him. Moreover, Dr. Treiber testified that he had not even examined Patient 89's breasts. (St. Ex. 4C at 594)

- iv.* Patient 162, service date October 20, 1997. Dr. Treiber testified that the patient presented with complaints of coughing, backaches, and difficulty sleeping. PFT, pre- and post-aerosol with Alupent were performed, but not ordered by Dr. Treiber. Further, Dr. Treiber testified that "echos were requested on the carotids and vertebrales" but that he did not order these tests either. Other tests performed but not ordered by Dr. Treiber included: spirometry, respiratory flow volume, "[a]erosol/vapor inhalation sputum for diagnostic purposes," "[e]chocardiography real time scan complete," "[p]hysiologic study of extracranial arteries bilateral," and "[d]uplex scan of extracranial arteries, complete bilateral studies." Dr. Treiber testified that he had diagnosed acute bronchitis, resolving. Moreover, Dr. Treiber testified that additional diagnoses of chest pain; carotid stenosis; vertebral basilar insufficiency; and "occlusion of artery, multiple bilateral without infarction" had been added by someone else. Finally, Dr. Treiber testified that he was the only physician who had examined and treated Patient 162 at Dr. Urban's office that day. (St. Ex. 4C at 594-599)

- v.* Patient 58, service date October 21, 1997. Dr. Treiber testified that he did not order a CUA, throat culture [TC], CBC, or ASO for this patient, although these

2001 NOV -6 P 1: 26

tests had been performed. Dr. Treiber further testified that he could find no indication in his notes for Patient 58's visit that would necessitate such testing. (St. Ex. 4F at 1425-1426)

- vi. Patient 141, service date October 20, 1997. Dr. Treiber testified that the following tests were performed but not ordered by him: CUA, EKG, CXR, drug screen, CBC, "chem," electrolytes, HIV, and CEA. Dr. Treiber further testified that the results of those tests were not available to him when he saw the patient. Moreover, Dr. Treiber testified that those tests had not been noted in the chart at the time he had seen the patient. (St. Ex. 4F at 1426-1427)

Testimony of Frank J. Korn, M.D.

- g. Frank J. Korn, M.D., testified that he worked as *locum tenens* in Dr. Urban's office from February 17 through 21, 1997. Dr. Korn further testified that, although Dr. Urban had been in the office during one of those days, Dr. Urban had not seen patients at that time. Moreover, Dr. Korn testified that he and Dr. Urban never saw any patients together. Dr. Korn testified that he was the treating physician for Dr. Urban's patients at Dr. Urban's office that week. (St. Ex. 4E at 1108-1110)

Dr. Korn testified that, approximately two years after he had worked in Dr. Urban's office, and at the behest of the Ohio Attorney General, he reviewed the medical records of patients he had seen at Dr. Urban's office. Dr. Korn testified that he noticed the following during his review:

A number of laboratory tests were performed that I had not ordered. In at least one medical record my name appeared at the bottom of my medical notes and the name was not signed by me. X-rays were ordered that I did not order. A number of medical records indicated diagnoses that I did not render.

(St. Ex. 4E at 1111-1112) Dr. Korn further testified that he had not been aware when working at Dr. Urban's office that tests had been performed that he had not ordered. Finally, Dr. Korn testified that the tests and procedures performed but not ordered by him were not medically necessary for the diagnosis and treatment of the patients' conditions. (St. Ex. 4E at 1112, 1151)

- h. Dr. Korn's testimony concerning patient care during his time at Dr. Urban's office included the following:
 - i. Patient 125, service date February 19, 1997. Dr. Korn testified that the patient had complained of pain in the right shoulder. Dr. Korn further testified that the medical records indicate that CUA and right shoulder x-ray were performed, but

2001 NOV -6 P 1:26

that he had not ordered those tests. Moreover, Dr. Korn testified that those entries had not been present in the medical record at the time he had seen the patient. (St. Ex. 4E at 1113-1116)

- ii. Patient 190, service date February 18, 1997. Dr. Korn testified that the patient had complained of coughing and a stomach ache. Dr. Korn testified that the medical records indicate that CUA, and "cult" had been performed, but that he had not ordered those tests. Moreover, Dr. Korn testified that a diagnosis of UTI appears in the record, but that he had not made or written that diagnosis. Finally, Dr. Korn testified that the entries of CUA, cult, and UTI had not been in the medical records when he had seen the patient. (St. Ex. 4E at 1116-1118)
- iii. Patient 24, service date "February 1997." Dr. Korn testified that the patient had complained of coughing, runny nose, and headaches. Dr. Korn testified that the medical records indicate that CUA, gravidex, CBC, iron determination [FE], and TC were performed, but that he had not ordered those tests. Moreover, Dr. Korn testified that he had not made or written the diagnosis of anemia that appears in the patient chart. (St. Ex. 4E at 1118-1121)
- iv. Patient 149, service date February 21, 1997. Dr. Korn testified that the patient had complained of being "[a]chy with chest congestion and chest pain for three days." Dr. Korn further testified that the medical records indicate that CUA, EKG rhythm, TC, CBC, hepatic amylase, and "h. pyloric" tests were performed, but that he had not ordered those tests, nor was he aware that those tests had been ordered. Dr. Korn further testified that diagnosis of acute abdominal pain appear in the medical record, but had been added by someone else. (St. Ex. 4E at 1125-1128)
- v. Patient 195, service date February 20, 1997. Dr. Korn testified that this patient had come in for a pelvic sonogram, which he had ordered. Dr. Korn further testified that the medical records indicate that additional tests had been performed that he had not ordered: "vaso spec," electrolytes, hormone, CBC, gonadotropin, and physiologic study of extremity veins. Moreover, Dr. Korn testified that he had made no diagnoses for this patient, and that the diagnoses of "C-spine sprain and strain," leg pain, and pelvic inflammatory disease that appear in the chart were added by someone else. Finally, Dr. Korn testified that he had written in the patient's chart, "'pap negative for infection.'" He explained that "[t]hat would suggest, although not entirely conclusively, that the diagnosis of [pelvic inflammatory disease] is not entirely accurate. The two are almost mutually exclusive." (St. Ex. 4E at 1128-1131)

Testimony of Peter M. Barnovsky, D.O.

- i. Peter M. Barnovsky, D.O., testified that he had been employed by Dr. Urban from May through December 1995. Dr. Barnovsky further testified that he and Dr. Urban had discussed that Dr. Barnovsky was looking for a permanent place to practice, and that Dr. Barnovsky had been “looking for something in the meantime until [Dr. Barnovsky] got set up.” Moreover, Dr. Barnovsky testified that, for his first two weeks working in Dr. Urban’s office, Dr. Urban was not present. Finally, Dr. Barnovsky testified that, during the time he was employed by Dr. Urban, no other physicians beside himself and Dr. Urban worked there. (St. Ex. 4E at 1202-1205)

Dr. Barnovsky testified that, when a patient came into Dr. Urban’s office, lab work, x-rays, and physical therapy would be performed on the patient, then the patient would be placed in an examination room for the physician to see. Dr. Barnovsky further testified that, as a matter of routine, tests had already been ordered prior to his seeing the patient. (St. Ex. 4E at 1206-1210)

Dr. Barnovsky testified that he had been uncomfortable with the number of tests that were being ordered: “I was told regularly [by Dr. Urban] that I wasn’t ordering enough tests and I needed to let the nursing staff do their job and I was to do my job, and that I needed to learn about the art of medicine[.]” Moreover, Dr. Barnovsky testified that these discussions frequently occurred when Dr. Urban handed Dr. Barnovsky his paycheck: “for example he would say that there is not enough profit margin on some of these tests, we need to get more of them ordered, the staff needs to get their job done and you need to let them do that. And then he would hand me the check afterwards.” (St. Ex. 4E at 1211-1213)

Dr. Barnovsky testified that he does not believe that tests should be ordered on a patient until a physician has seen the patient. Dr. Barnovsky noted that there are exceptions; for example, a nurse should immediately start an EKG on a patient who comes in with chest pain. Dr. Barnovsky further testified that a diagnosis noted in patient records should reflect what the physician thinks the patient is suffering from. (St. Ex. 4E at 1213-1214)

- j. Dr. Barnovsky testified that while working in Dr. Urban’s office he would occasionally order a hormone test as part of a dermatology workup on women suffering from certain skin problems or unwanted hair growth. Dr. Barnovsky further testified that Dr. Urban became aware that Dr. Barnovsky had been ordering such tests. Dr. Barnovsky testified that Dr. Urban “subsequently added that to the lab work that was performed in the office, and some of those tests would also be done ahead of time before I saw the patients, and sometimes they would even be drawn on male patients.” Dr. Barnovsky noted that such tests would have no validity for a male patient. (St. Ex. 4E at 1216-1217)

2001 NOV -6 P 1: 26

- k. Dr. Barnovsky testified that during the course of his employment with Dr. Urban he had seen diagnoses that he did not make added to medical records. Dr. Barnovsky further testified that these diagnoses were added without first consulting with Dr. Barnovsky and obtaining his authorization. Moreover, Dr. Barnovsky testified that the diagnoses had been added to justify testing that had been performed without Dr. Barnovsky's order. (St. Ex. 4E at 1217-1220)
- l. Dr. Barnovsky testified that he had observed or heard Dr. Urban make demands of his staff to increase billings, and to increase the amount of tests being ordered. (St. Ex. 4E at 1221)
- m. Dr. Barnovsky testified concerning tests being performed without an order from Dr. Barnovsky, and/or diagnoses being entered without Dr. Barnovsky's authorization into medical records, for patient visits in which Dr. Barnovsky was the treating physician. (St. Ex. 4F at 1224-1267) Dr. Barnovsky's testimony on these issues included the following:
 - i. Patient 111. Dr. Barnovsky stated that the medical records indicate that, for service date June 16, 1995, the patient had complained of leg pain. Dr. Barnovsky further testified that the medical records indicated that Patient 111's last menstrual period had started on June 6, 1995. Moreover, Dr. Barnovsky testified that CUA and HCG tests had been performed, but that he had not ordered them. In addition, Dr. Barnovsky noted that HCG is a pregnancy test, and that he would not have ordered such a test on a patient whose last menstrual period had begun ten days earlier. Dr. Barnovsky further testified that the diagnoses of amenorrhea and UTI were not his and had been added by someone else. Finally, Dr. Barnovsky testified that amenorrhea is a lack of menstrual cycle, and would not have been an appropriate diagnosis for a woman whose last menstrual period had begun ten days earlier. (St. Ex. 4F at 1226-1234)

Dr. Barnovsky further testified that diagnoses for mitosis and hypothyroid in the medical record for service date June 29, 1995, were not written in his handwriting and were not his diagnoses. (St. Ex. 4F at 1224-1226)
 - ii. Patient 92, service date July 13, 1995. Dr. Barnovsky testified that a diagnosis in the medical record for "fibrocystic breast" was not written in his handwriting and was not his diagnosis. Dr. Barnovsky further testified that a CUA had been performed, but had not been ordered by him. (St. Ex. 4F at 1226, 1236)
 - iii. Patient 67, service date September 14, 1995. Dr. Barnovsky testified that he had not ordered a KUB, chest x-ray, drug screen, complete urinalysis, pregnancy test, EKG, "R&R," or "somatosensory," although the chart indicates that those tests had been performed. Dr. Barnovsky further testified that diagnoses for back pain

2001 NOV -6 P 1:26

and cardiac arrhythmia were not in his handwriting and were not his diagnoses. (St. Ex. 4F at 1228-1229)

- iv. Patient 15, service date July 10, 1995. Dr. Barnovsky testified that a CUA was performed that he had not ordered. Dr. Barnovsky further testified that he had diagnosed acute bronchitis and fatigue, but an additional diagnosis of hypothyroid appears in the medical records that had been added by someone else. (St. Ex. 4F at 1234-1235)
- v. Patient 150, service date July 25, 1995. Dr. Barnovsky testified that the patient's complaint had been a burn on her leg. Moreover, Dr. Barnovsky testified that he had not ordered a chemistry profile, complete urinary analysis, or complete blood count on that date, although the chart indicates that those tests had been performed. Finally, Dr. Barnovsky testified that a diagnosis of anemia appears in the medical records, but had not been made or written by him. (St. Ex. 4F at 1236-1237)

Concerning service date August 1, 1995, Dr. Barnovsky testified that he had treated the patient for complaints of "[s]tiff neck causing headaches and foot pain." Dr. Barnovsky also testified that he had not ordered a "chem test," CUA, CBC, or thyroid profile, although the chart indicates that those tests had been performed. (St. Ex. 4F at 1237-1238)

- vi. Patient 69, service date September 5, 1995. Dr. Barnovsky testified that the patient had come in for removal of sutures from a previously performed biopsy. Dr. Barnovsky testified that he did not order a CUA, comprehensive profile, CEA, ESR, or "Lymes for culture," although the chart indicates that those tests had been performed. (St. Ex. 4F at 1249)
- vii. Patient 122, service date November 9, 1995. Dr. Barnovsky testified that the patient had had a fractured ankle, and had complained that the cast was too tight. Dr. Barnovsky testified that his diagnosis was ankle fracture. Dr. Barnovsky further testified that he had not ordered a "comprehensive profile which included chemistry tests," thyroid panel, CBC, or ASO, although the chart indicates that those tests had been performed. Moreover, Dr. Barnovsky testified that he had not diagnosed hypothyroid or anemia, although those diagnoses appear in the medical records. (St. Ex. 4F at 1260-1262)
- n. Dr. Barnovsky testified that he had left Dr. Urban's employ in December 1995 in order to start his own practice, and because Dr. Barnovsky "was uncomfortable working at the place." Dr. Barnovsky testified that he currently practices in Cortland, Ohio. (St. Ex. 4E at 1202; St. Ex. 4F at 1267-1268) Dr. Barnovsky acknowledged that he had ordered unnecessary tests while employed by Dr. Urban. Dr. Barnovsky testified that that is something that he regrets. Dr. Barnovsky further testified, "I was

2001 NOV -6 P 1:26

instructed to, and I did it for a short period of time until I refused to do it anymore.”
(St. Ex. 4F at 1328-1331)

- o. Dr. Barnovsky testified that he believes that some conditions that Dr. Urban’s patients suffered from were not being treated properly. Further, Dr. Barnovsky testified that “sometimes testing was done and nothing was being done with certain abnormal values.” (St. Ex. 4F at 1408-1409)

Testimony of William R. Blesch, M.D.

- p. William R. Blesch, M.D., testified that he had worked as a *locum tenens* physician in Dr. Urban’s office from June 17 through 21, 1996. Dr. Blesch further testified that he never met Dr. Urban, that Dr. Urban was not in the office that week, and that no other physician worked in Dr. Urban’s office that week. Moreover, Dr. Blesch testified that he had not been informed during that time that any member of Dr. Urban’s staff had the authority to order tests without Dr. Blesch’s permission. (St. Ex. 4G at 1455-1459)
- q. Dr. Blesch testified as follows concerning patients that he saw at Dr. Urban’s office:
 - i. Patient 88, service date June 17, 1996. Dr. Blesch testified that the patient came in complaining of backache and back pain secondary to a 1994 automobile accident. Dr. Blesch testified that the medical records indicate that the following tests had been performed: CUA, CBC, “chem,” and ESR. Dr. Blesch further testified that he had not ordered those tests, and had not been aware that they were performed. Dr. Blesch further testified that he had not written the word “bed” that appears beneath his signature, but presumed it to mean either “bed rest or that bed that [Dr. Urban] had in the office with the hot waterbed-type thing.” (St. Ex. 4G at 1459-1461)
 - ii. Patient 34, service date June 21, 1996. Dr. Blesch testified that the patient’s complaints had been weakness in both arms and numbness in the fingertips for an extended period of time. Dr. Blesch testified that the medical records indicate that the following tests were performed, but that he had not ordered them: CUA, estradiol, CBC, ASO, “chem,” and electrolytes. Dr. Blesch further testified that he had not diagnosed URI and back pain, although these diagnoses appear in the patient record. Moreover, Dr. Blesch testified that the word, “bed,” appears in the record but was not written by him. (St. Ex. 4G at 1461-1465)
 - iii. Patient 187, service date June 17, 1996. Dr. Blesch testified that the patient had complained of backache, coughing, sore throat, and runny nose for two days. Dr. Blesch testified that a diagnosis of aortic aneurysm appears in the medical records, but was not made by him. Dr. Blesch further testified that the medical records indicate that the following tests were performed, but that he had not

2001 NOV -6 P 1: 26

ordered them: paranasal sinus x-ray, CBC, "chem," amylase, ASO, "mono," TC, and "aorta U.S." (St. Ex. 4G at 1465-1469)

- iv. Patient 46, service date June 18, 1996. Dr. Blesch testified that the patient complained of wrist pain secondary to having fallen two days earlier, and of cold symptoms. Dr. Blesch further testified that he had ordered an x-ray of the patient's wrist. Dr. Blesch testified that the medical records indicate that the following tests were performed, but that he had not ordered them: PFT, pulse oximetry (which tested 98 percent), complete urinalysis, CBC, "[h]epatic," and electrolytes. Moreover, Dr. Blesch testified that the following diagnoses appear in the medical record, but had not been made by him: paralysis, "colles" [sic] fracture, and pulmonary insufficiency. (St. Ex. 1470-1474)
- v. Patient 117, service date June 18, 1996. Dr. Blesch testified that the patient's complaints had been back pain, elevated blood pressure, and shortness of breath and dizziness after climbing stairs. Dr. Blesch testified that he had diagnosed carotid bruit, hypertension, and possible cardiac disease. Dr. Blesch further testified that the medical records indicate that the following tests were performed, but that he had not ordered them: pulse oximeter, PFT, CBC, hepatic profile, and electrolytes. (St. Ex. 4G at 1475-1477)
- vi. Patient 82, service date June 19, 1996. Dr. Blesch testified that the patient's complaints had been headaches and lower back pain. Dr. Blesch further testified that the medical records indicate that the following tests were performed, but that he had not ordered them: CUA, HCG, CBC, hepatic profile, and electrolytes. In addition, Dr. Blesch testified that he had diagnosed sinus headache and mild anemia. Nevertheless, Dr. Blesch testified that additional diagnoses of breast pain, hepatomegaly, anemia, and electrolyte imbalance appear in the medical records but had not been made by him. (St. Ex. 4G at 1477-1483)
- vii. Patient 68, service date June 18, 1996. Dr. Blesch testified that the patient had been in a fight four days earlier and had an injured left knee, scratched right elbow, body aches, and a blow to the left eye. Dr. Blesch testified that he had diagnosed left knee ligamentous strain and sprain, but did not render the additional diagnosis of seizure disorder that appears in the medical records. Further, Dr. Blesch testified that the medical records indicate that the following tests were performed, but that he had not ordered them: CUA, drug screen, CBC, hepatic profile, HIV, and ESR. (St. Ex. 4G at 1480-1487)

Dr. Blesch testified that another medical professional reviewing Patient 68's medical records would be led to believe that these were the medical records of Dr. Blesch, including the diagnosis of seizure disorder. (St. Ex. 4G at 1486-1487)

6. In addition to the physicians who testified, several members of Dr. Urban's staff testified at the criminal trial. This testimony included the following:

Testimony of Cathy Fabian, L.P.N.

- a. Cathy Fabian testified that she is a licensed practical nurse [LPN] and that she has been licensed as such in the State of Ohio since 1979. Ms. Fabian testified that she worked for Dr. Urban as a staff nurse from January 1985 through April 1999. Ms. Fabian testified that she was the only nurse who worked for Dr. Urban during the time that she was employed by him. Ms. Fabian further testified that she has never been a registered nurse in the State of Ohio, and that Dr. Urban had been aware that she was not a registered nurse. (St. Ex. 4D at 739-741, 748, 762)

Ms. Fabian testified that she performed gynecological exams on patients in Dr. Urban's office. Ms. Fabian further testified that Dr. Urban had approached her in 1992 and inquired if Ms. Fabian would be interested in performing routine pap tests on his female patients, and Ms. Fabian agreed to do them. Moreover, Ms. Fabian testified that Dr. Urban instructed her concerning how to perform the tests. Further, Ms. Fabian testified that Dr. Urban had told her that it was okay for her to perform those tests. Ms. Fabian testified that she had questioned Dr. Urban concerning the ability of an LPN to perform these tests, and that Dr. Urban told her that she could obtain the specimens for a routine pap smear under the direction of a physician. Finally, Ms. Fabian testified that, since that time, she has learned that, under Ohio law, "LPNs are not permitted to perform pap tests nor gynecological exams." (St. Ex. 4D at 741-749)

Ms. Fabian testified that Dr. Urban was on site when she performed pap tests. (St. Ex. 4D at 829) Ms. Fabian further testified that office policy required that physician had to be on site, but did not have to be in the examination room. (St. Ex. 4D at 849-850)

Ms. Fabian testified that in September 1999 she entered a plea of guilty to a misdemeanor charge of unlicensed practice of registered nursing in Trumbull County [Ohio] Court. Ms. Fabian testified that the court sentenced her to one year of reporting probation and a fine. Further, Ms. Fabian testified that the Ohio Board of Nursing reprimanded her. (St. Ex. 4D at 749-750)

- b. Ms. Fabian testified that Dr. Urban had standard operating procedures that were to be followed to expedite a patient's visit. Ms. Fabian further testified that, for example, "[i]f a patient came into the office with a complaint of chest pain, [a member of Dr. Urban's staff] would order the chest x-ray, the EKG, the PFTs, and then have all of the information available in the chart before the patient was put into the room to see the doctor." Ms. Fabian testified that these tests were ordered and performed

STATE MEDICAL BOARD
OF OHIO

prior to the patient seeing and meeting with the physician. Moreover, Ms. Fabian testified that this was done routinely. (St. Ex. 4D at 750-754)

Ms. Fabian testified that Dr. Urban wanted his standard operating procedures to be followed even when another physician was covering his practice. Ms. Fabian testified:

There was a period in 1995 there was another physician working in the office [Dr. Barnovsky] that did not want to order tests, and I was told that the tests had to be ordered. [Dr. Urban] took the other physician and I in his office and told us that the tests had to be ordered.

(St. Ex. 4D at 754-755) Ms. Fabian further testified that Dr. Barnovsky had complained about the office's practice of ordering tests before Dr. Barnovsky had seen the patients, and that Dr. Barnovsky had stated his belief that the tests were not necessary. Ms. Fabian testified that she had approached Dr. Urban and told Dr. Urban that she did not want to "get in the middle" of a dispute between Dr. Barnovsky and Dr. Urban. Moreover, Ms. Fabian testified that Dr. Urban had told her that he wanted his practice to be conducted the same way whether he was there or not, including the ordering of tests and x-rays. Finally, Ms. Fabian testified that she continued to order the tests unless specifically told not to by Dr. Barnovsky. (St. Ex. 4D at 755-757)

Ms. Fabian testified that other physicians had questioned tests being performed before they saw the patient:

Some of them said they preferred to order their own tests, and I instructed them that this was Dr. Urban's policy, the tests were to be ordered before the physician saw the patient so all of the tests could be in the chart. If they wanted additional testing, they could also be ordered.

(St. Ex. 4D at 757-759) Ms. Fabian testified that she told Dr. Urban about the physicians who had indicated a desire to order their own tests. Ms. Fabian testified that Dr. Urban's response was that "[i]t was 'business as usual.' He was ultimately responsible." (St. Ex. 4D at 759)

Ms. Fabian testified that she is aware that individuals other than the physician who saw the patients had added diagnoses to patients' charts. Further, Ms. Fabian testified that she had added diagnoses to patient charts at the direction of Dr. Urban. (St. Ex. 4D at 757-759)

- c. Ms. Fabian testified that she recalled seeing Dr. Urban reviewing and updating patient files that had been requested by the Board and later by the Attorney General's office.

Ms. Fabian testified that Dr. Urban told her that he was “grooming the charts.”
(St. Ex. 4d at 760-761)

Testimony of Barbara Goodhart

- d. Barbara Goodhart testified that she had worked for Dr. Urban as a transcriptionist from 1990 until January 1999. Ms. Goodhart testified that, in July 1997 [sic], the Board had served a subpoena on Dr. Urban, and he subsequently gave Ms. Goodhart a list of charts to be pulled and reviewed. Ms. Goodhart testified that she had complied: “I put them by my desk and I would go through them to make sure everything was in the chart that they were asking for.” Ms. Goodhart further testified that she took additional dictation from Dr. Urban concerning those files. (St. Ex. 4C at 607-608, 624-625)

Ms. Goodhart testified that soon after the Board subpoena arrived, Dr. Urban received a grand jury subpoena for more patient records. Ms. Goodhart testified that, soon after the grand jury subpoena arrived, she observed Dr. Urban writing in “[a]lmost all” of the patient charts. Moreover, Ms. Goodhart testified, “I asked him if he should be doing that, and he said his attorney told him he was allowed to groom the charts, and I said okay and walked away.” (St. Ex. 4C at 626-627)

Ms. Goodhart testified that, after patients were seen by *locum tenens* physicians during Dr. Urban’s absence, certain files were set aside. Upon Dr. Urban’s return, Dr. Urban entered diagnoses in these files. (St. Ex. 4C at 636-637)

- e. Ms. Goodhart testified that Dr. Urban always instructed his staff to tell the truth to the investigators. Further, Ms. Goodhart testified that Dr. Urban made no effort to hide from the staff what he was doing to the patient charts that had been subpoenaed.
(St. Ex. 4C at 656-657)

Testimony of Colleen Chesmar

- f. Colleen Chesmar testified that she is an x-ray technician, and that she had been employed as such by Dr. Urban from September 1985 through March 1999.
(St. Ex. 4H at 1807-1811)

Ms. Chesmar testified that Dr. Urban was “a great person to work for.” Ms. Chesmar further testified that everyone who worked in Dr. Urban’s office got along well, and “were like family.” (St. Ex. 4H at 1814)

Ms. Chesmar testified that “[w]e didn’t order tests ahead of time when there was visiting doctors there. They determined what was to be done with the patient that day.” Ms. Chesmar further testified that x-rays were not performed ahead of time; if the visiting physician did not request an x-ray, no x-ray was done: “That is the way

the office policy was. That is the way we ran the office. Each individual doctor, you know, we did it however—they were the boss that day, and we did it however they wanted it done.” (St. Ex. 4H at 1839-1844)

7. One patient of Dr. Urban’s testified during the criminal trial:

a. Patient J.M. testified that she had been a patient of Dr. Urban’s from 1995 through summer 1996. Patient J.M. testified that in March 1995 she had had a breast examination, cervical examination, and pap smear performed by Cathy Fabian. Patient J.M. further testified that she never saw Dr. Urban during this particular visit. (St. Ex. 4D at 713-715)

b. Patient J.M. testified that at one time she had gone to see Dr. Urban because she was feeling depressed. Patient J.M. further testified that she had wanted to ask Dr. Urban about Prozac, and what the side effects of that medication were. Moreover, Patient J.M. testified that, during this visit:

Dr. Urban responded with putting his sleeve up and tapping at his watch and said, ‘Medicaid doesn’t pay me enough to take this much time,’ and he said, ‘I would recommend you see a therapist.’ Then he responded with, ‘Well, I’m not a psychologist or a psychiatrist,’ and then he said, ‘Do you want the Prozac or not?’ And I said no.

(St. Ex. 4D at 715-716)

c. Patient J.M. testified that, during one of her last visits to Dr. Urban’s office, Dr. Urban entered the examining room and was “very angry, very abrupt.” Patient J.M. testified that Cathy Fabian was with Dr. Urban. Patient J.M. testified:

He said—he took his chart and slammed it down on the shelf that comes out from the wall and he said, ‘I want to know, have you contacted’ I believe he said ‘State Medical Board regarding me?’

And I said, ‘I don’t know what you’re talking about.’

And he said, ‘Did you turn me in for something?’

And I said, ‘No I have not.’

And he proceeded with, ‘Do you sell drugs? Do you do drugs?’

STATE MEDICAL BOARD
OF OHIO

2001 NOV -6 P 1:27

And I proceeded with, 'You're my doctor. You see what you prescribe for me. I don't sell drugs to anybody.'

(St. Ex. 4D at 716-717) Patient J.M. testified that she went back to Dr. Urban only one time following that episode, because Dr. Urban told her to return for an ultrasound. (St. Ex. 4D at 717-718)

- d. Patient J.M. testified that after she left Dr. Urban's practice as a patient, she had requested copies of her medical records. Patient J.M. further testified that she never obtained copies of her records. Patient J.M. testified, "I believe I was told it would be \$25 to release them and a dollar per page, and I just really thought it cost too much money, and I couldn't afford it." (St. Ex. 4D at 718)
8. Dr. Urban presented no witnesses or exhibits in his defense at the criminal trial. (St. Ex. 4I at 2018)
9. The parties to the criminal proceeding had stipulated that Dr. Urban had been paid a total sum of \$713,723.71 by the Ohio Department of Human Services for the years 1995 through 1997. (St. Ex. 4I at 2017; Resp. Ex. 63)
10. On September 22, 2000, the jury returned the following verdicts concerning Dr. Urban:
 - a. Guilty as to Counts One and Two, Tampering with Evidence, in violation of Section 2921.12(A)(1), Ohio Revised Code, felonies of the third degree. Count One concerned records relating to a Franklin County special grand jury investigation initiated by the Ohio Attorney General. Count Two concerned records relating to a Board investigation.
 - b. Guilty as to Counts Six and Seven, Medicaid Fraud, in violation of Section 2913.40(B), Ohio Revised Code, felonies of the fourth degree. Count Six concerned claims for services that were not medically necessary. Count Seven concerned claims for family planning services and related to Dr. Urban having billed for pelvic examinations and pap tests that had been performed by an LPN. Both counts concerned conduct that occurred from January 1, 1995, to June 30, 1996.
 - c. Guilty as to Count Nine, Medicaid Fraud, in violation of 2913.40(B), Ohio Revised Code, but to the lesser offense of a misdemeanor of the first degree. The jury did not find that the value of funds reimbursed in payment of the relevant claims had been five hundred dollars or more. Count Nine concerned conduct that occurred from July 1, 1996, to December 31, 1997.

2001 NOV -6 P 1:27

- d. Not guilty as to Counts Five and Eight. Counts Five and Eight had concerned Medicaid claims relating to thyroid tests.

(St. Ex. 3; St. Ex. 4I at 2126-2127)

11. Following the return of the jury's verdict, the court indicated that, for purposes of sentencing, it required further information concerning the propriety of altering or "grooming" the medical charts that had been subpoenaed by the Board and by the Ohio Attorney General's office. Accordingly, the court provided the parties with an opportunity to present testimony concerning that issue at a sentencing hearing. (St. Ex. 4I at 2129-2132; St. Ex. 4J at 2148-2150) Testimony concerning that issue included the following:

- a. Robert M. Taylor, M.D., testified as an expert on behalf of the State concerning the issue of the propriety of altering medical charts. Dr. Taylor testified that the standard for adding new information to a medical record is for the new note to appear "in proper chronological order so the note appears in the chart consistent with the time and date that it's actually placed[.]" Further, if the new note adds to or corrects a previous note that was erroneous or incomplete, the new note should refer back to the earlier note and state that it is a correction or addition. Moreover, the new note should be dated and signed. (St. Ex. 4J at 2154)

Dr. Taylor testified that if a medical record is altered several years after the occurrence of an event

it's hard to believe that that could be an improvement of the accuracy of the record. It's very unlikely that three years later somebody coming back and making an alteration would improve the accuracy. The presumption would be there is an ulterior motive that the person is going back to somehow make the record appear a certain way rather than reflect reality.

(St. Ex. 4J at 2158) Dr. Taylor further testified that such alterations, if inaccurate, could have negative consequences for the patient's future care. (St. Ex. 4J at 2158)

Dr. Taylor testified that medical assistants and licensed practical nurses do not have the appropriate training and medical knowledge to order tests without the input of the treating physician. Dr. Taylor testified that a *locum tenens* physician is considered to be the treating physician for any patient seen by the *locum tenens* physician. Further, Dr. Taylor testified that the *locum tenens* physician should make the decisions concerning the appropriate testing and treatment for the patients he or she sees. (St. Ex. 4J at 2159-2160)

- b. Kenneth Bravo testified that he is an attorney, and that he was hired by Dr. Urban in July or August 1996. Mr. Bravo further testified that Dr. Urban had retained his

STATE MEDICAL BOARD
OF OHIO
2001 NOV -6 P 1:27

services upon Dr. Urban's receiving a subpoena for patient records from the Board. (St. Ex. 4K at 2196-2197)

Mr. Bravo testified that he and Dr. Urban negotiated with the Board and the Attorney General's office for Dr. Urban to produce the patient records over a period of time. Mr. Bravo further testified that this was necessary in order to give Dr. Urban an opportunity to make copies of the records for his own use, inasmuch as many of the records subpoenaed were active patient files. Moreover, Mr. Bravo testified that some of the information subpoenaed was stored electronically. (St. Ex. 4K at 2198-2201)

Mr. Bravo testified that during the course of his representation of Dr. Urban he learned that Dr. Urban was pulling and copying patient files himself. Mr. Bravo further testified that Dr. Urban stated that he was doing this because

he wanted to make sure that when these files were produced that what was in the file folder for Patient A, for example, were the records that related to Patient A. He explained to me that sometimes another patient's documents would get into the wrong file. He wanted to make sure that all of the papers that were in that file were for the right patient. He wanted to review them all personally.

(St. Ex. 4K at 2202-2203)

- c. Mr. Bravo denied having used the term "grooming" in his conversations with Dr. Urban concerning the production of patient records. Mr. Bravo testified:

I can't say as I sit here today whether that term was used or not used by Dr. Urban. Certainly it was not used by me. But it's my belief if it was used, it was used to describe going through the file to make sure the right pieces of paper were in that file.

(St. Ex. 4K at 2204-2205, 2209) Moreover, Mr. Bravo testified that he had no discussions with Dr. Urban at that time concerning making changes or additions to the patient records, other than the addition of hard copies of electronic data. In addition, Mr. Bravo testified regarding his advice to clients concerning documents that had been subpoenaed:

Well, my normal advice would be that once a document is subpoenaed you have to produce that document as is. Furthermore, as applies to medical charts, it's my understanding there is a correct procedure for adding information to a chart[.] * * * But that never came up. I was never asked that question, so I never gave that advice.

(St. Ex. 4K at 2205-2208) Finally, Mr. Bravo testified that Dr. Urban never informed him that Dr. Urban had been adding information to the patient records other than computer-generated documents. (St. Ex. 4K at 2213-2214, 2219)

- d. Mr. Bravo testified that at some time during his representation of Dr. Urban he had met with the Assistant Attorneys General assigned to Dr. Urban's case. Mr. Bravo further testified that the Assistant Attorneys General had informed him that they had evidence that Dr. Urban's patient records had been altered, and that they were considering charging Dr. Urban with Tampering with Evidence. Mr. Bravo testified that he had been shocked by this information, and that he contacted Dr. Urban immediately and met with Dr. Urban to discuss the issue. Moreover, Mr. Bravo testified that he then informed Dr. Urban that he believed that the evidence of tampering substantially weakened Dr. Urban's criminal defense, and that Dr. Urban appeared in response to be "very shook up." Finally, Mr. Bravo testified that the dollar amount that had been at issue with regard to the then-possible charges of Medicaid Fraud had not been very large, "and the numbers were potentially within an error range within a physician's office and not necessarily indicative of fraud. But the tampering, assuming that they could prove what they were indicating, to me made it much more serious." (St. Ex. 4K at 2221-2224)

12. On January 19, 2001, the court sentenced Dr. Urban as follows:

- a. With regard to Counts One and Two, the Tampering with Evidence counts, the court sentenced Dr. Urban to one year of incarceration on each count, to run concurrently. The court further ordered Dr. Urban to pay a fine of \$10,000.00 for each count, for a total fine of \$20,000.00 for Counts One and Two.
- b. With regard to Counts Six and Seven, the felony Medicaid Fraud counts, the court sentenced Dr. Urban to one year of incarceration for each count, to run concurrently. The court suspended the term of incarceration and placed Dr. Urban on probation for five years, subject to various terms and conditions; fined Dr. Urban \$5,000.00; ordered restitution of \$8,308.15 to be paid to the Ohio Department of Jobs and Family Services; ordered Dr. Urban to complete two hundred hours of community service; ordered Dr. Urban to pay court costs; and ordered Dr. Urban to pay \$2,500.00, which was one-half of the \$5,000.00 cost of the investigation of the case.
- c. With regard to Count Nine, the misdemeanor Medicaid Fraud count, the court sentenced Dr. Urban to five years of probation with the same conditions imposed as to Counts Six and Seven, but with no additional financial sanctions.

(St. Ex. 3; St. Ex. 4L at 30-38)

With regard to its sentence for Counts One and Two, the court stated, in part, as follows:

[Dr. Urban] is an educated man. He is an intelligent man. He was in a position of trust concerning his patients and their records, and the view that I have of the evidence that I saw throughout this trial was that once he believed he was being investigated, there was a systematic effort on his part with the late entries into those records of justifying things that had been going on in his office as a matter of routine in hopes that that justification would prevent exactly what happened here, which was the indictment for the fraud.

(St. Ex. 4L at 33-34) The court allowed Dr. Urban to continue on bond for purposes of appeal and, pending a decision by the Franklin County Court of Appeals, suspended all elements of the sentence except for probation and community service. The Judgment Entry of the Court was filed on January 25, 2001. (St. Ex. 4L at 36-37)

Testimony offered at the Board Hearing by Past and Present Members of Dr. Urban's Staff

13. Jeannette Campana Hamilton testified at the present hearing on behalf of Dr. Urban. Ms. Hamilton testified that she has worked for Dr. Urban as a typist and medical assistant since 1989. (Tr. at 37-38)

Ms. Hamilton testified that Dr. Urban had a full lab, EKG, x-ray, physical therapy, and ultrasound equipment on site. Ms. Hamilton further testified that other physicians in the area would occasionally send patients to Dr. Urban to have lab work performed because the nearest hospital was approximately thirty minutes away. (Tr. at 39-40)

Ms. Hamilton testified that Dr. Urban's patient volume has substantially decreased since his legal problems began. (Tr. at 43-44)

Ms. Hamilton testified that, in the early to mid 1990s, Dr. Urban's office was a nice place to work. Ms. Hamilton testified that "[e]verybody was happy. It was like family. * * * Dr. Urban was good to work for." (Tr. at 44)

Ms. Hamilton testified that she had assisted in responding to the subpoenas for patient records that came to Dr. Urban's office. Ms. Hamilton testified that Dr. Urban had instructed his staff to "make sure that everything was in them that they would need," including lab reports that may have been elsewhere in the office. (Tr. at 45-48)

Ms. Hamilton testified that in 1996 or 1997, Mr. Bravo, Dr. Urban's attorney, visited Dr. Urban's office so Dr. Urban's staff "could ask him and show him what was going on. * * * Like putting the charts together, grooming the charts, making sure all the lab is in there; like I said before, all the tests, everything was in order. Because the way our charts

2001 NOV -6 P 1:27

are, they are in sub files.” Moreover, concerning the term, “grooming,” Ms. Hamilton testified,

[t]hat was something we made up in the office, because it—Putting them together. Grooming, again, I meant like taking the lab, putting it in the lab files. Because stuff got put out of order. It would be like in a lab waiting for follow up. Make sure the lab lady called. There was two lab girls. Make sure somebody called, there was follow up on something, and we made sure it was in there. So trying to make it easier so when they got it, they could see it was done and in there.

(Tr. at 49-52)

Ms. Hamilton testified that she and other members of Dr. Urban’s staff had met with Mr. Bravo. Ms. Hamilton testified as follows concerning that meeting:

[Mr. Bravo] asked what we were doing. We said, again, we were grooming the charts. He asked what that meant. We said putting them together; everything that belonged in it, we were making sure it was in there. And was that adding to? And he said, ‘No. Are you changing any diagnosis?’ and we said no. We showed him what we were doing. We showed him. He said there is nothing wrong with that.

(Tr. at 55-56) Moreover, with regard to added writings in the patient records, Ms. Hamilton testified that Mr. Bravo said that “as long as you weren’t changing diagnoses, there wasn’t anything wrong with it.” (Tr. at 56) Ms. Hamilton later clarified her response, and stated that Mr. Bravo had not told her that it was all right for her to write additional things in the patient records. Ms. Hamilton stated that the writings that she had been referring to were corrections of her spelling errors. Ms. Hamilton testified that she was a bad speller. (Tr. at 61-64)

14. Karen Elder testified at the present hearing on behalf of Dr. Urban. Ms. Elder testified that she had worked as a secretary for Dr. Urban from 1989 until 1998. Ms. Elder testified that her primary job responsibilities included filling out Workers’ Compensation claim forms. Ms. Elder further testified that her job was entirely administrative and that she had no patient care responsibilities. (Tr. at 66-69)

Ms. Elder testified that she had observed Dr. Urban reviewing the charts that had been subpoenaed. Ms. Elder further testified that the only writing that she ever observed Dr. Urban add to a chart was his signature. (Tr. at 80-81)

2001 NOV -6 P 1:27

15. Marcia Urban testified at the present hearing on behalf of Dr. Urban. Ms. Urban testified that she is the spouse of Dr. Urban, and that they have been married for 21 years. (Tr. at 84-85)

Ms. Urban testified that Dr. Urban first opened his office in Cortland, Ohio, in 1984. Ms. Urban stated that the office has remained in the same location since that time, although it has grown substantially in size. Ms. Urban further testified that when Dr. Urban first opened his office, they had only two rooms, and Ms. Urban was Dr. Urban's only employee. Moreover, Ms. Urban testified that Dr. Urban's practice "exploded" after a short time, and continued to grow quickly in patient load, number of employees, and equipment. Finally, Ms. Urban testified that, at the peak of his practice, Dr. Urban saw as many as sixty or seventy patients per day. (Tr. at 88-92)

Ms. Urban testified that Dr. Urban added equipment over time as a convenience to his patients. Ms. Urban further testified that Dr. Urban's office is "out in a very rural community. People would come from very far distances, and as a courtesy to the patients, [Dr. Urban] felt that having services there would benefit and help the people." (Tr. at 92) Accordingly, Ms. Urban testified that Dr. Urban purchased "a very high tech lab system," that Ms. Urban described as being "at the level of hospitals." Ms. Urban testified that Dr. Urban also had x-ray equipment and certified x-ray technicians on site, as well as ultrasound equipment. Moreover, Ms. Urban testified that Dr. Urban had an echocardiogram machine. (Tr. at 94-96)

Ms. Urban testified that Dr. Urban treated all of his patients the same, regardless of their Medicaid, Medicare, or private pay status. (Tr. at 93-94)

Ms. Urban testified that the working environment at Dr. Urban's was like "a family." Ms. Urban further testified that, in the mid 1990s, fifteen people worked there. Ms. Urban testified that, today, four people work there beside herself and Dr. Urban. Moreover, Ms. Urban testified that Dr. Urban today sees only about ten or fifteen patients per day. (Tr. at 96-97)

16. Ms. Urban testified that, when Dr. Urban began receiving subpoenas for patient records, Mr. Bravo visited Dr. Urban's office to meet with Dr. Urban's staff. Ms. Urban further testified that the staff showed Mr. Bravo how they were pulling and copying the charts, that records kept in different sections of the office such as the x-ray and lab were being incorporated into the charts, and submitted to Dr. Urban for his review "to make sure that they were complete or any deficiencies were there, signatures." Ms. Urban testified that Mr. Bravo told Dr. Urban and staff that what they were doing was okay. (Tr. at 97-100)

On direct examination, Ms. Urban described a conversation that occurred between Dr. Urban and Mr. Bravo concerning the subpoenaed patient records. Ms. Urban testified

2001 NOV -6 P 1: 28

that Mr. Bravo told Dr. Urban that it was okay to complete and update the charts as long as they were not changing diagnoses:

Q. [Mr. House]: And can you tell us what Dr. Urban said to Mr. Bravo with respect to the charts?

A. [Ms. Urban]: That some of the charts needed to be completed. If there's any deficiencies, you know, update them.

Q. Anything else?

A. That's really about it.

Q. And what did—

A. And I think he said something like, 'Well, you are not changing anything?' And he says, 'No.'

Q. Did Mr. Bravo say it was all right to do that?

A. Yeah

* * *

Q. Did you have an understanding as to what Mr. Bravo meant by changing things?

A. As long as we weren't changing anything.

Q. Well, when you say anything, what do you mean by anything?

A. There was nothing that was changed, so I don't know.

Q. Do you mean diagnoses?

A. Yeah. Yes.

Q. Anything else?

A. [No.]

(Tr. at 101-102)

17. In a December 4, 2000, affidavit, Ms. Urban stated that “she heard [Mr. Bravo] being advised that certain records were being brought up to date and otherwise added to after the date of treatment[, and that] she heard [Mr. Bravo] tell Dr. Urban that there was nothing wrong with this procedure, and that he could continue to do so, to ‘groom’ them to make the files complete.” (Resp. Ex. 74; Tr. at 112)
18. Ms. Urban testified that members of Dr. Urban’s staff were interviewed by the Attorney General’s office, by the Board, and by the Ohio State Nursing Board. Ms. Urban further testified that Dr. Urban instructed his staff to “[t]ell the truth” during such interviews. (Tr. at 104-105)
19. Ms. Urban testified that she never saw Dr. Urban make additional written entries in the patient records that had been subpoenaed. (Tr. at 116)

Testimony offered at the Board Hearing by Dr. Urban

20. Dr. Urban testified that, at its peak in 1995, his practice employed eighteen people. Dr. Urban further testified that, of these eighteen employees, twelve had been with him for more than five years. Dr. Urban further testified that all of his employees were very highly qualified and competent at their various responsibilities, and that he was very comfortable with them. (Tr. at 140-148)
21. Dr. Urban testified concerning his office’s Standard Operating Procedure and *locum tenens* physicians:

I have this wonderful office, all this equipment, 13 employees, all these patients coming in that I know personally and I admire, I love, and now I bring Dr. Unknown into the picture. Now, how can I develop a relationship with the doctor but I don’t know him too well and he’s coming on site? So this is kind of the overall dilemma I felt I was getting into. So what I used were some backup—Plan B solutions or ideas to provide some protection. And the protection, number one, was really Cathy Fabian; great girl. And she was responsible to go to the doctor on each encounter and hold the doctor’s hand and to evaluate him to make sure he’s doing the right thing—he/she, I should say, this physician that’s on site to make sure that we are doing the right thing for the patient. Because ultimately—as I’m living through this situation, ultimately I felt it would be a burden I would have to bear should a doctor come in and there would be a particular event or a problem. So I felt that by having the operating procedure, the job descriptions, Cathy, Jeannette and Sue, all these people, they would kind of watch and I don’t want to say supervise a physician, but at least provide some guidelines. * * *

2001 NOV -6 P 1: 28

And then I would hear from my staff that this particular patient may have a problem that needs follow up, so then we would approach that patient. But my biggest concerns were what I would call the patients that I would target: What patients came in today, this week, that are the highest risk or have the most significant problems we need to follow up on. Let's make a list of those patients and then we'll attack that list. We'll call those patients up, send them a postcard, make sure there is adequate follow up and adequate care for them.

What I felt I had in place was several methods that I felt detect problem areas, problem issues, problem patients. And then we would address those matters, between the doctors, between Cathy.

* * *

And I thought it was, you know, a safeguard. Again, with the ultimate goal, the ultimate issue, was to provide that gold standard, take care of the patient appropriately and properly, do the right thing.

(Resp. Ex. 70; Tr. at. 150-154)

Dr. Urban stated that the *locum tenens* was the physician in charge when Dr. Urban was not there. Dr. Urban further testified that his standard operating procedures refer to things being performed under the direct supervision of a physician. Moreover, Dr. Urban testified that Ms. Fabian merely provided Dr. Urban with her opinion of how the physician performed. (Tr. at 227-228)

22. Dr. Urban's Standard Operating Procedures state as follows:

Standard Operating Procedures:

Under direct supervision of the physician, an employee of Dr. Edward Urban, may initiate any or all of the following Standard Operating Procedures, in part of the initial patient assessment and triage:

CHEST PAIN/INJURY.....CUA, HCG, DRUG SCREEN, CXR, EKG, PFT'S, AEROSOL NEBULIZER TREATMENT, PULSE OXYMETER [sic].

PELVIC PAIN/INJURY.....CUA, HCG, DRUG SCREEN, KUB, EKG.

SINUS, HEADACHE/INJURY.....CUA, HCG, DRUG SCREEN, CXR, SINUS/SKULL XRAYs, EKG, PULSE OXYMETER [sic].

SHORTNESS OF BREATH.....CUA, HCG, DRUG SCREEN, CXR, PFT'S, AEROSOL NEBULIZER TREATMENT, PULSE OXYMETER [sic], EKG.

**DIGIT, EXTREMITY PAIN/INJURY.....CUA, HCG, DRUG SCREEN,
XRAY, VASOSPECT.**

**NECK, BACK, HIP PAIN/INJURY.....CUA, HCG, DRUG SCREEN,
XRAY, VASOSPECT.**

(Resp. Ex. 70) (Emphasis in original)

23. Dr. Urban further testified concerning how and why his standard operating procedures were implemented:

[The standard operating procedures] were in place to protect the patient, to provide good health care, to protect the business, and to allow a high quality of care. The standard operating procedure if you review it, it talks about doing things in a very general, very nonobligatory fashion. These are guidelines for things that could be done in these particular situations. They were not mandated. They were not necessary for each visit. They were recommendations, suggestions. This is what I would like to see in this particular situation. These are things I wanted to have done eventually. If they have abdominal pain or pelvic pain, these were guidelines. They were set up so that when you see 70, 80 people a day, you didn't have a senior moment, as I'll describe, to say that you forgot to do this test or this thing was forgotten.

Now, the staff knows this is what you like to see. If it's not done, the staff can bring it to you and say, 'This wasn't done,' or, 'This wasn't done because you forgot it.' The checks and balances, the backup system to assure comprehensive care was provided and the services were utilized.

Now, the other aspect of this I believe is that a standard of care is different for each practicing facility, whether it's a hospital, an I.C.U., an operating suite. A standard of care is different at each of these facilities in terms of the responsibility of the physician or the services provided at that particular location. Fortunately, I believe the standard of care at my facility, at my location, was higher than most family practitioner or general practitioner's standards, simply because I had the services available. An example, a pregnancy test, an x-ray, a blood test, those services could be provided and results obtained immediately. Therefore, the standard was much higher there. Like an emergency room versus a doctor practicing in this particular location with a stethoscope. The services he can provide here are very limited. The scope of his practice is limited, the things that can be done. In order to bring in and do it at a logical, orderly manner, a

procedure, a protocol needed to be followed. Policies had to be established. And this is what we do, and this is what we do in these situations.

(Tr. at 195-198)

Dr. Urban testified that, to his knowledge, no tests had been run in his office that were not medically necessary. (Tr. at 203-204) Dr. Urban further testified that medical necessity encompasses “a very broad spectrum of whether you are an HMO or whether you are fee for service. It’s a very broad creature out there, and I think we are trying to contain it and identify it for cost issues.” Moreover, Dr. Urban testified that Medicaid does not define medical necessity, but rather leaves it to the discretion of the physician. Dr. Urban further testified that Medicaid is generally very liberal in paying for services. (Tr. at 204-206)

24. Dr. Urban testified that in 1995 he had purchased a complex computer system for his office. Dr. Urban stated that the system had various modules, such as scheduling, billing, medical records, and prescriptions. Dr. Urban further testified that the module that he had had the most trouble implementing was the medical records module:

The medical records component was my solution to deficient medical records. And this is the area of, you know, the tampering thing which is a devastating—but I knew I had a problem with medical records. I knew I was deficient. I knew I was making a mistake by not completing these timely.
* * * And I put too much faith, I guess, in belief that I could buy a solution and implement it and without any problems or issues.

(Tr. at 169-170) Dr. Urban further testified that just as he was attempting to implement the new computer system, the subpoenas starting coming in: “I’m trying to bring on line a \$40,000 computer system. At the same time I start to realize some of the deficiencies of my medical records, and at the same time I feel the attack on this Medicaid fraud investigation. Bad timing. All kind of blew up at once on me.” (Tr. at 171-174)

25. Dr. Urban testified that he first received a subpoena from the Board for patient records in 1995. Dr. Urban stated that he contacted an attorney, Kenneth Bravo, for advice concerning the subpoena. Dr. Urban testified that the Board’s subpoena had been for approximately 300 patient records to be produced within a period of one or two weeks. Dr. Urban testified that “to logistically get those records out and review them, copy them, process them, groom them, whatever the word may be, but to prepare them was more tedious and labor intensive than I appreciated.” Dr. Urban noted that some parts of his patient records had been stored electronically by that time. Dr. Urban testified that a time frame for delivery was initially worked out. However, Dr. Urban testified that additional subpoenas continued to come to his office, which caused significant disruption for his

2001 NOV -6 P 1: 28

office staff. Finally, Dr. Urban testified that his attorney told him that there was nothing Dr. Urban could do but comply. (Tr. at 163-169)

Dr. Urban testified that he had reviewed his situation with Mr. Bravo, and that Mr. Bravo's response to him had been to "[l]et them do what they want to do. Give them the records. Don't obstruct." (Tr. at 174-177) Dr. Urban further testified that he and Mr. Bravo had had "hours of discussions" concerning what Dr. Urban should physically do with the charts. Dr. Urban testified that he bought a new copier to make copies. Dr. Urban further testified that he and Mr. Bravo talked about "grooming" the charts. Dr. Urban testified:

I don't know where that word really came from, whether it came from me or the staff. I think it came from the staff, that this was the preparation of the chart for transfer to the State, the grooming of the chart. It encompassed the whole aspect of removing [sic] the pieces that were necessary of the chart in terms of dates, the reports, the progress notes, and assuring that all the information was in there, everything was available, that I did not obstruct their investigation or impair it in any way, that I gave them everything they wanted.

* * *

Now, some of the issues I wasn't aware of, some of the scribes, some of the marks that were entered into the chart, but as best I could, I reviewed this with him and, you know, what he said, what I said, must have been a mistake. Maybe I misunderstood him. Maybe he told me, 'Don't write in the chart.' You know, 'Don't change anything.' You know, I lost track of the words, but it seems like we went through this and—It [tampering with evidence] was a big mistake. I don't know how it happened.

(Tr. at 177-181)

Dr. Urban testified that he had made additions to the subpoenaed medical records. Dr. Urban testified that he wrote in the charts and "completed the deficiencies that were in the chart[s]." Dr. Urban further testified, "[I added what] I felt was missing. What I felt I knew about what was missing." Moreover, Dr. Urban testified that he only added information that he had believed to be accurate. Finally, Dr. Urban testified that he thinks that he added approximately thirty entries. (Tr. at 182-185, 233)

Dr. Urban denied that he completed patient charts for times when *locum tenens* physicians had covered his practice. Dr. Urban further testified that if another physician

had seen a patient:

Not too much I can do with that. That's his note, his documentation. I've got to pass. Dr. Urban, it's my record, it's my office, it's my note. Didn't finish the objective, I didn't finish—usually it's the objective part. I didn't finish the objective. I finish it. I remember to the best of my recollection based upon the procedures, the things I routinely did, I finish the note.

(Tr. at 182-185, 233)

Dr. Urban testified that he believed that he had misunderstood Mr. Bravo's advice, and had erroneously believed that Mr. Bravo told him "it was okay to make these additions to complete the deficiencies." Dr. Urban further testified that he had not believed at the time that what had been doing was wrong. (Tr. at 183-184)

Dr. Urban testified that he never destroyed any patient records, nor did he erase any information from the patient records. (Tr. at 188-189)

Dr. Urban denied that he had added to the subpoenaed patient records in order to justify his billing to Medicaid. Dr. Urban stated that he had already billed Medicaid and supplied them with an ICD number and CPT number, and that there was no need to further justify what he had done. (Tr. at 231-233)

26. Dr. Urban testified that he had been a Medicaid provider, and that he had been the subject of audits. Dr. Urban testified that he had been audited frequently, but that he did not believe that that had been unusual. Dr. Urban attributed the frequency of audits to the fact that he was an independent practitioner, rather than a salaried HMO employee, and because of his large patient volume. Dr. Urban acknowledged that mistakes had been found on occasion, and subsequently corrected. Finally, Dr. Urban testified that there was never an issue during these audits of his office having billed for tests that had not been performed. (Tr. at 158-162)

Dr. Urban testified that he had reviewed the patient records that were subpoenaed, rather than simply turn them over, because that is what his office had done during audits. Dr. Urban testified that he had had problems during audits in which he had been told that the files were not complete, and that items were missing from the files. Dr. Urban testified that he had therefore wanted to make sure he "got everything there the first time." (189-191)

27. Dr. Urban testified that the Ohio Attorney General's office interviewed all of his employees during the course of its investigation. Dr. Urban further testified that his instructions to all of his employees had been for them to tell the truth. (Tr. at 186-187)

2001 NOV -6 P 1:28

28. Dr. Urban testified that one of the felony counts of Medicaid Fraud concerned his having allowed an LPN to perform pelvic pap exams. Dr. Urban testified that he had believed at the time that that was permitted, but that he had been in error. Dr. Urban further testified that he had based this opinion on a January 11, 1995, position paper from the Board entitled, *Breast, Pelvic and Papanicolaou Examinations*. This position paper states, in pertinent part: "A licensed physician may delegate specific technical components of the pelvic examination to nurses or physician's assistants if within their scope of practice, such as obtaining papanicolaou smears[.]" Further, Dr. Urban testified that his error had not been allowing an LPN to perform the examinations, but in billing the examinations. (Resp. Ex. 64; Tr. at 207-212)

Dr. Urban testified that Ms. Fabian was a very competent nurse. Dr. Urban further testified that he had trained Ms. Fabian how to perform pap exams. (Tr. at 213-214)

Dr. Urban testified that Mr. Bravo had sent a letter to the Ohio Nursing Board describing what Ms. Fabian was doing and requesting guidance concerning its appropriateness. Dr. Urban further testified that no response was ever received. (Tr. at 214-215)

29. Dr. Urban testified that, throughout the course of the Board and Attorney General investigations of his practice, no one from those agencies or from the Ohio Department of Human Services advised him to stop anything that he was doing. Dr. Urban further stated that if he had been informed that what he was doing was wrong, he would have stopped. (Tr. at 216-217)
30. Dr. Urban testified that he had wanted to testify in his own defense at the criminal trial, but that his criminal trial attorney would not allow him. Dr. Urban stated that the attorney told him that he would refuse to defend Dr. Urban if he chose to testify. Dr. Urban further stated that his criminal trial attorney presented no witnesses or exhibits in his defense. (Tr. at 217-218)
31. Dr. Urban testified that he had had no selfish or dishonest motive in his dealings with the Medicaid program or in his response to the subpoenas. Dr. Urban further testified that he had made mistakes, but they were not criminal acts. Moreover, Dr. Urban testified that none of the conduct that underlies his criminal convictions resulted in patient harm. (Tr. at 223-224)

Additional Evidence

32. Dr. Urban submitted a number of letters from patients and members of his medical community. These letters characterize Dr. Urban as a competent and dedicated physician. (Resp. Exs. 1 through 54) (Note that the State did not have an opportunity to cross-examine the authors of these letters.)

33. Dr. Urban submitted several Entries of Orders and Reports and Recommendations that were recently addressed by the Board, that involve criminal conduct or convictions, and that resulted in dispositions other than permanent revocation. (Resp. Exs. 68 and 75 through 78)

FINDINGS OF FACT

In a Judgment Entry filed in the Franklin County Court of Common Pleas on January 25, 2001, following a trial by jury, Edward J. Urban, D.O., was found guilty of two felony counts of violating Section 2921.12(A)(1), Ohio Revised Code, Tampering with Evidence, based upon the alteration by Dr. Urban of patient medical records that had been subpoenaed by the Ohio Attorney General and the Board in the course of their investigations of Dr. Urban's medical practice. Further, Dr. Urban was found guilty of two felony counts and one misdemeanor count of violation of Section 2913.40(B), Ohio Revised Code, Medicaid Fraud, based upon the false and misleading statements and representations made by Dr. Urban in billing Medicaid for services that were not medically necessary and for family planning services performed by a licensed practical nurse.

CONCLUSIONS OF LAW

1. The crimes for which Edward J. Urban, D.O., was convicted—specifically, Tampering with Evidence and Medicaid Fraud—were based upon false or fraudulent statements made in connection with claims for Medicaid, and the alteration of subpoenaed medical records. Accordingly, the conduct of Dr. Urban underlying the judicial finding of guilt, as set forth in the Findings of Fact, constitutes “publishing a false, fraudulent, deceptive, or misleading statement,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.

At hearing, Dr. Urban moved for dismissal of the Board's allegation that he had violated Section 4731.22(B)(5), Ohio Revised Code. Dr. Urban's attorney argued that “there are no facts in the record indicating that there has been a false, misleading, or fraudulent statement other than the fact that there has been a conviction.” (Hearing Transcript at 36) Dr. Urban's attorney further expressed concern that, should Dr. Urban's criminal conviction be overturned on appeal, Section 4731.22(H), Ohio Revised Code, provides that Dr. Urban could petition for reconsideration of the Board's Order based upon violations of Sections 4731.22(B)(9) and (11), but not for Section 4731.22(B)(5). (See Hearing Transcript at 31-37)

Pursuant to Rule 4731-13-03(E)(1), Ohio Administrative Code, the Hearing Examiner lacks the authority to grant motions for dismissal of charges. However, the Hearing Examiner informed the parties that he would consider Dr. Urban's motion when making a recommendation to the Board.

2001 NOV -6 P 1:29

As stated above, the evidence is sufficient to support a conclusion that the conduct underlying Dr. Urban's criminal convictions involved "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999. The possibility that Dr. Urban's criminal conviction may be reversed some time in the future does not present sufficient ground to warrant the dismissal of this allegation. Accordingly, the Hearing Examiner does not recommend that the Board dismiss its allegation of violation of Section 4731.22(B)(5), Ohio Revised Code, at this time.

2. The judicial findings of guilt concerning Dr. Urban as set forth in the Findings of Fact constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.
3. The judicial findings of guilt concerning Dr. Urban as set forth in the Findings of Fact constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

* * * * *

At hearing, Dr. Urban argued that the Board should impose a disposition other than the permanent revocation of his certificate. In support of his argument, Dr. Urban referenced several recent Board actions in which the Board considered Respondents' criminal convictions and imposed dispositions other than permanent revocation. The cases referenced by Dr. Urban are as follows:

- *Anthony G. Polito, D.P.M.*: Dr. Polito entered into a Consent Agreement with the Board in which he admitted to having been found guilty of one misdemeanor count of Theft, the acts underlying which had involved his fraudulent upcoding of insurance claims for an amount less than three hundred dollars. The Board suspended Dr. Polito's certificate for thirty days, and placed him on probation for at least three years following reinstatement. (See Resp. Ex. 68)
- *Gregory Charles Brant, D.O.*: Dr. Brant pleaded guilty to two misdemeanor counts of Obstructing Official Business, the acts underlying which had involved his alteration of patient records that in turn impeded an investigation by the Ohio Bureau of Workers Compensation. Following a hearing, the Board imposed a permanent revocation that was stayed for an indefinite suspension for at least thirty days, conditions for reinstatement, and probation for at least three years following reinstatement. (See Resp. Ex. 75)
- *Gregory X. Boehm, M.D.*: Dr. Boehm pleaded guilty in U.S. District Court to one felony count of Health Care Fraud, the acts underlying which had involved his knowingly and

2001 NOV -6 P 1:29

willfully executing a scheme to defraud Medicaid and Medicare by submitting numerous billing claims for services he had not actually provided. Following a hearing, the Board suspended Dr. Boehm's certificate for one year, and placed Dr. Boehm on probation for at least five years following reinstatement. (See Resp. Ex. 76)

- *Elliot L. Neufeld, D.O.*: Dr. Neufeld pleaded guilty in federal court to one felony count of Knowingly and Willfully Presenting False Claims, the acts underlying which involved his having made fraudulent claims to Medicare and Medicaid. Following a hearing, the Board imposed a one year suspension of Dr. Neufeld's certificate, stayed all but thirty days of the suspension, and placed Dr. Neufeld on probation for at least three years following reinstatement. (See Resp. Ex. 77)
- *Lawrence L. Young III, M.D.*: Dr. Young pleaded guilty in federal court to one felony count of Attempt to Evade or Defeat Tax, the acts underlying which involved his willful attempt to evade 1995 federal income tax by failing to file a return and failing to pay more than \$150,000.00 income tax due. Following a hearing, the Board imposed a stayed thirty day suspension subject to probation for at least three years. (See Resp. Ex. 78)

Both *Polito* and *Brant* are distinguishable from the present case because they concerned only convictions for misdemeanor offenses rather than for felony offenses. Moreover, *Young* is distinguishable from the present case inasmuch as *Young* involved a conviction for a felony offense that was unrelated to the Respondent's medical practice.

With regard to both *Boehm* and *Neufeld*, the Board found that the conduct that gave rise to those Respondents' convictions had not been committed for the purpose of enriching the Respondents. However, evidence presented in Dr. Urban's case suggests otherwise. For example, the testimony of Dr. Barnovsky and Ms. Fabian offered in the criminal trial indicated that Dr. Urban pressured them to perform tests that were medically unnecessary. Further, when *locum tenens* physicians were covering Dr. Urban's practice, testing was performed that was medically unnecessary, without the order of a physician and, in many cases, without the *locum tenens* physician even being aware that the tests had been performed. Moreover, diagnoses were added to *locum tenens* physicians' notes to attempt to justify the testing performed. Dr. Urban's testimony at the present hearing that the standard of care required such extensive testing—for the simple reason that he had the equipment on site—is ludicrous. Dr. Urban's argument that the billing was an innocent mistake and within an acceptable margin of error is similarly unpersuasive. Finally, when Dr. Urban's patient records were subpoenaed by the Board and by the Ohio Attorney General, Dr. Urban altered the records for the purpose of impairing the evidentiary value of those records.

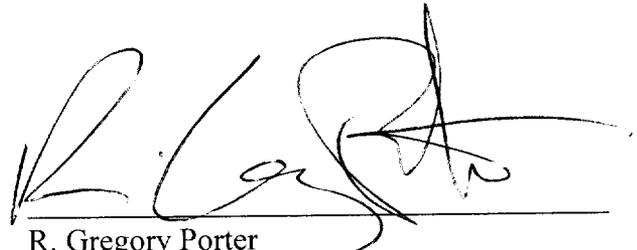
2001 NOV -6 P 1:29

PROPOSED ORDER

It is hereby ORDERED that:

1. The motion of Edward J. Urban, D.O., to dismiss the Board's allegations concerning violation of Section 4731.22(B)(5), Ohio Revised Code, is DENIED.
2. The certificate of Dr. Urban 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.

A handwritten signature in black ink, appearing to read 'R. Gregory Porter', written over a horizontal line.

R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 12, 2001

REPORTS AND RECOMMENDATIONS

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

Dr. Bhati 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 matter of Hany M. Iskander, M.D.; Charles H. Pierce, M.D.; and Edward J. Urban, D.O.? A roll call was taken:

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

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

Dr. Bhati noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Bhati 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.

.....
EDWARD J. URBAN, D.O.

.....
DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF EDWARD J. URBAN, D.O. DR. AGRESTA SECONDED THE MOTION.

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

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

The motion carried.



State Medical Board of Ohio

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

February 14, 2001

Edward J. Urban, D.O.
2950 Greenville Road
P.O. Box 307
Cortland, Ohio 44410

Dear Doctor Urban:

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

- (1) On or about January 25, 2001, in the Franklin County Court of Common Pleas, you were found guilty, following a trial by jury, of two felony counts of violation of Section 2921.12(A)(1), Ohio Revised Code, Tampering with Evidence, based upon your alteration of patient medical records that were subpoenaed by the Ohio Attorney General and the State Medical Board of Ohio in the course of their investigations of your medical practice. Further, you were found guilty of two felony counts and one misdemeanor count of violation of Section 2913.40(B), Ohio Revised Code, Medicaid Fraud, based upon the false and misleading statements and representations you made in billing Medicaid for services that were not medically necessary and for family planning services. A copy of the Judgment Entry and relevant portions of the Indictment are attached and incorporated herein.

The acts underlying the finding of guilt as alleged in paragraph (1) above constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, the judicial finding of guilt as alleged in paragraph (1) above constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, the judicial finding of guilt as alleged in paragraph (1) above constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment

Mailed 2-15-01

in lieu of conviction for, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) 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 (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anant R. Bhati, M.D.
Acting Secretary

AGG/krt

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 4317
RETURN RECEIPT REQUESTED

FILED
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

2001 JAN 25 AM 11:42

36223D13

State of Ohio,

CLERK OF COURTS
Plaintiff,

vs.

Case No. 99CR-09-4745

Edward Urban,

Judge Hogan

Defendant.

JUDGMENT ENTRY



On September 22, 2000, the State of Ohio was represented by Assistant Attorney Generals Connie Nearhood and Adrienne Blair and the Defendant was represented by attorney Mark Colucci. The case was tried by a Jury which returned verdicts finding the Defendant guilty of Counts One and Two, Tampering with Evidence in violation of Section 2921.12 of the R.C., felonies of the third degree (law eff. 7-1-96); guilty of Counts Six and Seven, Medicaid Fraud, in violation of Section 2913.40 of the R.C., felonies of the fourth degree (law prior to 7-1-96); and guilty of Count Nine, Medicaid Fraud, in violation of Section 2913.40 of the R.C., a misdemeanor of the first degree (law eff. 7-1-96). The Jury returned verdicts finding Defendant not guilty of Count Five and Count Eight.

The Court had previously ordered and received a pre-sentence investigation.

121679

A sentencing hearing was scheduled for January 19, 2001, prior to which attorney Colucci withdrew from further representation and William Kluge³⁶²²³⁰¹⁴ entered an appearance on behalf of Defendant. A motion for new trial was filed, evidence taken, and the Court overruled the same on January 19, 2001.

On January 19, 2001, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Attorney Generals Connie Nearhood and Adrienne Blair, and the Defendant was represented by William Kluge. There was not a sentence recommendation.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court hereby imposes the following sentences:

As to Counts Six and Seven, Medicaid Fraud, in violation of 2913.40, fourth degree felonies, the Court has considered the criteria for probation pursuant to Section 2951.02 of the Ohio Revised Code and ORDERS that the execution of the confinement portion of the sentence, to wit: One (1) year on each count concurrent to each other at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS, be suspended and the Defendant be placed on probation in the charge of Cindi Gibson, Chief Probation Officer. The probation is to continue from this date, January 19, 2001, for a period of

five (5) years upon the following terms and conditions, to wit: Defendant shall abide by the rules and regulations of the Probation Department; no new convictions; pay court costs herein; pay a fine in the amount of \$5,000.00; pay restitution of \$8,308.15 to the Ohio Department of Jobs and Family Services, 30 East Broad Street, Columbus, Ohio 43215; Defendant shall complete two hundred (200) hours of Community Service; Defendant shall pay costs of supervision; Defendant shall pay one-half the expenses associated with the investigation of this case that amount in total \$5,000.00, Defendant shall pay \$2,500.00.

36223D15

As to the remaining Counts, the Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is not mandatory pursuant to R.C. 2929.13(F).

As to Count Nine, Medicaid Fraud, in violation of 2913.40, a misdemeanor of the first degree, the Court hereby imposes a period of Probation for five (5) years with the same conditions set out above; however, no additional financial sanctions are rendered as to this Count.

As to Counts One and Two, Tampering With Evidence, in violation of 2921.12 of the R.C., felonies of the third degree, the Court imposes a sentence of one (1) year at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS on each Count to run concurrent to each other.

The Court stated on the record its reasons for imposing this sentence.

56223016

After imposing sentence, the Court gave its finding and stated its reasons for the sentence as required by R.C. 2929.19(B)(2)(a)(b) and (c)(d) and (e).

Having considered Defendant's present and future ability to pay a fine and financial sanctions, pursuant to R.C. 2929.19, the Court orders Defendant to pay a maximum fine of \$10,000 on each count for a total of \$20,000 on Counts One and Two, and the Court renders judgment for the same.

After the imposition of sentence, the Court notified the Defendant orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e).

The Court finds that the Defendant has zero days of jail credit and hereby certifies the time to the Ohio Department of Rehabilitation and Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.

The Court orders that the original bond remain in effect as an appeal bond and the execution of the prison sentence herein ordered is stayed pending appeal.


DANIEL T. HOGAN, JUDGE 1-24-01

Copies to:

36223017

Connie Nearhood
Adrienne Blair
Assistant Attorney Generals

William Kluge
Counsel for Defendant

THE STATE OF OHIO Franklin County, ss	} I, JOHN O'GRADY, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>JUDGMENT ENTRY</u> NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COUNTY THIS <u>12</u> DAY OF <u>FEB</u> A.D. 20 <u>01</u>	
JOHN O'GRADY, Clerk	
By <u>Jan Stark</u> Deputy	

32711C10

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

99CR 09-4745

CASE NO.

STATE OF OHIO :
:
COUNTY OF FRANKLIN, ss :

INDICTMENT FOR:

Edward J. Urban

TAMPERING WITH EVIDENCE, Felony of the third degree, R.C. 2921.12(A)(1)(law on and after July 1, 1996), Two Counts;

; MEDICAID FRAUD, Felony of fourth degree, R.C. 2913.40(B) (law prior to July 1, 1996),

One Count; MEDICAID FRAUD, Felony of the fifth degree, R.C. 2913.40(B)(law on and after July 1, 1996), One Count.

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
99-09-3
CLERK
R.C.

In the Court of Common Pleas, Franklin County, Ohio, of the Special Grand Jury Term beginning the eleventh day of January in the year of our Lord, one thousand nine hundred and ninety-nine.

ON COMPUTER
17

The Jurors of the Special Grand Jury of the State of Ohio, duly selected, impaneled and sworn, on their oaths, in the name and by the authority of the State of Ohio:

Count One

Do find and present that over the period of on or about May 7, 1997, to on or about September 30, 1998, Edward J. Urban, within Franklin County, Ohio, as part of a course of criminal conduct, did, knowing that an official investigation, to wit: a Franklin County special grand jury investigation of Medicaid Fraud initiated by the Ohio Attorney General under R.C. 109.85 was in progress, alter, destroy, conceal, and remove certain records and documents, to wit: medical records and documents relating to treatment, care, and services purportedly given or provided to Ohio Medicaid recipients, with purpose to impair their value as evidence in such investigation, and the aforesaid is a violation of Section 2921.12(A)(1) of the Ohio Revised Code, Tampering with Evidence, a felony of the third degree.

Count Two

Do find and present that over the period of on or about July 18, 1996, to on or about September 9, 1996, Edward J. Urban, within Franklin County, Ohio, as part of a course of criminal conduct, did, knowing that an official investigation, to wit: an Ohio State Medical Board investigation, was in progress, alter, destroy, conceal, and remove certain records and documents, to wit: medical records and documents relating to treatment, care, and services purportedly given or provided to Ohio Medicaid recipients, with purpose to impair their value as evidence in such investigation, and the aforesaid is a violation of Section 2921.12(A)(1) of the Ohio Revised Code, Tampering with Evidence, a felony of the third degree.

Count Six

Do find and present that over the period of on or about January 1, 1995, to on or about June 30, 1996, Edward J. Urban, within Franklin County, Ohio, as part of a course of criminal conduct, did knowingly make and cause to be made false and misleading statements and representations to the Ohio Department of Human Services, Medicaid Division, in claims for medical services that were not medically necessary, all submitted for use in obtaining reimbursement from the State of Ohio Medical Assistance Program ("Medicaid"), and the aforesaid is a violation of Section 2913.40(B) of the Ohio Revised Code, Medicaid Fraud, a felony of the fourth degree.

Count Seven

Do find and present that over the period of on or about January 1, 1995, to June 30, 1996, Edward J. Urban, within Franklin County, Ohio, as part of a course of criminal conduct, did knowingly make and cause to be made false and misleading statements and representations to the State of Ohio Department of Human Services, Medicaid Division, in claims for "family planning services", all submitted for use in obtaining reimbursement from the State of Ohio Medical

32711C14

Assistance Program ("Medicaid"), and the aforesaid is a violation of Section 2913.40(B) of the Ohio Revised Code, Medicaid Fraud, a felony of the fourth degree.

Count Nine

Do find and present that over the period of on or about July 1, 1996, to December 31, 1997, Edward J. Urban, within Franklin County, Ohio, as part of a course of criminal conduct, did knowingly make and cause to be made false and misleading statements and representations to the State of Ohio Department of Human Services, Medicaid Division, in claims for medical services which were not medically necessary, all submitted for use in obtaining reimbursement from the State of Ohio Medical Assistance Program ("Medicaid"). The value of the funds reimbursed in payment of said claims is five hundred dollars (\$500.00) or more and the aforesaid is a violation of Section 2913.40(B) of the Ohio Revised Code, Medicaid Fraud, a felony of the fifth degree.

32711C18

Contrary to the statute in such cases made and provided, and against the peace and dignity of
the State of Ohio.

BETTY D. MONTGOMERY

Attorney General

By:



ADRIANNE M. BLAIR (0043988)

DENISE S. GOLONKA (0034466)

Assistant Attorneys General

Prosecuting Attorneys

A TRUE BILL


Foreperson of the Grand Jury

NOTICE OF APPEAL

Appellant Edward J. Urban, D.O. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals for Franklin County, Tenth Appellate District, entered in Case Number 03APE-04-426 on January 13, 2004 in the case styled *Edward J. Urban, D.O. v. The State Medical Board of Ohio*.

This case is one of public or great general interest.

Respectfully submitted,

OHIO STATE MEDICAL BOARD

MAR 0 1 2004



N. Victor Goodman (0004912)
C. David Paragas (0043908)
Ronald L. House, Jr. (0036752)
Counsel of Record
Benesch, Friedlander, Coplan
& Aronoff LLP
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Telephone No. (614) 223-9300
Facsimile No. (614) 223-9330

Counsel for Appellant
Edward J. Urban, D.O.

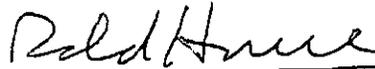
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal was served via regular U.S. Mail Service this 27 day of February, 2004, upon the following:

Rebecca J. Albers
Assistant Attorney General
Health and Human Services Section
State Office Tower
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428

OHIO STATE MEDICAL BOARD

MAR 01 2004



Ronald L. House (0036752)