



State Medical Board of Ohio

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March 13, 2002

James Harold Gray, Jr., D.O.
204 Woodland Drive
P. O. Box 1045
Antwerp, OH 45813

Dear Doctor Gray:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 13, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

Such an appeal 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. /TAG
Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4359
RETURN RECEIPT REQUESTED

Cc: Anne Marie Sferra Vorys and James F. Flynn, Esqs.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4366
RETURN RECEIPT REQUESTED

Mailed 3.26.02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 13, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of James Harold Gray, Jr., D.O., as it appears in the Journal of the State Medical Board of Ohio.

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


Anand G. Garg, M.D. /TAD
Secretary

(SEAL)

March 13, 2002
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES HAROLD GRAY, JR., D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 13, 2002.

Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of James Harold Gray, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Gray's certificate shall be SUSPENDED for fifteen (15) days.
- B. **PROBATION:** Upon reinstatement or restoration, Dr. Gray's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
 - 1. **Modification of Terms:** Dr. Gray shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - 2. **Obey the Law:** Dr. Gray shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - 3. **Declarations of Compliance:** Dr. Gray shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating

whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal Appearances:** Dr. Gray shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. **Tolling of Probationary Period While Out of State:** In the event that Dr. Gray should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Gray must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
6. **Record Services Provided by Physician Assistant:** Dr. Gray shall document with specific detail in the patient medical record the services provided by any physician assistant in Dr. Gray's employ.
7. **Random Inspection of Dr. Gray's Practice:** Dr. Gray shall allow inspection of his practice by Board investigators on a random basis to assure that Dr. Gray and his physician assistant are practicing in accordance with Dr. Gray's utilization plan and with the law of the State. Dr. Gray shall make his patient charts available to the Board for inspection upon request.
8. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Gray shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
9. **Medical Records Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Gray shall provide acceptable documentation of satisfactory completion of a course on maintaining adequate and appropriate medical records, such course to be approved in advance by

the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

10. **Examination on Law Relating to Practice of Physician Assistants:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Gray shall take and pass an examination to be administered by the Board or its designee related to the content of the Revised Code and the Administrative Code relating to the practice of physician assistants in Ohio.
11. **Refrain From Teaching Physician Assistants:** Dr. Gray shall refrain from teaching physician assistants, unless otherwise determined by the Board.
12. **Violation of Terms of Probation:** If Dr. Gray violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Gray's certificate.

C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Gray's certificate will be fully restored.

D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gray shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Gray shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gray shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Gray shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Gray shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

In the Matter of James Harold Gray, Jr., D.O.

Page 4

This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.

(SEAL)

Anand G. Garg, M.D. / ~~MD~~
Anand G. Garg, M.D.
Secretary

March 13, 2002

Date

2002 FEB -8 P 4: 37

**REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES HAROLD GRAY, JR., D.O.**

The Matter of James Harold Gray, Jr., D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on October 1 through 5, 9, 18, 19, and 24, 2001.

INTRODUCTION

I. Basis for Hearing

A. By letter dated June 13, 2001, the State Medical Board of Ohio [Board] notified James Harold Gray, Jr., D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on allegations pertaining to Dr. Gray's supervision of Thomas L. Gemmer, P.A., and Thomas A. Hunter, P.A. The Board alleged that Dr. Gray's conduct constitutes:

- “[m]aking 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, podiatry, 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,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.”
- “[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter,’ as that clause is used in Section 4731.22(B)(32), Ohio Revised Code, to wit: Section 4730.21(C), Ohio Revised Code.”
- “‘violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,’ as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.”
- “‘violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter

STATE MEDICAL BOARD
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or any rule promulgated by the board,' as that clause is used in Section 37
4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-03(C), Ohio
Administrative Code as in effect prior to September 1, 2000."

- "“violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,’ as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-04(C), Ohio Administrative Code.”
- "“[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,’ as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense.”
- "“[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,’ as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4729.51, Ohio Revised Code, Persons who may sell, purchase, distribute, or deliver dangerous drugs.”
- "“[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,’ as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, as in effect prior to October 20, 1994, to wit: Section 4731.41, Ohio Revised Code. Pursuant to Section 4731.99(A), Ohio Revised Code, as in effect prior to March 9, 1999, violation of 4731.41, Ohio Revised Code, constitutes a misdemeanor offense.”
- "“[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,’ as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4730.02(E), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.”

Accordingly, the Board advised Dr. Gray of his right to request a hearing in this matter. (State’s Exhibit 5A).

- B. On July 11, 2001, James F. Flynn, Esq., submitted a written hearing request on behalf of Dr. Gray. (State's Exhibit 5B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mary K. Crawford, Assistant Attorney General.
- B. On behalf of the Respondent: Anne Marie Sferra Vorys and James F. Flynn, Esqs.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

- 1. James Harold Gray, Jr., D.O., as on cross-examination
- 2. Thomas A. Hunter, P.A., as on cross-examination
- 3. Larry Wayne Thornhill
- 4. Kelly Sherry, L.P.N.
- 5. Michael S. Baggish, M.D.
- 6. Jeanette Brooks
- 7. Rose Monger, R.N.
- 8. Patricia Madison, R.N.
- 9. Cathy Hacker

B. Presented by the Respondent

- 1. Mother of Patients 2 and 3
- 2. Thomas A. Hunter, P.A.
- 3. Joel Mariotti
- 4. David Derck
- 5. Lori Lynn Hockenberry
- 6. Fred Abramovitz, M.D.
- 7. Gary Wayne Adkins
- 8. David Eugene Bagley
- 9. Cathy Hacker
- 10. James Harold Gray, Jr., D.O.
- 11. David Paul Schlueter, M.D.

12. Brian L. Bachelder, M.D.
13. Jeffrey Dale Bachtel, M.D.

II. Exhibits Examined

(Note: Exhibits marked with an asterisk [*] have been sealed to protect confidentiality.)

A. Presented by the State

- * 1. State's Exhibits 1, 2, and 3: Copies of medical records maintained by Dr. Gray for Patients 1, 2, and 3, respectively.
- * 2. State's Exhibit 4: Confidential patient key.
3. State's Exhibits 5A through 5AA: Procedural exhibits.
4. State's Exhibit 6: Withdrawn.
5. State's Exhibit 7: Copy of a Physician's Assistant Utilization Request filed with the Board by Dr. Gray in July 1991.
6. State's Exhibit 8: Copy of a Notice of Employment of Physician's Assistant filed in August 1991 by Dr. Gray on behalf of Thomas L. Gemmer, P.A.
7. State's Exhibit 9: Copy of Dr. Gray's July 21, 1999, Physician Assistant Utilization Plan.
8. State's Exhibit 10: Copy of an application for hospital privileges submitted by Thomas A. Hunter, P.A., to Paulding County Hospital.
9. State's Exhibits 11, 12, and 13: Redacted copies of minutes from Paulding County Hospital's Medical Staff Executive Committee Meetings held on April 21, September 3, and September 15, 1997, respectively.
10. State's Exhibit 14: Copy of a Paulding County Hospital policy entitled "Students, Physician Assistant - Approved Clinical Rotations and Observer-Only Status" effective September 25, 1997.
11. State's Exhibit 15: Copy of a Physician Assistant Utilization Plan filed with the Board by Dr. Gray on July 21, 1999.
12. State's Exhibit 16: Curriculum vitae of Michael Simeon Baggish, M.D.

13. State's Exhibit 17: Withdrawn.
14. State's Exhibit 18: Diagram of the procedure used to perform a circumcision.
15. State's Exhibits 19 and 20: Excerpts regarding circumcision from *Taber's Cyclopedic Medical Dictionary* and *Mosby's Medical, Nursing, and Allied Health Dictionary*.
16. State's Exhibit 21: A leaflet entitled, "Circumcision: Information for Parents," produced by the American Academy of Pediatrics.
17. State's Exhibit 22: Withdrawn.
18. State's Exhibit 23: Copy of a transcript of an April 13, 2001, deposition of Mr. Hunter.
19. State's Exhibits 24, 25 and 26: Copies of documents pertaining to Dr. Gray's 1991 Physician's Assistant Utilization Request.
20. State's Exhibit 27: Copy of a transcript of an April 13, 2001, deposition of Dr. Gray.
21. State's Exhibit 28: Excerpt of testimony provided by Brian L. Bachelder, M.D., before an unrelated Board hearing.

B. Presented by the Respondent

1. Respondents' Exhibit A: Map of Paulding County, Ohio, and vicinity.
2. Respondents' Exhibit B: Copy of a February 2, 2000, letter to Mr. Hunter from Larry W. Thornhill, Chief Executive Officer of Paulding County Hospital.
- * 3. Respondents' Exhibit C: Copy of a signed Consent for Invasive Medical Procedure pertaining to the circumcision of Patient 2.
4. Respondents' Exhibit D: Copy of a June 27, 2000, letter to Dr. Gray from the Medical Executive Committee of Paulding County Hospital.
5. Respondents' Exhibit E: Copy of a June 27, 2000, letter to Mr. Hunter from the Medical Executive Committee of Paulding County Hospital.

6. Respondents' Exhibit F: Copy of a September 6, 2000, letter to Mr. Hunter from Mr. Thornhill.
7. Respondents' Exhibit G: Copy of a September 6, 2001, expert report by Fred Abramovitz, M.D.
8. Respondents' Exhibit H: Copy of a September 10, 2001, expert report by Jeffrey D. Bachtel, M.D.
9. Respondents' Exhibit I: Copy of an undated expert report by Brian L. Bachelder, M.D.
10. Respondents' Exhibit J: Curriculum vitae of Dr. Gray.
11. Respondents' Exhibit K: Curriculum vitae of Dr. Abramovitz.
12. Respondents' Exhibit L: Curriculum vitae of Dr. Bachtel.
13. Respondents' Exhibit M: Curriculum vitae of Dr. Bachelder.
14. Respondents' Exhibit N: Copy of an April 10, 2001, letter confirming the designation of Paulding County as a Primary Medical Care Health Professional Shortage Area.
15. Respondents' Exhibit O: Copy of a document entitled "Physician Assistant Information - Important Notice."
16. Respondents' Exhibit P: Excerpt from the Board's current Standard Physician Assistant Utilization Plan.
17. Respondents' Exhibit Q: Affidavit of Mr. Gemmer. See Proffered Exhibits, below.
- * 18. Respondents' Exhibit R-1: Proffered. See Proffered Exhibits, below.
19. Respondents' Exhibit R-2: September 17, 2001, affidavit of David P. Schlueter, M.D., as redacted. See Proffered Exhibits, below.
20. Respondents' Exhibits S through Z: Letters of support written on behalf of Dr. Gray.

21. Respondents' Exhibit AA: Videotape of a news documentary pertaining to Dr. Gray as a rural family practitioner. (Note: Exhibit will be maintained in the Board's offices for review by Board members.)
22. Respondents' Exhibit BB: Copy of a September 20, 2001, memorandum by Dr. Abramovitz responding to the expert report of Dr. Baggish.
23. Respondents' Exhibit CC: Copy of a subpoena *duces tecum* issued to Cathy Hacker.
24. Respondents' Exhibit DD: Copy of a June 8, 2001, request for an Ohio Department of Health J-1 Visa Waiver for Virginia Halachanova, M.D., sponsored by Paulding County Hospital.
25. Respondents' Exhibit EE: Copy of the September 18, 2001, Ohio Department of Health J-1 Visa Waiver Physician Sponsorship Policy.
26. Respondents' Exhibit FF: Chart of Physicians and other Health Professional Placements by the Primary Care and Rural Health Program from 1995 to 2000.
27. Respondents' Exhibit GG: Copy of a January 31, 2001, Ohio Department of Health request for designation of Paulding County as a Primary Care Health Professional Shortage Area.
28. Respondents' Exhibit HH: Copy of a September 27, 2001, letter from the Board to State Senator Lynn R. Wachtmann, with attached letter to the Board from Sen. Wachtmann.
29. Respondents' Exhibit II: Copy of a Paulding County Hospital policy entitled "Students, Physician Assistant - Approved Clinical Rotations" revised in May 1999.
30. Respondents' Exhibit JJ: Copy of a Paulding County Hospital policy entitled "Students, Physician Assistant - Approved Clinical Rotations" revised in March 2001.
31. Respondents' Exhibit KK: Copy of a March 3, 1998, letter to Dr. Gray from the Lutheran College of Health Professions regarding Mr. Hunter.
32. Respondents' Exhibit LL: University of Saint Francis Physician Assistant Rotation Guidelines for Family Medicine.

33. Respondents' Exhibit MM: University of Saint Francis Physician Assistant Rotation Guidelines for Obstetrics & Gynecology.
34. Respondents' Exhibit NN: Copy of a June 26, 2000, letter to Ms. Hacker from Dr. Gray requesting that Mr. Hunter be granted approval for assisting in surgery.
35. Respondents' Exhibit OO: Copy of a June 26, 2000, letter to Ms. Hacker from Dr. Gray informing the Board of Dr. Gray's absence from his office.
36. Respondents' Exhibit PP: Copy of the Board's May 13, 1998, Delegation of Medical Tasks position paper.
37. Respondents' Exhibit QQ: Summary of financial and admitting statistics for Paulding County Hospital.
38. Respondents' Exhibit RR: Copies of Board meeting minutes and other documents pertaining to the approval of tasks to be performed by physician assistants.

C. Presented by the Attorney Hearing Examiner

- * Board Exhibit A: Proffered. See Proffered Exhibits, below.

D. Presented by the Parties Post-Hearing

1. Presented by the State

- a. State's Exhibit 29: State's Response to Respondents' Motion to Supplement the Record, filed November 19, 2001.
- b. State's Exhibit 30: State's Closing Argument, filed November 28, 2001.
- c. State's Exhibit 31: State's Reply to Respondents' Post-Trial Brief/Closing Argument, filed December 18, 2001.

2. Presented by the Respondent

- a. Respondents' Exhibit SS: Undated letter to Respondent's counsel from Gary Adkins, Chief Executive Officer, Paulding County Hospital, indicating that Dr. Evarista Nnadi had tendered her resignation effective February 1, 2002.

- b. Respondents' Exhibit TT: Respondents' Motion to Supplement the Record, filed November 12, 2001.
- c. Respondents' Exhibit UU: Post-Hearing Brief of Respondents, filed December 13, 2001.

PROFFERED EXHIBITS

1. Respondents' Exhibit Q: Dr. Gray moved for admission of a September 6, 2001, affidavit of Thomas Gemmer, R.N., P.A. The State objected to its admission if for the truth of the matters asserted. The Hearing Examiner sustained the State's objection, but agreed to admit the exhibit for the limited purpose of reviewing it as a document relied upon by the Dr. Gray's experts. The Attorney Hearing Examiner further agreed, however, to proffer the document for the truth of the statements contained therein. See Hearing Transcript at 1341-1347. Should the Board choose to do so, however, the Board may vote to overrule the decision of the Hearing Examiner, and admit Respondents' Exhibit Q into evidence without restriction.
2. Respondents' Exhibit R-1: Dr. Gray moved for admission of a September 17, 2001, affidavit of David P. Schlueter, M.D. The State objected to admission of portions of the exhibit as these portions contain expert opinion and Dr. Gray had not provided the State with an expert report prior to hearing. The Hearing Examiner sustained the State's objection, and agreed to strike those portions. The redacted copy of the exhibit was admitted to the record, and the original was proffered on behalf of Dr. Gray. (See Respondents' Exhibit R-2; Hearing Transcript at 1348-1349). Should the Board choose to do so, however, the Board may vote to overrule the decision of the Hearing Examiner, and admit Respondents' Exhibit R-1 into evidence.
3. Board Exhibit A: At hearing, the parties agreed that certain testimony should be stricken from the record. Accordingly, the parties obtained excerpts from the transcript and jointly marked the portions that they desired to be stricken. Post-hearing, the Hearing Examiner made the redactions from the record. Board Exhibit A contains the excerpts from the transcript with the parties' jointly-made markings indicating the portions that they desired to have stricken.

PROCEDURAL MATTERS

1. On June 13, 2001, the Board issued notices of opportunity for hearing to Dr. Gray and to Thomas A. Hunter, P.A. Both requested a hearing. In addition, both requested consolidation of the matters because the allegations in each notice of opportunity were

substantially similar. The State did not object to consolidation. Accordingly, by Entry dated July 20, 2001, the Hearing Examiner granted the Respondents' motions to consolidate for purposes of the administrative hearing. (See State's Exhibits 5B, 5E and 5G).

2. On October 1, 2001, the Board filed an Agreed Order Dismissing Paragraph 3(c) of the Notice of Opportunity for Hearing issued June 13, 2001, in the Matter of James Harold Gray, Jr., D.O. Accordingly, there will be no Findings of Fact or Conclusions of Law regarding allegations set forth in Paragraph 3(c) of the notice of opportunity for hearing. (See State's Exhibit AA. See also State's Exhibit 5Y).
3. On September 19, 2001, Dr. Gray filed a request for subpoenas and subpoenas *duces tecum*. One of Dr. Gray's requests asked that Cathy Hacker, an employee of the Board, produce various documents related to Dr. Gray and/or physician assistant policies and procedures. On September 25, 2001, the State filed a Motion to Quash Subpoena Request in Part, arguing that a number of the documents requested were confidential pursuant to statute. By Entry dated September 27, 2001, the Hearing Examiner granted the State's motion "to the extent that the documents requested [were] confidential pursuant to Section 4731.22(F)(5) of the Revised Code." (See State's Exhibits 5W, 5X, and Respondents' Exhibit CC).

On September 28, 2001, Dr. Gray filed a Memorandum Contra of Dr. Gray and Mr. Hunter To State's Motion to Quash Subpoena or, in the Alternative, Motion for Reconsideration. The Hearing Examiner denied Dr. Gray's motion. (See State's Exhibit 5Z and Hearing Transcript at 1357-1358).

4. With the agreement of the parties, the Hearing Examiner stated that she would strike from the hearing transcript the following testimony:
 - a. The last name of the mother of Patients 2 and 3. (See Hearing Transcript at 523-524, 1360-1361).
 - b. Portions of Mr. Thornhill's testimony from pages 232 through 242. (See Hearing Transcript at 1360-1361. See also Proffered Exhibits, paragraph 3).
 - c. Portions of Dr. Gray's testimony from pages 1131 and 1132. (See Hearing Transcript at 1360-1361. See also Proffered Exhibits, paragraph 3).
5. For each volume of the transcript, there is a corresponding condensed transcript. In all but one of the nine volumes, the pages are numbered identically in the original transcript and in the condensed transcript. In Volume VI, however, the pages are not numbered identically. Accordingly, for each citation to Volume VI, a citation to the original transcript and to the condensed transcript has been provided.

6. At the close of the hearing, the parties agreed to submit written closing arguments, and the hearing record was held open for that purpose. Pursuant to a schedule set forth by the Hearing Examiner, the final written argument was filed on December 18, 2001. The hearing record closed at that time. (See Hearing Transcript at 1362-1363).

Nevertheless, the hearing record was reopened to admit an oral stipulation of the parties. (See paragraph 7, below). The hearing record closed again on February 8, 2002.

7. On January 31, 2002, the Hearing Examiner initiated a telephone conference with counsel for the parties. At that time, the Hearing Examiner asked the parties to consider the allegations made in the notice of opportunity for hearing which pertained to Section 4731.41, Ohio Revised Code, "Practice of medicine or surgery without certificate," in light of Section 4731.43, Ohio Revised Code, "Practice of osteopathy without certificate."

On February 8, 2002, counsel for the parties contacted the Hearing Examiner. Counsel for the parties advised that they were waiving any objection to the potential misapplication of Section 4731.41, Ohio Revised Code. The hearing record was reopened to admit the parties' oral stipulation, and closed again on February 8, 2002.

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.

James Harold Gray, Jr., D.O.

1. James Harold Gray, Jr., D.O., received a doctor of osteopathic medicine degree from the New York College of Osteopathic Medicine–New York Institute of Technology in Old Westbury, New York, in 1983. In 1984, Dr. Gray completed a rotating internship at Massapequa General Hospital in Seaford, New York. From 1984 through 1985, Dr. Gray participated in a residency at Doctors Hospital in Columbus, Ohio. (Hearing Transcript [Tr.] at 983, 988-990; Respondents' Exhibit [Resp. Ex.] J).

Dr. Gray practices in a solo practice in Antwerp, Ohio, which is located in Paulding County. Dr. Gray testified that he practices family medicine, including pediatrics and obstetrics, in a very rural area of Ohio. Dr. Gray testified that he also performs surgery, including cesarean sections, tubal ligations, emergency appendectomies, colonoscopies, endoscopies, and obstetric and gynecologic surgeries. Dr. Gray stated that he also sees patients in their homes and in nursing homes. (Tr. at 19, 21; Resp. Ex. J).

Dr. Gray is licensed to practice osteopathic medicine and surgery in Ohio and in Indiana. He was board certified in 1985 by the American Osteopathic Board of Family Physicians. Dr. Gray testified that if a physician is board certified in family practice, the physician is board certified for life. Nevertheless, Dr. Gray testified that he has voluntarily retaken his boards to assure that he remains "up to snuff." (Tr. at 19, 990-991; Resp. Ex. J).

2. Dr. Gray testified that, since childhood, one of his goals was to go to underserved areas and practice medicine. He stated that there were a lot of poor people where he grew up and he wanted to take care of those people. (Tr. at 982-983).

Dr. Gray testified that, because his instructors in medical school had been aware that he had planned to work in a rural area, the instructors took him "under their wings" and allowed him to do additional procedures, such as C-Sections. Dr. Gray stated further stated that he had performed over one hundred deliveries in his third or fourth year of medical school. He explained that these were New York City hospitals which were "woefully understaffed" and which served a very large indigent population. (Tr. at 982-985).

Dr. Gray testified that, during his third and fourth year as a medical student, he had performed the majority of an appendectomy and had sewn the abdomen and subcutaneous tissues during colon resections. He stated that he usually performed the majority of closing entire abdominal walls. (Tr. at 987).

Dr. Gray testified that he had decided to settle in Antwerp during the middle of his residency. Once he decided to settle in Antwerp, he concentrated on getting as much training in the other aspects of medicine as he could. Moreover, Dr. Gray completed a rotation with gastroenterologists to learn how to perform colonoscopies and upper GI endoscopies. (Tr. at 993-994).

Thomas A. Hunter, P.A.

3. Thomas A. Hunter, P.A., testified that he lives in New Haven, Indiana, which is a suburb of Fort Wayne. He is employed by Dr. Gray in Antwerp, Ohio, which is approximately thirty minutes from his home. (Tr. at 546-547).

Mr. Hunter testified that he had graduated from Indiana University in 1983 with a bachelor degree in respiratory therapy. Thereafter, Mr. Hunter attended the Lutheran College in Fort Wayne, Indiana, to learn physician assisting. Midway through his courses, the Lutheran College was purchased by the University of St. Francis. Mr. Hunter stated that he completed a two year program that led to a bachelor degree. In 1999, Mr. Hunter graduated with a bachelor degree in physician assisting. (Tr. at 549, 561).

Mr. Hunter testified that, during his physician assistant training, he had completed eleven rotations which included family practice, internal medicine, emergency medicine, pediatrics, surgery, OB-GYN, and psychiatry. He stated he had completed three rotations with Dr. Gray. Each rotation was a calendar month. He also completed a surgical rotation with a physician in Indiana. (Tr. at 550; Resp. Exs. KK, LL, MM).

Mr. Hunter testified that he had started working with Dr. Gray as a physician assistant student in October 1998. Thereafter, Mr. Hunter started working for Dr. Gray on a part-time basis when he received his temporary license in September 1999. Finally, Mr. Hunter started working for Dr. Gray as a physician assistant on a full-time basis in November 1999, after Mr. Hunter completed his physician assistant board examinations. (Tr. at 137, 564-565, 606-607).

Expert Witnesses

4. Michael S. Baggish, M.D. testified at hearing, by telephone, on behalf of the State. Dr. Baggish testified that he is employed at the Department of Gynecology and Obstetrics at Good Samaritan Hospital in Cincinnati, Ohio. He received his medical degree from the University of Louisville in 1961. Thereafter, Dr. Baggish went to The Johns Hopkins Hospital in Baltimore, Maryland. Dr. Baggish participated in a surgical residency for one year. Subsequently, he transferred to a program in obstetrics and gynecology and completed that program in 1968. During his residency, from 1965 to 1966, Dr. Baggish was a Fellow of the American Cancer Society and worked in Singapore studying cardio-carcinoma. (Tr. at 283-284; State's Exhibit [St. Ex.] 16).

After finishing his residency, Dr. Baggish served as a Commander at the United States Navy Hospital at Portsmouth, Virginia, for two years. He then returned to The Johns Hopkins Hospital as an assistant professor of obstetrics and gynecology. In 1972, Dr. Baggish went to Hartford, Connecticut, as the Chief of OB-GYN at Mount Sinai Hospital and as an associate professor of OB-GYN at the University of Connecticut. In 1973, he went to Syracuse, New York, as a professor and chairman of the Department of Obstetrics and Gynecology at the State University of New York Health Science Center in Syracuse. In 1991, Dr. Baggish went to London, England, to the St. Georges Medical School for a sabbatical in urogynecology. (Tr. at 284-285; St. Ex. 16).

In 1993, Dr. Baggish accepted positions as Chairman of the Department of OB-GYN at Good Samaritan Hospital in Cincinnati, Ohio, and as professor at the University of Cincinnati. He has remained in those positions since that time. (Tr. at 284-285; St. Ex. 16).

Dr. Baggish is a diplomate of the American Board of Obstetrics and Gynecology and a fellow of the American College of Surgeons and the American College of Obstetricians and Gynecologists. Dr. Baggish has authored and co-authored a number of textbooks in obstetrics and gynecology. (St. Ex. 16).

5. Fred Abramovitz, M.D., testified at hearing, by telephone, on behalf of Dr. Gray. Dr. Abramovitz received his medical degree from The Ohio State University College of Medicine in 1973. He completed a residency in obstetrics and gynecology at the University of North Carolina in 1977. Dr. Abramovitz is certified by the American Board of Obstetrics and Gynecology. (Tr. at 739-741; Resp. Ex. K).

After completing his residency, Dr. Abramovitz entered a private group practice in Columbus, Ohio. He also accepted a position as the Director of Medical Education at Grant Hospital, which is a teaching program affiliated with The Ohio State University. As the Director of Medical Education, Dr. Abramovitz was responsible for curriculum preparation in obstetrics and gynecology, teaching obstetrics and gynecology to OB-GYN and family practice residents, and supervising a faculty of fifteen other OB-GYN physicians. (Tr. at 739-741; Resp. Ex. K).

After ten years in that position, Dr. Abramovitz resumed full time private practice in Columbus. He has privileges at Grant Hospital, Mount Carmel East Hospital and East Side Surgery Center, all located in Columbus. Dr. Abramovitz works with a nurse practitioner. (Tr. at 739-740; Resp. Ex. K).

6. Brian L. Bachelder, M.D., testified at hearing on behalf of Dr. Gray. Dr. Bachelder received a medical degree from the University of Cincinnati College of Medicine in 1981. In 1984, he completed a residency in family practice at the University of Minnesota. The following year, Dr. Bachelder completed a master's degree in family practice at the University of Minnesota. He is certified by the American Board of Family Physicians. (Tr. at 1174-1176; Resp. Ex. M).

Dr. Bachelder has practiced in Mount Gilead, Ohio, in Morrow County, since 1984. Dr. Bachelder testified that Morrow County is a rural county with a population of approximately 30,000. He stated that Mount Gilead has a population of 3,000, and is designated as a medically underserved area. (Tr. at 1178, 1181).

Dr. Bachelder testified that he cares for patients from birth to death. His practice includes obstetrics and newborn care. Dr. Bachelder also performs circumcisions, performs minor surgeries in his office, and assists in major surgeries at the hospital. Furthermore, Dr. Bachelder employs a physician assistant. He testified that his physician assistant does not participate in any obstetric cases. (Tr. at 1179, 1189-1190).

2002 FEB -8 P 14:39

Dr. Bachelder further testified that he had provided testimony before the Board during hearings on revisions to rules governing physician assistants. Dr. Bachelder stated that he had testified at a Board rules hearing on behalf of the Ohio Academy of Family Physicians. (Tr. at 1189).

7. Jeffrey Dale Bachtel, M.D., testified at hearing on behalf of Dr. Gray. Dr. Bachtel received a medical degree from the Northeastern Ohio Universities College of Medicine in 1981. In 1984, Dr. Bachtel completed a family practice residency at Akron General Medical Center in Akron, Ohio. Dr. Bachtel is certified by the American Academy of Family Physicians. Furthermore, he is currently the vice-president of the Ohio Academy of Family Physicians. (Tr. at 1275-1277; Resp. Ex. L).

Since 1984, Dr. Bachtel has maintained a private practice in Tallmadge, Ohio. Dr. Bachtel testified that he employs two physician assistants. He stated that he utilizes his physician assistants exclusively in the office. (Tr. at 1278-1279).

Dr. Bachtel testified that he had testified before the Board when the current physician assistant rules were being considered. He testified on behalf of the Ohio Academy of Family Physicians and as a liaison to the Ohio Association of Physician Assistants. (Tr. at 1289).

Paulding County

8. Antwerp, Ohio, where Dr. Gray and Mr. Hunter practice, is located in Paulding County. Paulding County is located in northwest Ohio, along Ohio's border with Indiana. (Resp. Ex. A).
9. Joel Mariotti testified at hearing, pursuant to subpoena, on behalf of Dr. Gray. Mr. Mariotti is the Program Administrator for the Ohio Department of Health. He is responsible for the Office of Primary Care and Rural Health, which is part of the Bureau of Community Health Services and Systems Development. (Tr. at 657-658).

Mr. Mariotti testified that the Office of Primary Care and Rural Health is comprised of approximately thirteen programs. Part of the office's responsibilities are directed to the provision of primary care in the State of Ohio. Among those programs is the Office of Primary Care, which includes the Division of Shortage Designation which is responsible for determining health professional shortage areas. The functions of the Office of Primary Care and Rural Health that focus on delivery of primary care also include the Primary Care Search Program, which finds clinical rotations in underserved areas for second and third year medical students. Finally, the primary care focus of the Office of Primary Care and

Rural Health includes the National Health Service Corp Scholarship Program and the National Service Loan Repayment Program. (Tr. at 658-659).

Mr. Mariotti further testified that the Office of Primary Care and Rural Health also focuses on rural health issues. Mr. Mariotti testified that these programs include the State Office of Rural Health. The functions of the Office of Primary Care and Rural Health that focus on rural health also include the Critical Access Hospital Program, which is a certification program for rural hospitals. (Tr. at 659).

Mr. Mariotti testified that a “health professional shortage area” [HPSA] is a geographic area defined by a community that wants to have an area so designated. Once a community is designated as a HPSA, the state and federal government can assist the community with placement of health care professionals. The criteria for acceptance into the program are prescribed by the federal government by the Division of Shortage Designation. The designation is based on a number of demographic characteristics. The primary consideration is the physician to population ratio—if an area has few physicians, then it is likely to be designated as a HPSA. Other factors considered include morbidity rate, mortality rate, birth rate, and Medicaid data. In addition, age distribution of the population is considered. Nevertheless, Mr. Mariotti testified that the most important consideration is the physician to population ratio. He stated that it is directed at primary care physicians including, but not limited to, family medicine, internal medicine, obstetrics, and pediatrics. (Tr. at 661-662).

10. Mr. Mariotti testified that, in April 2001, the Division of Shortage Designation had reinstated Paulding County as a HPSA. (Tr. at 665-666; Resp. Ex. GG; Resp. Ex. N). Mr. Mariotti testified that the designation indicates that there is less than one physician per 3,500 residents. (Tr. at 666).

Mr. Mariotti testified that designation as a HPSA allows Mr. Mariotti’s office and other offices to assist the area with placement of health professionals. Mr. Mariotti testified that the National Health Service Corporation allows Mr. Mariotti’s agency to place physicians within Paulding County, either scholarship students or loan repayment students, or physician assistants and other allied health professionals. It also allows Mr. Mariotti’s agency to place physicians under the Ohio Physicians Loan Repayment Program. Mr. Mariotti explained that the Ohio Physicians Loan Repayment Program requires that ten dollars of each medical license renewal fee be earmarked for this program. In return, the agency forgives loans of physicians who agree to work in HPSAs in Ohio. (Tr. at 666-667).

11. Mr. Mariotti testified that his agency is also responsible for recommending applicants for the J-1 Visa Waiver Program for approval from the Immigration and Naturalization Service in Washington, D.C. Mr. Mariotti testified that the J-1 Visa Waiver Program deals with physicians from foreign countries who desire to remain in the United States.

Physicians who receive a J-1 Visa Waiver are permitted to stay in the country for a specified period of time so long as they agree to practice medicine in a HPSA. It is a highly sought-after privilege and each year the number of applicants increases. (Tr. at 667-670; Resp. Ex. JJ).

Mr. Mariotti testified that the goal of these programs is to better allocate the health care professional resources in Ohio. The intent is to help facilitate the placement of physicians, social workers, nurses, nurse practitioners, and physician assistants to underserved parts of the state. He added that the most recent budget bill in Ohio provided for a task force to study the shortage of health care workers. (Tr. at 674-675).

12. Mr. Mariotti testified that Dr. Gray was a former National Health Service Corporation scholar. Mr. Mariotti testified that the National Health Service Corporation Scholarship is a highly competitive program. Approximately five percent of all individuals who apply are accepted. It considers medical abilities, knowledge and commitment to service. (Tr. at 661).
13. Larry Wayne Thornhill testified at hearing on behalf of the State. Mr. Thornhill testified that he was the Chief Executive Officer at Paulding County Hospital from August 1999 through August 2001. He was responsible for the day-to-day operations of the facility. (Tr. at 177-178).

Mr. Thornhill stated that Paulding County is a rural county with an indigent population; he believes the median income is \$19,000 per year. Mr. Thornhill testified that Paulding is one of the poorest counties in the state. He further testified that there are no four-lane roads in Paulding County and travel is difficult. Moreover, growth in Paulding County has been stagnant over the last 125 years. (Tr. at 189-191, 193).

Mr. Thornhill testified that, in 1999, Paulding County Hospital was classified as a fifty-seven bed hospital. Nevertheless, the hospital rarely had more than seven or eight beds occupied at any given time. In January 2001, however, due to financial difficulties, the hospital was converted to a critical access hospital. Converting to a critical access hospital allowed Paulding County Hospital to gain cost-based reimbursement from Medicare. As a result, the hospital became financially viable. (Tr. at 189-191).

Mr. Thornhill testified that a critical access hospital is a concept that resulted from the Balanced Budget Act of 1997. It is a designation by the State that the facility is a rural facility critical to the continued access of care by the residents of that area. Mr. Thornhill testified that, in order to receive designation as a critical access hospital, there must be a significant distance to the next largest hospital, a limited highway system, a certain population served, and a limited number of physicians in the county in relation to the population and remoteness of the area. In addition, there can be no more than twenty-five

2002 FEB -9 P 11:39

beds in the hospital. Therefore, Paulding County Hospital chose to decrease its size from fifty-seven to twenty-five beds in order to receive the critical access designation. (Tr. at 192-193).

Mr. Thornhill testified that Paulding County is also a HPSA. He stated that the HPSA designation is unrelated to the critical access area hospital designation. (Tr. at 193-195). Mr. Thornhill testified that one of the criteria for designation as a HPSA area is that the area has previously made and failed at attempts to recruit American-born physicians. (Tr. at 196-198; Resp. Ex. DD). Mr. Thornhill testified that Paulding County Hospital has advertised in magazines; sent representatives to medical schools and open houses; and submitted numerous letters to medical schools, but has received no response. (Tr. at 198).

14. Mr. Thornhill testified that the active medical staff at Paulding County Hospital consists of no specialists. The active medical staff is a group of general practice physicians: Dr. Gray, Dr. Fishbaugh, Dr. Nnadi, Dr. Kuhn, Dr. Robinson and Dr. Teets. (Tr. at 201-203).

Mr. Thornhill stated that Dr. Nnadi has been working in Paulding County through the J-1 Visa Program, and has practiced in the area for six years. Dr. Nnadi is a family practice physician who practices OB as well. He stated that Dr. Nnadi serves a large Medicaid population. (Tr. at 199-203).

Mr. Thornhill further testified that Dr. Kuhn's practice is closed to new patients. Mr. Thornhill believes that Dr. Robinson and Dr. Teets may still be accepting new patients. He concluded, however, that Dr. Gray has the largest practice, in part, because he employs a physician assistant. (Tr. at 202-203).

15. David Randall Derck testified at hearing on behalf of Dr. Gray. Mr. Derck testified that he was born in Antwerp sixty years ago. He has lived in Antwerp for his entire life. Mr. Derck testified that he is married, has three children, and runs an insurance agency in Antwerp. (Tr. at 688-689; Resp. Ex. U).

Mr. Derck testified that he became active in the Chamber of Commerce more than thirty years ago. The Chamber of Commerce started a Community Improvement Corporation in Antwerp and Mr. Derck has been the president since its inception. Mr. Derck testified that the Community Improvement Corporation is a structure created by the State of Ohio to promote economic and industrial development in the community. (Tr. at 689-690). Mr. Derck further testified that, in the early 1990's, the Chamber of Commerce formed another board called the Paulding County Economic Development Board. Mr. Derck is also the president of that board. Mr. Derck testified that the Paulding County Economic Development Board works closely with the commissioners and employs a full time economic developer. (Tr. at 690-691).

STATE MEDICAL BOARD
2007 FEB -8 P 14:39

Mr. Derck testified that the village of Antwerp is situated approximately two miles from the Indiana border; twenty-five miles from Fort Wayne, Indiana; eighty miles from Toledo; and 120 miles from Columbus. He stated that Antwerp is a very small, rural village, but it is the second largest village in Paulding County. (Tr. at 691).

Mr. Derck testified that the county of Paulding is very rural and depends on farming. There is not much industry. One of the largest employers in the county is Paulding County Hospital. The hospital employs approximately two hundred people. (Tr. at 692).

Mr. Derck testified that the population of Paulding County is aging. He stated that Paulding County offers so little employment that young people who go to college never come back. The people who remain are generally high school graduates and older people who have lived in the county all of their lives. The income level is low to medium. Most of the jobs in the county are minimum wage. In addition, there is a large population of farmers, who have difficulty maintaining an income. (Tr. at 693-694).

Mr. Derck testified that, as part of his commitment to community service, he participated in physician recruitment for Paulding County. He found, however, that it was a very expensive task. He also found that many of the physicians he interviewed were more interested in going to dinner and to the nearest golf course than they were in practicing in Paulding County. Mr. Derck testified that most physicians are not interested in practicing in a rural area. Physicians come from cities and prefer to practice in cities. The choices of schools and education in rural areas is limited. Moreover, there are no specialists practicing in Paulding County, although a few come to the hospital one day a week. (Tr. at 695, 699-700).

Mr. Derck testified it was through the physician recruiting process that he became familiar with Dr. Gray. Mr. Derck stated that he learned of Dr. Gray while Dr. Gray was still in Columbus. Mr. Derck called Dr. Gray and invited Dr. Gray and his family to Antwerp. The community was impressed with Dr. Gray. (Tr. at 697-698).

16. David Eugene Bagley testified at hearing on behalf of Dr. Gray. Mr. Bagley testified that he is the Superintendent of Schools of the Antwerp Local School District. He has been the superintendent for fourteen years. (Tr. at 831; Resp. Ex. T).

Mr. Bagley testified that Antwerp is eleven miles from Paulding County Hospital. He stated that the school district is a fifty-seven square mile district and there are eight hundred students in the district. The school has one facility, kindergarten through twelfth grade. Mr. Bagley testified that the school district is poor and ranks 110 from the bottom of 612 school districts in the state of Ohio. The district receives state financial support because of their impoverished status. (Tr. at 832-833; Resp. Ex. T).

Dr. Gray's Practice

17. Dr. Gray testified that his practice serves between four and five thousand patients. He stated that these patients come from all over Paulding County, and some travel from as far as Fort Wayne, Indiana. Dr. Gray testified that his payroll mix is forty percent Medicare, thirty or forty percent commercial insurance, and twenty percent Medicaid and self-pay. He stated that, for patients who cannot pay, outstanding debts are often forgiven at Christmas time. (Tr. at 1000, 1010, 1011).

Dr. Gray testified that his office is open on Monday for approximately ten or eleven hours, and on Tuesday for approximately eight hours. The office is closed on Wednesday. On Thursday, the office is open for eight or nine hours, and on Friday sometimes less than eight hours. The office is closed on Saturday and Sunday. (Tr. at 31-32).

Dr. Gray testified that he has also been treating patients in their homes since the inception of his practice. He stated that he makes house calls for very ill patients, and during inclement weather when elderly patients might slip and fall. Dr. Gray testified that he is also involved with care of the children in the Children's Home and with the Crippled Children's Society. (Tr. at 1002, 1005-1006).

18. Dr. Gray stated that he has been trying to recruit a partner for approximately twelve years. He has gone as far as St. Louis to a recruiting seminar. He stated that family doctors do not want to practice in a rural area because they do not want to work so much. He stated that patients in a rural area come to the physician's house and a physician can not turn those people away. He further stated that doctors in Fort Wayne charge twice as much as he for an initial office visit. Dr. Gray concluded that new family practitioners prefer big groups where they can be on call less and make twice as much as they would in a rural area. (Tr. at 1010).

Dr. Gray testified that, after failing to recruit another physician, he decided to try recruiting physician assistants. Therefore, he became involved with the training of physician assistants from Fort Wayne. Dr. Gray testified that, since 1997, he has allowed physician assistant students to rotate through his practice. Dr. Gray testified that he allows only one student at a time, and limits the rotations to three to four per year. Each student usually performs a four to six week rotation. (Tr. at 22-23, Tr. at 1017-1018).

Dr. Gray testified that he has employed only two physician assistants since 1991. One was Thomas L. Gemmer, P.A., and the other was Mr. Hunter. Dr. Gray stated that he employed Mr. Gemmer from 1991 until 1995. Between 1995 and 1999, he had no physician assistant in his employ. (Tr. at 29-30).

Dr. Gray testified that he had hired Mr. Hunter because Mr. Hunter was the brightest physician assistant student Dr. Gray has ever had. He stated that Mr. Hunter treats patients similarly to the way Dr. Gray treats patients. Finally, Dr. Gray stated that the patients liked Mr. Hunter and Dr. Gray did not want to let him get away. (Tr. at 1014-1015).

19. Mr. Hunter testified that he decided to work for Dr. Gray because Dr. Gray and Mr. Hunter got along well, not only on a professional level, but also on a personal level. Mr. Hunter stated Dr. Gray's office exudes a family atmosphere, where people laugh and have fun. Mr. Hunter further testified that Dr. Gray is unique in the way he thinks: he's supportive, easy going, and spends time teaching. (Tr. at 555-557).

Mr. Hunter stated that there are five employees in Dr. Gray's office. One of them was Dr. Gray's original employee sixteen years ago. Mr. Hunter stated that it had impressed him that Dr. Gray's employees have remained for so long. (Tr. at 557).

Thomas L. Gemmer, P.A.

19. On July 10, 1991, Dr. Gray filed a Standard Physician's Assistant Utilization Request with the Board. In the utilization request, Dr. Gray advised that he practiced general osteopathic medicine in a solo, office and hospital based practice. He requested authorization from the Board to employ a physician assistant to perform basic tasks, including assisting in surgery. (St. Ex. 7).

Under "Utilization of PAs," the "Basic Tasks" section of Dr. Gray's July 10, 1991, utilization request provides as follows:

The tasks listed below may be approved by the Board to be performed by your Physician's Assistant under your supervision and only while you are available for consultation. Check each of these tasks which you request the Board to approve for you [sic] Physician's Assistant to perform. Mark only those things that will be performed.

1. Screen patients to aid the employing physician in determining the need for further medical attention.
2. Review patient records to aid in determining health status.
3. Take patient histories; perform physician examinations, and identify normal and abnormal findings on histories, physical examinations, and commonly performed initial laboratory studies. Information collected is

to be presented to the employing physician prior to treatment based upon such information.

4. Perform developmental screening examination on children as relating to nervous, motor, and mental functions.
5. Record pertinent patient data.
6. Make decisions regarding data gathering on patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition. The Physician's Assistant will present the information collected to the employing physician prior to treatment based upon such data.
7. Prepare patient summaries for employing physician's patients only, which must be reviewed and countersigned by the employing physician.
8. Initiate requests for commonly performed initial laboratory studies.
9. Collect specimens for and perform commonly performed blood counts, urine analysis, stool analysis, and cultures using office kits.
10. Perform the following clinical procedures:
 - a. Venipuncture
 - b. Intradermal tests
 - c. Electrocardiogram (not including interpretation)
 - d. Care and suturing of minor lacerations
 - e. Apply cast or splint under direction of employing physician. Such application shall be made only after examination by the employing physician, and any necessary reduction by the employing physician.
 - f. Application of dressings and bandages
 - g. Administration of medication and intravenous fluids upon order of the employing physician.
 - h. Removal of superficial foreign bodies after consultation with the employing physician and under his direction.
 - i. Cardio-pulmonary resuscitation.
 - j. Audiometry screening, to be presented to the employing physician.
 - k. Routine visual screening, to be presented to the employing physician
 - l. Carry out aseptic and isolation techniques

2012 FEB -9 PM 1:40

m. Catheterization of the urinary bladder

11. Provide patient education regarding common medical problems.
12. Assist the employing physician(s) in operative procedures, provided that these physician-supervised procedures have been delineated within the scope of practice for a physician's assistant and approved by the appropriate committee of the hospital where such services are to be rendered. [Please note: this authorizes hospital-based surgical assisting ONLY.]

Application for functions other than those listed above requires the submission of a supplemental utilization request on the form provided by the State Medical Board. * * *

(St. Ex. 7 at 2-3) (emphasis in original). Dr. Gray checked all of the basic tasks noted above. He further advised that he would not be submitting a supplemental utilization request. (St. Ex. 7 at 2-3).

On July 10, 1991, the Board discussed Dr. Gray's utilization request. The Board members noted that Dr. Gray had requested that his physician assistant assist in surgery. The members questioned whether Dr. Gray, a general practitioner, had surgical privileges at a hospital. The Board voted to obtain clarification of Dr. Gray's surgical practice. (St. Ex. 24).

Board staff contacted Dr. Gray by letter dated July 18, 1991, requesting clarification of his surgical privileges. (St. Ex. 25). Shortly thereafter, the administrator at Paulding County Hospital advised the Board that Dr. Gray maintained the following surgical privileges: esophagoscopy, gastroscopy, proctoscopy; sigmoidoscopy/colonoscopy; caesarian section; tonsillectomy; appendectomy; inguinal herniorrhaphy; and ventral/femoral herniorrhaphy. (St. Ex. 26). By letter dated August 16, 1991, the Board advised Dr. Gray that his utilization request had been approved. (St. Ex. 7).

20. On August 26, 1991, Dr. Gray filed a Notice of Employment of Physician's Assistant with the Board. In the Notice of Employment of Physician's Assistant, Dr. Gray advised that he would employ Thomas Leon Gemmer, P.A., beginning September 3, 1991. (St. Ex. 8).

Mr. Gemmer also signed the Notice of Employment of Physician's Assistant. By signing the notice, Mr. Gemmer agreed to "perform only those duties as outlined in the Physician's Assistant Utilization Request submitted by [Dr. Gray] as approved by the State Medical Board." (St. Ex. 8).

2002 FEB -02 P 11:40

21. Mr. Gemmer filed an application at Paulding County Hospital for allied health professional privileges. In the application, Mr. Gemmer stated that he had received an associate degree in nursing from Purdue University in 1983. Mr. Gemmer also stated that, in 1976, he had received a Bachelor of Science degree in physician assisting from Indiana University School of Medicine. Finally, in the application, Mr. Gemmer advised as follows: "I request and agree to perform only those duties as outlined in the Physicians Assistant Utilization Request as submitted by Dr. James Gray or Group as approved by the State of Ohio Medical Board." (St. Ex. 6).
22. Dr. Gray testified that Mr. Gemmer had worked for him from approximately 1991 through 1995. Dr. Gray stated that Mr. Gemmer had helped Dr. Gray run an indigent clinic at Paulding County Hospital. The clinic was open all day on Wednesday and a half day on Thursday. (Tr. at 30-31, 1052-1054).

Dr. Gray testified that Mr. Gemmer also assisted him in performing emergency surgeries, especially if no other physician was available. Dr. Gray defined assisting in surgery as passing instruments, retracting tissues, stapling the skin or subcutaneous tissue, and cutting adhesions. Initially, Dr. Gray stated that Mr. Gemmer had not worked in Dr. Gray's office. (Tr. at 33-34, 38). Dr. Gray later testified, however, that, towards the end of Mr. Gemmer's employment with Dr. Gray, Mr. Gemmer had worked in Dr. Gray's office. (Tr. at 1054).

Dr. Gray testified that Mr. Gemmer had worked for him until 1995, at which time Mr. Gemmer took a leave of absence to care for Mr. Gemmer's mother. Dr. Gray testified that, until 1997, he had not realized that Mr. Gemmer would not be returning to his practice. (Tr. at 1052).

By letter dated January 29, 1997, Dr. Gray notified the Board that Mr. Gemmer's employment had been terminated. (Tr. at 1052; St. Ex. 8).

The 1994 Delivery

23. The medical records for Patient 1 indicate that, in August 1994, Patient 1 was eighteen years old and a patient of Dr. Gray. Patient 1 was pregnant; her expected date of delivery had been August 3, 1994. (St. Ex. 1 at 1a, 5a).

At approximately 1:00 a.m., on August 11, 1994, Patient 1 presented to Paulding County Hospital in active labor. Previously, her "bag of waters" had broken and she had experienced a "bloody show." On admission, Patient 1's contractions were four minutes apart. (St. Ex. 1 at 1a, 5a).

STATE MEDICAL BOARD
OF CALIFORNIA
300 PULP - 2 P W 110

The labor and delivery nurses' notes indicate as follows:

- At 1:30 a.m., Patient 1 was admitted to the Labor Room. At that time, Patient 1's cervix was three to four centimeters dilated and eighty percent effaced. The baby was at station "-4." Her contractions had started fifty minutes earlier. Dr. Gray was notified of Patient 1's admission at 3:10. (St. Ex. 1 at 1, 5a, 5b).
- At 3:20, Patient 1 notified the nurse that she was feeling "pushy." The fetal heart rate at that time was 108, and Patient 1's cervix was dilated 6 centimeters. At 3:30, Patient 1's contractions were two to three minutes apart. Dr. Gray was notified of Patient 1's condition. (St. Ex. 1 at 5b).
- At 4:50, a "bloody show was noted." Patient 1 stated that she felt she needed to "push." At 5:05, Patient 1's contractions were two minutes apart. At 5:15, Dr. Gray called the hospital to check on Patient 1's progress. At 5:20, Patient 1's cervix was dilated 8 centimeters, and she found it difficult to refrain from pushing.
- At 5:50, Patient 1's cervix was completely dilated; Dr. Gray arrived at the hospital and advised Patient 1 that she could begin pushing. (St. Ex. 1 at 5b-6a).
- Patient 1 continued to push. The nurses' notes do not indicate the frequency of contractions. Dr. Gray saw Patient 1 at 6:40 and 7:15. At 8:00, Dr. Gray performed a vaginal examination of Patient 1. At 8:33, Patient 1 was transported to the delivery room. Dr. Gray was contacted in surgery at 9:00. (St. Ex. 1 at 6a-6b).
- At 9:20, Mr. Gemmer arrived in the delivery room. At 9:21, Patient 1 delivered vaginally with Mr. Gemmer in attendance.
- At 9:29, Pitocin was administered intramuscularly. (St. Ex. 1 at 6b, 7).
- Dr. Gray arrived in the delivery room at 9:30. Shortly thereafter, an episiotomy was repaired.
- The nurses' notes do not indicate who performed the episiotomy or the episiotomy repair. (St. Ex. 1 at 6b).

The Vaginal Delivery Record states that the birth occurred at 9:21 a.m. Under "Comments," the record indicates "precip." (St. Ex. 1 at 14). [Note: The nurse who recorded the note testified that she had written "precip" to indicate that the doctor had not been in attendance. (Tr. at 459).

24. Dr. Gray wrote a Delivery Summary, which included the following:

The patient's an 18 year old female, gravida I, para 0, with an [expected date of delivery] of 8-3-94. She came into PCH during labor, especially after she was approx. 8-9 cm. She did have some early decels due to head compressions. At 9:21, she delivered a viable white male neonate with APGAR of 8-9-10 * * * The placenta was delivered at 09:28. * * * A midline episiotomy was done and this was extended by the neonate to but not including the external anal sphincter. This was closed with a modified William's closure. After delivery the patient had a little excess bleeding, so she was given Pitocin and some fundal massage was done and several clots were evacuated from the cervix. The patient tolerated the procedure very well and was sent to recovery in excellent condition. The neonate's condition was very stable.

(St. Ex. 1 at 13). Dr. Gray's physical exam showed a left occipital parietal cephalohematoma but neurologically the neonate was intact. (St. Ex. 1 at 13).

25. Rose Munger, R.N., testified at hearing on behalf of the state. Ms. Munger testified that she has been employed by Paulding County Hospital for twenty-three years. She has been the manager of the OB department for the past seven years. (Tr. at 444-445).

Ms. Munger testified that the OB unit at Paulding County Hospital is a level 1 facility. Therefore, Paulding County Hospital does not accept high risk pregnancies. The hospital is designed to care for full term, normal, uncomplicated pregnancies. (Tr. at 446).

Ms. Munger testified that the OB Department is generally staffed by one RN and one LPN per shift. (Tr. at 451).

Ms. Munger testified that she had started a shift at 7:00 a.m. on August 11, 1994, when Patient 1 was in the midst of her labor. Ms. Munger testified that, when Patient 1 was getting ready to deliver, Ms. Munger had called Dr. Gray in surgery to advise him of the impending delivery. (Tr. at 454-455). Ms. Munger testified that, since Patient 1 had been pushing for three and a half hours; it had not been a surprise that the baby was coming when she called Dr. Gray. (Tr. at 458-459).

Ms. Munger testified that, when she contacted surgery, she had learned that Dr. Gray was not available. Ms. Munger further testified that it is her policy to call the emergency room physician when the attending physician is not available. She can not recall, however, if she had tried to contact the emergency room physician for Patient 1's delivery. (Tr. at 481).

Ms. Munger testified that Mr. Gemmer had delivered the baby. (Tr. at 454-455).

Ms. Munger testified that she believes that Mr. Gemmer performed an episiotomy but that

she cannot clearly remember. (Tr. at 458). She stated that she believes Mr. Gemmer performed the episiotomy although she cannot clearly remember him doing so. Nevertheless, she stated that Dr. Gray would not have done the episiotomy because he did not come into the room until after the baby was born. She further stated that no one but Mr. Gemmer could have performed the episiotomy because, other than the patient, the only persons in the room were Ms. Munger, an LPN, and Mr. Gemmer. She stated that neither of the nurses would have performed an episiotomy. (Tr. at 458, 472-475; St. Ex. 1 at 4, square 5).

Ms. Munger testified that she had been surprised when Mr. Gemmer appeared for the delivery. She stated that she had not had any indication previous to his appearance that Mr. Gemmer would be performing the delivery. (Tr. at 485-486).

Ms. Munger testified that, other than the incident in 1994, she is not aware of any time when Dr. Gray has been in surgery while one of his patients delivered. (Tr. at 489).

26. Lori Lynn Hockenberry testified at hearing on behalf of the Dr. Gray. Ms. Hockenberry testified that she is a nurse anesthetist, an independent practitioner. Prior to becoming an independent practitioner, she was employed as a registered nurse in Paulding County Hospital's emergency room and operating room. (Tr. at 719-720).

Ms. Hockenberry testified that she was in the surgical suite with Dr. Gray when he was called to deliver a baby. She stated that he was performing a tonsillectomy on a young boy. She further testified that there were only two nurses in the surgical suite that day—a scrub nurse and a circulating nurse. Nevertheless, Ms. Hockenberry testified that she could not remember whether she had been acting as the circulating nurse, the scrub nurse, or the charge nurse. (Tr. at 721-722, 731).

Ms. Hockenberry could not remember how the message that Dr. Gray was needed in the delivery room had been conveyed to the surgical suite. She could not remember if someone had come to the surgical suite or if she had taken a message by telephone. She did remember, however, hoping that Dr. Gray would not leave the surgical suite because the patient was already asleep. Nevertheless, she could not remember how far into the surgery they were when they were notified. (Tr. at 722-723).

Ms. Hockenberry stated that someone from the surgical suite had called other areas of the hospital to see if another physician was available. Ms. Hockenberry could not remember if she had called the emergency room or if someone else had. She stated that someone had notified them that there was no emergency room physician in the hospital. She stated that that was unusual because, at that time, emergency room physicians were supposed to cover the hospital at all times (Tr. at 722-723, 732).

Ms. Hockenberry could not remember if Dr. Gray had spoken to anyone but she doubted that he had. She said usually messages are conveyed from the circulating nurse to the charge nurse who would have been outside of the room. She could not recall if the charge nurse was there that day or if she herself had been the charge nurse. She did remember, however, that the information was conveyed to the surgical suite somehow.
(Tr. at 723-724).

Ms. Hockenberry clearly remembered that, when information was transmitted, however it had been transmitted, "there was kind of a pause, and you know, I think Dr. Gray was running through his mind that – you know, what we were going to do. And he remembered that * * * Tom Gemmer was in the emergency room or I'm sorry, the clinic. So he told someone to go get Tom Gemmer." Ms. Hockenberry could not remember whom Dr. Gray had told to get Mr. Gemmer. (Tr. at 724-725).

When asked why she believed that she had known what Dr. Gray had been thinking, she stated that Dr. Gray had "stopped whatever he was doing and I remember him kind of looking in the distance, so I assume he was thinking, ok, what are we going to do here."
(Tr. at 725).

27. Dr. Gray testified that he had performed a vaginal examination of Patient 1 at 8:00. At that time, he had noted that her cervix was fully dilated, Nevertheless, Dr. Gray did not believe that Patient 1 would deliver vaginally. He did not believe that her pushing was effective. (Tr. at 1058). Dr. Gray had concluded that Patient 1 would require C-section.
(Tr. at 121-122).

Dr. Gray testified that he had come to this conclusion because the station of the baby's head had not progressed. When asked how he had come to that conclusion, since the station had not been documented in the record since 3:00 a.m., at which time the station was noted to be -1, Dr. Gray testified that it did not appear from the notes that the head had ever progressed beyond the station of -1. Dr. Gray did admit, however, that, despite the lack of documentation, the baby's head had progressed beyond -1 by the time the baby delivered.
(Tr. at 1059; St. Ex. 1 at 5b).

Dr. Gray testified that he had had a child scheduled for a tonsillectomy that morning. Dr. Gray decided to perform the tonsillectomy, despite Patient 1's condition. Dr. Gray testified that, in deciding to perform the tonsillectomy, he was balancing the interests of a "little kid fasting" against the interests of Patient 1. Dr. Gray testified that "you don't want to keep a five year old fasting for a long period." Dr. Gray had hoped to be able to complete the tonsillectomy before taking Patient 1 for a C-section. (Tr. at 121-122). Nevertheless, Dr. Gray testified that he had not tried to contact the emergency room physician to arrange for assistance should it become necessary. (Tr. at 125).

Dr. Gray testified that he had been in the middle of the tonsillectomy when he was notified that Patient 1 was ready to deliver. He stated that he had called other areas of hospital to see if any physicians available. He stated that the emergency room physician had not been in the hospital, and no other physician could be found. (Tr. at 117-119).

Dr. Gray testified that, since he could not find another physician, he had asked the nurses to contact Mr. Gemmer in the hospital clinic. Dr. Gray stated that he had been aware that Mr. Gemmer had performed more than 200 deliveries when he was in the navy. Dr. Gray stated that he had never seen Mr. Gemmer deliver a baby, but Dr. Gray had no reason to believe that Mr. Gemmer's report of having delivered more than 200 babies was untrue. Dr. Gray testified that Mr. Gemmer had told him that Mr. Gemmer had performed over two hundred deliveries in the Navy and had assisted in multiple surgeries. Dr. Gray stated that, although he had not attempted to confirm Mr. Gemmer's story, Dr. Gray's observation of Mr. Gemmer was consistent with that information. (Tr. at 119-120, 1054-1057).

Dr. Gray testified that if Mr. Gemmer had not been there to deliver the baby, the baby would have been delivered by one of the OB nurses. Dr. Gray testified that he had believed that Mr. Gemmer was the most qualified person to perform the delivery under the circumstances. (Tr. at 122-123).

Dr. Gray testified that Patient 1's delivery had been a precipitous delivery. He stated that he believed it had been a precipitous delivery because the nurses had not recorded a station after the -1 at 3:00 a.m. Therefore, Dr. Gray concluded that the baby had descended very rapidly once the baby finally started to move. Dr. Gray acknowledged that Patient 1 had been pushing for three and one-half hours. (Tr. at 129, 130).

28. Dr. Gray testified that he had repaired an episiotomy on Patient 1. He stated, however, that he did not know if an actual episiotomy had been performed or if Patient 1 had torn on her own. Dr. Gray testified that he would not have been able to tell by looking at the tear if it had been a surgical episiotomy or a tear because, with a woman having her first baby, it is sometimes difficult to distinguish between the two. (Tr. at 126-127).

Dr. Gray acknowledged that the delivery summary states that a mid-line episiotomy had been performed, but that Patient 1 had torn external anal sphincter despite the episiotomy. At that point, Dr. Gray concluded that Mr. Gemmer had performed a very small episiotomy and that the baby's head extended the episiotomy. (Tr. at 127-129; St. Ex. 1 at 13).

29. Dr. Gray acknowledged there was no indication in the delivery summary that Mr. Gemmer had delivered the baby. When asked why he had failed to document this, Dr. Gray responded, "I have asked myself that question so many times and I just don't know." (Tr. at 130-131; St. Ex. 1 at 13).

2007 FEB -8 P 40

Dr. Gray later testified that, if one physician delivers a baby before the attending physician arrives, the fact that someone other than the attending physician delivered the baby may not always be documented. The delivering physician just turns everything over to the attending physician once the attending physician arrives. (Tr. at 1061-1062).

30. Dr. Baggish testified that he had reviewed the patient records for Patient 1. Dr. Baggish stated that there was nothing in the record to support Dr. Gray's theory that Patient 1 had been an appropriate candidate for a C-Section. (Tr. at 288-289).

Moreover, Dr. Baggish testified that there was nothing in the patient's record to indicate that the delivery had been precipitous. He testified that a precipitous delivery is a sudden and unexpected, poorly controlled delivery. He stated that a delivery would be considered precipitous when the patient moves quite suddenly from less than full dilation to a sudden need to push the baby. But the data in Patient 1's medical record indicates that Patient 1 had been pushing for a long period of time under direct observation. Therefore, it was not a precipitous delivery. (Tr. at 302-303, 382-383).

Dr. Baggish further testified that, when Patient 1 was still pushing at 8: a.m., she was experiencing a prolonged second stage of labor. At the time she delivered, she was "well over two standard deviations for prima gravida for second stage." He stated that this is significant because decisions should have been made as to what to do at that point. Dr. Baggish stated a patient requires close observation at that point. (Tr. at 289, 290, 293, 299).

Dr. Baggish testified that Dr. Gray knew or should have known that he could not leave the patient deep in the second stage to perform an elective operation. Dr. Baggish further testified that Dr. Gray leaving the patient to do an elective surgery had, in fact, created the likelihood that someone else would have to deliver the baby. (Tr. at 301).

31. Dr. Baggish testified that the purpose of a delivery summary is to accurately depict the events which occurred and memorialize them in writing. He further stated that it is important to document who performed the delivery if that person is someone other than the person dictating the delivery summary. Moreover, if unusual events occur, it is important to document the unusual events. He stated that, if it is not so indicated, one would assume that the author of the discharge summary is the one who delivered the baby. (Tr. at 299-300, 349; St. Ex. 1 at 13).
32. Dr. Abramovitz testified that the average amount of time a woman having her first child will push is one to two hours. He testified that, since Patient 1's dilation seemed to be going well, one could make an indirect assumption that her contractions had been adequate. Dr. Abramovitz stated that his own limit would be three hours. He stated that, when a patient has been pushing for three hour, the physician should become concerned that something is wrong. (Tr. at 802-804).

33. Dr. Bachelder testified that Patient 1's delivery had been a difficult situation in which neither Dr. Gray nor any other physician was available for the delivery. Therefore, either Mr. Gemmer or a nurse would have had to perform the delivery. Dr. Bachelder concluded that, in asking Mr. Gemmer to perform the delivery, Dr. Gray had done what was best for Patient 1. Dr. Bachelder stated that Mr. Gemmer had been involved in two hundred deliveries, which was "a great value" and "a huge asset." (Tr. at 1211-1212).

Paulding County Hospital Policies

34. On April 21, 1997, the Paulding County Hospital Medical Staff Executive Committee met. Dr. Gray was not present at that meeting. The minutes from that meeting indicate that the status of physician assistant students was discussed. The committee agreed that "a student's privileges cannot be more than those of a licensed physician assistant." (St. Ex. 11).

Dr. Gray acknowledged that minutes from the Medical Staff Executive Committee meeting on April 21, 1997, state that a physician assistant student's privileges may not be more than those of a licensed physician assistant. (Tr. at 102; St. Ex. 11).

35. The Medical Staff Executive Committee met again on September 3, 1997. Dr. Gray was the presiding officer. The minutes from that meeting indicate that "[a] question of whether students can assist in delivery [of] OB patients and circumcisions was raised." A member of the committee agreed to investigate the issue. (St. Ex. 12).

Dr. Gray testified that he had been present at the medical staff executive committee discussion on September 3, 1997. He stated that he had requested clarification on policies pertaining to medical and physician assistant students. In addition, Dr. Gray had questioned whether his physician assistant could assist in the delivery of OB patients and in the performance of circumcisions. (Tr. at 99-100; St. Ex. 12).

36. The Medical Staff Executive Committee met again on September 15, 1997. Dr. Gray was present at that meeting. The minutes indicate that, in the discussion,

It was clarified that physician assistant students may assist the sponsoring or consenting physician but may not perform surgical or obstetrical procedures. Assisting is limited to holding retractors in OR. These limitations comply with state laws regarding physician assistants per research by [a committee member].

(St. Ex. 13). There is no indication in the minutes that the committee had voted on the policy. (St. Ex. 13).

Dr. Gray testified that he had been present at the Medical Staff Executive Committee meeting on September 15, 1997. Dr. Gray noted that it had been clarified that physician assistant students may not perform surgical or obstetrical procedures and that assisting is limited to holding retractors in the operating room. (Tr. at 100-101; St. Ex. 13).

37. In September 1997, officials of Paulding County Hospital signed a policy entitled "Students, Physician Assistant-Approved Clinical Rotations and Observer-Only Status." The policy provides, under "Specific Limitations," that "Physician Assistant students may assist the sponsoring physician or consenting physician in procedures but may not perform surgical procedures or obstetrical deliveries." Under "General Rules for Physician Assistant Students," the policy provides that "Students may observe in the OR and may hold retractors at the discretion of the operating surgeon or OR supervisor." Finally, the policy provides a list of functions that may be performed by a physician assistant at Paulding County Hospital. (St. Ex. 14; St. Ex. 9).

Dr. Gray acknowledged that this was a formal policy adopted by the medical staff. (Tr. at 100-101).

The Standard Utilization Plan Governing Mr. Hunter

38. On July 21, 1999, Dr. Gray filed a standard physician assistant utilization plan with the Board. In the utilization plan, Dr. Gray requested the Board's authorization to employ a physician assistant and agreed to limit the tasks the physician assistant would perform to the following:

Under 'supervision, on-site supervision, or direct supervision:'

- Obtaining comprehensive patient histories;
- Taking patient histories; performing physical examinations, including audiometry screening, routine visual screening, and pelvic, rectal, and genital-urinary examinations when indicated;
- Initiating, requesting and/or performing routine laboratory, radiologic and diagnostic studies as indicated;
- Identifying normal and abnormal findings on histories, physical examinations, and commonly performed initial laboratory studies;
- Assessing patients for development of treatment plans;
- Implementing treatment plans that have been reviewed and approved by the supervising physician;
- Monitoring the effectiveness of therapeutic interventions;
- Providing patient education;

2012 FEB -8 P 11:40

- Instituting and changing orders on patient charts as directed by the supervising physician, with any such orders written by the physician assistant to be reviewed by a supervising physician within twenty-four (24) hours after the order is written and countersigned if the order is appropriate;
- Screening patients to aid the supervising physician in determining the need for further medical attention;
- Performing developmental screening examinations on children as relating to nervous, motor, and mental functions;
- Performing care and suturing of minor lacerations;
- Applying cast or splint;
- Administering medication and intravenous fluids upon order of the supervising physician;
- Removing superficial foreign bodies;
- Inserting a catheter in the urinary bladder;
- Performing cardio-pulmonary resuscitation, and

Under “on-site” or “direct supervision,”

- Initiating treatment plans that have been reviewed and approved by the supervising physician for new patients or for existing patients with new conditions;
- Carrying out or relaying the supervising physician’s order for medication, to the extent permitted under laws pertaining to drugs.

(St. Ex. 9 at 3).

Dr. Gray did not request privileges for his physician assistant to assist him in surgery. Had he done so, Dr. Gray would have checked the “assisting in surgery” box in the utilization plan which would have indicated his request for a physician assistant to perform the following:

Assisting in surgery in a hospital, as defined in Section 3727.01 of the Ohio Revised Code, or an outpatient surgical care center affiliated with the hospital * * * provided that these physician-supervised procedures have been delineated within the scope of practice of a physician assistant and approved by the appropriate committee of the hospital or outpatient surgical care center where such services are to be rendered.

(St. Ex. 9 at 3). The Board approved Dr. Gray’s standard utilization plan. (St. Ex. 9).

2002 FEB -9 P 11:40

39. On September 11, 1999, Dr. Gray submitted a Physician Assistant Supervision Agreement, advising that Mr. Hunter had agreed to work with Dr. Gray under the terms of the standard utilization plan approved by the Board for Dr. Gray. (St. Ex. 9).

Mr. Hunter's Privileges at Paulding County Hospital

40. On August 18, 1999, Mr. Hunter filed an application at Paulding County Hospital for Allied Health Professional Privileges. Paulding County Hospital granted a variety of privileges to Mr. Hunter. The hospital denied, however, Mr. Hunter privileges to perform the following:

- a. "Life-threatening emergency. At the time of a clinical emergency any practitioner may render whatever care he believes to be indicated."
- b. "Assist in surgery. Position, drape, dressings, set up and pass instruments."

(St. Ex. 10). The hospital's Credentials Committee noted that privileges had been granted "with the exception of assistance in surgery since not requested/approved by State in utilization plan." (St. Ex. 10).

By letter dated February 2, 2000, Mr. Thornhill notified Mr. Hunter that his request for provisional physician assistant privileges had been granted "consistent with the standard utilization plan approved by the Ohio State Medical Board." (Resp. Ex. B). By letter dated September 6, 2000, Mr. Thornhill advised Mr. Hunter,

[T]he results of quality assurance monitoring during your six-month provisional status period for Affiliate Physician Assistant privileges have been positive. Effective August 31, 2000, provisional status was lifted by our Board of Trustees at the recommendation of the Medical Staff.

(Resp. Ex. F).

The Circumcision

41. Patients 2 and 3, twin males, were born at Paulding County Hospital on May 10, 2000. Patient 2 weighed five pounds, twelve ounces; Patient 3 weighed five pounds, four ounces. The patients' mother signed a "Consent for Invasive Medical Procedure, Circumcision," to be performed "under the direction of" Dr. Gray. (St. Exs. 2 & 3 at 1, 2, 8; Resp. Ex. C).

2001 FEB -8 P 14:40

42. *Taber's Cyclopedic Medical Dictionary* defines circumcision as the "[s]urgical removal of the end of the prepuce of the penis." (St. Ex. 19). *Mosby's Medical, Nursing, and Allied Health Dictionary* defines circumcision as "a surgical procedure in which the prepuce of the penis * * * is excised." (St. Ex. 20). *The Medline Medical Encyclopedia* defines circumcision as "the surgical removal of the foreskin of the penis." (St. Ex. 18). Finally, a pamphlet produced by the American Academy of Pediatrics defines circumcision as "a surgical procedure in which the skin covering the end of the penis is removed." (St. Ex. 21).

43. Dr. Gray testified that he had performed four to five hundred circumcisions during his practice of medicine. He stated that the most frequent complication of circumcision is bleeding; the second most frequent is infection. (Tr. at 1049).

(Tr. at 49-51). Dr. Gray testified that the string and plastibell will "fall off" in approximately three to seven days. (Tr. at 52).

44. The nurses' notes for Patient 3 on May 11, 2000, at 8:05 a.m., indicate, "Circumcision done per Dr. Gray [with] Tom Hunter, P.A., assisting. Circ done [with] 1.1 cm plastibell." (St. Ex. 3 at 17).

The nurses' notes for Patient 2 on May 11, 2000, at 8:20 a.m., indicate, "Circumcision done per Tom Hunter, P.A. [with] Dr. Gray assisting. Circ done [with] 1.1 cm plastibell." (St. Ex. 2 at 17).

45. In a Summary Report for Patient 3, Dr. Gray wrote, "[Patient 3] had a circumcision on 5/11 and this went without incident. I had Tom Hunter, PAC, glove and assist me on the circumcision of these twins since they were smaller and would slip out of the circ board." (St. Ex. 2 at 38).

In a Summary Report for Patient 2, Dr. Gray wrote, "This patient had a newborn circumcision done by me and since this twin and his brother were small and would wriggle out of the circ board Tom Hunter, PAC assisted me with the circumcision." (St. Ex. 2 at 38).

46. Dr. Gray also completed a Progress Note for Patient 3 on May 11, 2001. He stated, "Doing well. Phys. exam normal. Circ today." Dr. Gray signed the note. (St. Ex. 3 at 37).

Dr. Gray also completed a Progress Note for Patient 2 on May 11, 2001. He stated, "Doing well. Phys. exam normal. Circ today." Dr. Gray signed the note under this statement, toward the right side of the page. To Patient 2's note, however, in compressed handwriting between the left margin and his signature, Dr. Gray wrote, "Tom Hunter assisted [with] circ. since babies smaller were squirming out of circ board so needed him." (St. Ex. 2 at 37).

2017 FEB -9 P 4:40

47. Dr. Gray completed a Newborn Circumcision Report for Patient 2, as follows:

The patient was prepped and draped in the usual manner after being placed on the circ board. Great care was taken to avoid pinching any tissue while placing the baby on to the circ board. The foreskin and scrotal area were cleansed with phisoderm and the neonate was draped with sterile drapes from the circ kit. After this was performed, the lateral foreskin was grasped with two straight stats. A third straight stat was used to release adhesions between the glans penis and the foreskin. A straight stat was used to clamp the dorsal foreskin. This was left on for approximately 30 seconds and then a dorsal slit was made. The foreskin was then retracted proximally to the glans penis and all adhesions were wiped away. A 1.1 cm centimeter [sic] plastibel was then placed over the glans penis and the foreskin was retracted distally to this. The ligature was then tied over the foreskin to the plastibel and all excess foreskin was trimmed away. The neonate tolerated the procedure very well and hemostasis was achieved without problems. This neonate was sent to his mother's room without incident and in excellent condition.

Tom Hunter, P.A., assisted me with this circumcision. The procedure went well.

(St. Ex. 2 at 33). This report was similar to the note written for Patient 3, but Patient 3's note did not contain the reference to Mr. Hunter. (St. Ex. 3 at 33).

48. Dr. Gray testified that, in May 2000, the circumcision room at Paulding County Hospital was a small room next to the nursery. There was a large picture window between the nursery and the circumcision room. The circumcision room was approximately nine by twelve feet. Just below the large picture window was a circumcision table. The circumcision table was approximately thirty by thirty-six inches, and was set eight to ten inches below the picture window. Dr. Gray further testified that the door from the nursery into the circumcision room was approximately twenty-six inches from the circumcision table. (Tr. at 1039-1041).

Dr. Gray testified that, when performing a circumcision, the baby is placed on a "circ board." He testified that a circ board is a small plastic board with Velcro straps to immobilize the baby's extremities. He stated that the purpose is to keep the child stationary. Dr. Gray stated that babies who are smaller than the average baby can wriggle out of a circ board. He further stated that, on occasion, it helps to have another person assist by holding the baby. Dr. Gray explained that there are smaller circ boards available, but Paulding County Hospital is not a wealthy hospital and could only afford circ boards built for full term infants. (Tr. at 74-75).

49. Dr. Gray testified that Patients 2 and 3 were small and, since the circ board was for full term babies, the babies were “wriggling all over the place.” Dr. Gray testified that he had asked Mr. Hunter to help him keep the babies on the circ board. He stated that, during the first circumcision, involving Patient 3, Dr. Gray had performed the procedure. He stated that Mr. Hunter had kept the baby on the circ board and held some instruments. (Tr. at 78-80).

Dr. Gray described the circumcision of Patient 2. Dr. Gray stated that he and Mr. Hunter had stood at the foot of the table. Mr. Hunter performed the steps of the procedure as Dr. Gray directed him. Dr. Gray stated that Mr. Hunter had used no independent judgment during the procedure. Dr. Gray testified that Mr. Hunter had grasped the lateral foreskin on each side with a hemostat. Mr. Hunter held the hemostat on one side and Dr. Gray held the hemostat on the other. Mr. Hunter then put the third hemostat between the foreskin and the glans penis to lyse adhesions. Dr. Gray testified that he believes that he, himself, had placed the hemostat to devascularize the foreskin and had cut the dorsal slit. He further stated that he believes that Mr. Hunter had placed the plastibell over the head of the penis and tied the string. (Tr. at 1042-1044).

Dr. Gray testified that, during the course of the circumcision of Patient 2, Patricia Madison, R.N., the Director of Nursing at Paulding County Hospital, had come into the room and yelled “Stop this procedure.” Dr. Gray stated that Ms. Madison had “scared the living daylights out of [him].” Dr. Gray stated that he had asked Ms. Madison to leave the room because he was doing a procedure. Dr. Gray admitted that he had not spoken to her calmly and that a confrontation had ensued. Dr. Gray stated that, during the confrontation between him and Ms. Madison, Mr. Hunter had asked Dr. Gray to take over the procedure. (Tr. at 78-80, 1045).

Dr. Gray testified that he very clearly remembers Ms. Madison coming into the room because this was the only occasion in sixteen years that “something has come out of the blue and scared the living daylights out of me during a procedure.” Nevertheless, at another time, Dr. Gray testified that he is unclear as to when Ms. Madison had entered the room. He stated that he believes it was toward the middle or end of the procedure, but he is not sure. Moreover, he stated that he is not clear as to what happened before or after the time Ms. Madison entered the room. (Tr. at 1045, 1101-1102).

Dr. Gray testified that, after Ms. Madison had left the room, Mr. Hunter also left. Mr. Hunter then contacted the Board, and left a message for Cathy Hacker, the P.A. Program Administrator for the Board. Dr. Gray believes that Mr. Hunter told Ms. Hacker that there had been a problem with doing a circumcision and that Dr. Gray would be calling her shortly. (Tr. at 88-89).

2007 FEB -9 P 10:40

Dr. Gray testified that, after finishing the procedure, he had gone to the office of Mr. Thornhill, then the Chief Executive Officer at Paulding County Hospital. Dr. Gray stated that he had been “very upset” at that time. Dr. Gray told Mr. Thornhill that Mr. Hunter had been assisting him with a circumcision when Ms. Madison entered the room and demanded that they stop the procedure. (Tr. at 83-84).

Dr. Gray noted that Mr. Thornhill had asked him to identify the parts of the procedure that Mr. Hunter had performed. Dr. Gray testified that he had lied to Mr. Thornhill, telling him that Mr. Hunter had cut nothing but the string. Dr. Gray stated that, at that time, he had believed that Mr. Hunter had trimmed the skin off the plastibell at the end of the procedure. (Tr. at 83-84).

Dr. Gray stated that, after leaving Mr. Thornhill’s office, he had contacted Ms. Hacker. He told her that he and his physician assistant had done a circumcision and that he needed clarification of his utilization plan. Dr. Gray believes that he had described the procedure to Ms. Hacker and advised her that Mr. Hunter had cut skin. Dr. Gray stated that Ms. Hacker had responded that, if that what he told her was true, Dr. Gray had violated his utilization plan. (Tr. at 88-89; 1046).

Dr. Gray testified that, the following day, Mr. Thornhill advised Dr. Gray that Mr. Thornhill had also spoken with Ms. Hacker. Mr. Thornhill told Dr. Gray that Ms. Hacker had stated that Dr. Gray had admitted that Mr. Hunter had cut skin. Mr. Thornhill asked Dr. Gray why he had made different statements to Ms. Hacker and to Mr. Thornhill. Dr. Gray responded that, “There must have been some miscommunication.” At hearing, Dr. Gray testified that he had lied to Mr. Thornhill a second time because he had had “some misguided reason for protecting my employee – but it was very stupid of me.” (Tr. at 89-90).

50. Mr. Hunter testified that Dr. Gray had performed the circumcision of Patient 3, and that Mr. Hunter had assisted. Mr. Hunter further testified that, after Patient 3’s circumcision was complete, Patient 2 was prepared for his circumcision. Dr. Gray and Mr. Hunter switched places at the foot of the table, and Mr. Hunter performed the circumcision of Patient 2. Mr. Hunter testified that Dr. Gray had “walked him through” each step of the procedure, telling him what to do, and Mr. Hunter had followed Dr. Gray’s instructions. (Tr. at 159-160).

Mr. Hunter stated that, at some point during the circumcision, Ms. Madison had opened the door and shouted for them to stop the procedure. He stated that Dr. Gray had asked Ms. Madison to leave them alone. Mr. Hunter testified that, when Ms. Madison opened the door, it was within inches from him. He stated that he had had to move his elbow to avoid being bumped. (Tr. at 159-160, 568-569).

2002 FEB - 9 P 11: 40

Mr. Hunter testified that Ms. Madison had advised Dr. Gray that Mr. Hunter was not authorized to perform the procedure. Dr. Gray responded that Mr. Hunter was Dr. Gray's "student" and that Mr. Hunter's performing the procedure was appropriate. Mr. Hunter stated that, at some point, he had put down the instruments and asked Dr. Gray to finish the procedure. (Tr. at 159-160).

Mr. Hunter testified that he had left the room when the procedure was complete. Mr. Hunter called Ms. Hacker in an attempt to get clarification on what he was allowed to do. Mr. Hunter stated that Ms. Hacker had returned the call later in the afternoon and spoken with Dr. Gray. (Tr. at 571-572, 574-575).

51. At hearing, Dr. Gray was unable to recall who had cut the dorsal slit on Patient 2. Moreover, despite his admission that he had lied to Mr. Thornhill about Mr. Hunter not cutting skin, at hearing, Dr. Gray could not remember if Mr. Hunter had cut any skin at all. (Tr. at 1044).

When asked if he would have known at the time he spoke to Mr. Thornhill or Ms. Hacker whether Mr. Hunter had made the dorsal slit, Dr. Gray admitted that he probably would have known then but that he was not certain now. (Tr. at 91).

Moreover, Dr. Gray acknowledged that he had discussed the circumcisions of Patients 2 and 3 in a deposition before the Board on April 13, 2001. Dr. Gray stated that he had testified in his deposition that he had cut the dorsal slit himself. Dr. Gray acknowledged, at the hearing, that Mr. Hunter had remembered the incident differently. (Tr. at 72, 81).

52. At hearing, Mr. Hunter was able to recall clamping the foreskin and breaking adhesions at the head of the penis during the circumcision of Patient 2. Mr. Hunter stated that he believes he also cut the dorsal slit. He stated that, at the time Ms. Madison opened the door, he had been either making the cut or was about to make the cut. Mr. Hunter testified that he had performed all of the steps of Patient 2's circumcision prior to Ms. Madison's entrance. (Tr. at 159-160, 615-616, 618).

Mr. Hunter acknowledged that he had discussed the circumcisions of Patients 2 and 3 in a deposition before the Board on April 13, 2001. Mr. Hunter stated that he had testified in his deposition that he had cut the dorsal slit, placed the plastibell, and tied the string during the circumcision of Patient 2. At the deposition, Mr. Hunter also testified that he had been getting ready to cut the foreskin when Ms. Madison entered the room. Mr. Hunter testified that, since his deposition testimony had been closer to the date of the event, his memory at the time of the deposition had probably been more accurate than his memory at the time of the hearing. Mr. Hunter explained that, since he has had time to reflect on the events under less duress, he truthfully cannot remember if he cut the dorsal slit. He clarified, however, that he was not denying having done it. (Tr. at 161-162, 615-616).

Mr. Hunter further testified that, when Ms. Madison walked into the room, he had been “absolutely flustered.” He stated he had never been in such a situation. Mr. Hunter testified that, during the confrontation between Dr. Gray and Ms. Madison, his hands had started shaking and he had been unable to finish the procedure. Mr. Hunter testified, “I wish I could remember it all. But it’s just like being hit by a train or a car wreck.” When asked what had changed between the time of his deposition and the time of the hearing to affect his memory, Mr. Hunter responded, “more facts, more paperwork, and more everything.” He stated that the event was “a nightmare” he wanted to forget. (Tr. at 617-618).

53. Kelly Sherry, LPN, testified at hearing by telephone on behalf of the State. Ms. Sherry testified that she has worked at Paulding County Hospital since 1993. She stated that she works in the OB department and that one of her responsibilities is to be present at circumcisions. (Tr. at 243-244).

Ms. Sherry stated that the circumcision room at Paulding County Hospital is a small room next to the nursery. Between the two rooms, there is a door and a large window. She stated someone standing in the nursery can see clearly into the circumcision room. Ms. Sherry further testified that someone standing in the nursery can see the circumcision table which is next to the large window. (Tr. at 256, 267).

Ms. Sherry testified that in May 2000 the same circ board was used for all babies regardless of their size. If the baby was smaller, one would adjust the straps to hold the baby tighter. Ms. Sherry stated that she has never held a baby’s arms and legs to assist in performing a circumcision. She further stated that she has never seen a situation where a second person has had to restrain the baby. (Tr. at 246-247).

54. Ms. Sherry testified that she had been present at the circumcisions of Patients 2 and 3 on May 11, 2000. Ms. Sherry testified that, prior to the circumcisions that morning, Ms. Munger had told her “to watch what is going on in there.” (Tr. at 262-263).

Ms. Sherry testified that Dr. Gray performed the circumcision of Patient 3 with Mr. Hunter at his side. She stated that, after Patient 3’s circumcision, Ms. Sherry brought Patient 2 into the room. During Patient 2’s circumcision, Mr. Hunter was standing at the baby’s feet. Dr. Gray stood next to Mr. Hunter or walked around him. Ms. Sherry stated that she had been standing diagonally behind Mr. Hunter and could see his arms moving during the course of the procedure. Ms. Sherry stated that she did not remember Dr. Gray holding instruments. (Tr. at 252-255, 266, 269-270, 275).

Ms. Sherry stated that she had heard Dr. Gray instructing Mr. Hunter regarding the steps of the circumcision. Moreover, she had seen the instruments in Mr. Hunter’s hands.

Although she could not see the steps of the procedure, Ms. Sherry stated that she believed Mr. Hunter had cut the dorsal slit. Ms. Sherry testified that she had seen Mr. Hunter's arms moving when Patient 2 let out a sharp cry. Ms. Sherry stated that she has been present at a number of circumcisions and the sound of a baby's scream when skin is cut is much more intense than the baby's normal cry. (Tr. at 254-255, 275).

55. Ms. Sherry stated that, during the course of the circumcision of Patient 2, she had seen Ms. Munger looking through the window from the nursery into the circumcision room. Ms. Sherry stated that Ms. Munger had appeared to be angry, and had quickly left the nursery. (Tr. at 256-257).

Shortly thereafter, Ms. Madison entered the circumcision room. Ms. Sherry testified that Ms. Madison's coming into the circumcision room had not surprised her because she had seen Ms. Madison through the nursery window. Ms. Sherry stated that Ms. Madison had opened the door, and that she had not been yelling when she entered the room. Ms. Sherry further stated that Ms. Madison had simply told Mr. Hunter to stop what he was doing because he was not allowed to perform circumcisions. Thereafter, however, Ms. Madison and Dr. Gray engaged in a loud, angry exchange. Ms. Sherry did not remember who started yelling loudly first. (Tr. at 258, 272-273).

56. Ms. Sherry testified that she did not recall anyone restraining Patient 2 or 3 during the circumcisions. She stated that it would be unusual to see someone restraining a baby's arms and legs in the process of a circumcision. She further stated that one would have to go under the sterile drapes in order to do that. She stated that if it had happened during the circumcisions of Patients 2 and 3, she would remember it. (Tr. at 248-249).
57. Ms. Sherry stated that, after the circumcision of Patient 2, Dr. Gray had approached Ms. Munger in a "very upset" manner. She testified that he had slammed a chart on the desk and said "Thanks a lot." (Tr. at 281).
58. Ms. Munger testified that on May 11, 2000, she had walked into the nursery and looked into the circumcision room. Ms. Munger stated that she had been able to see the circumcision table very clearly from where she was standing. (Tr. at 464-465).

Ms. Munger testified that she had seen Mr. Hunter standing over Patient 2. It had appeared to Ms. Munger that Mr. Hunter was performing the circumcision. Ms. Munger testified that Mr. Hunter had had scissors in his hand, that the scissors had been bloody, and that the baby's penis had been cut. She further stated that Dr. Gray had been standing next to Mr. Hunter with his hands clasped together. Ms. Munger stated that she had notified her supervisor, Ms. Madison, that a physician assistant was performing a circumcision with Dr. Gray observing. (Tr. at 464-465, 492-493).

Ms. Munger testified that, when Dr. Gray was finished with the circumcisions, he had come out of the nursery with a chart in his hand. She further stated that he had slammed the chart on the desk and yelled at her in a loud and angry voice. Then Dr. Gray left the room. (Tr. at 466).

Ms. Munger further stated that, sometime after the circumcisions of Patients 2 and 3, Dr. Gray had been performing another circumcision in the circumcision room. Ms. Munger stated that she had gone into the nursery for formulas. Dr. Gray approached her later that day, pulled her into a room, and yelled at her for spying on him. Ms. Munger stated that she had not been spying on Dr. Gray. Moreover, she had not even been aware that Dr. Gray was in the circumcision room when she entered the nursery. (Tr. at 468-469).

59. Patricia Madison, R.N., testified at hearing on behalf of the State. Ms. Madison testified that she had worked at Paulding County Hospital from approximately April 1998 through April 2001. She served as the Chief Nursing Officer and was responsible for the patient care services at the hospital. She explained that the patient care services included nursing, radiology, pharmacy, respiratory therapy and laboratory. (Tr. at 496-498).

Ms. Madison testified that she recalls the circumcision of Patient 2. Ms. Madison testified that Ms. Munger had contacted her at a meeting and had asked her to step out. She stated that Ms. Munger had been upset and reported that Mr. Hunter was performing a circumcision. Ms. Munger had asked Ms. Madison to take care of the situation. Ms. Madison stated that she had reported the situation to Mr. Thornhill. Mr. Thornhill asked Ms. Madison to take care of the matter. (Tr. at 502-503).

Ms. Madison stated that she had walked through the nursery and into the circumcision room. Ms. Madison testified that, when she went to the circumcision room, she had seen Mr. Hunter standing at the feet of the baby. Mr. Hunter had instruments in both hands. Dr. Gray held no instruments. (Tr. at 502-505).

Ms. Madison stated that she had told Dr. Gray calmly that he would have to stop the procedure, but Dr. Gray did nothing. Ms. Madison then told Mr. Hunter "Tom, you need to put down those instruments; I'm going to call the State and your license is going to be affected. Please don't jeopardize your license." She stated that Dr. Gray had been "very, very angry" and told her to leave the room. Mr. Hunter put down his instruments, and Dr. Gray completed the circumcision. Ms. Madison returned to Mr. Thornhill's office. (Tr. at 502-503).

Subsequently, Dr. Gray went to Mr. Thornhill's office. Ms. Madison was in Mr. Thornhill's office at that time. Ms. Madison testified that Dr. Gray was "extremely angry." He told Ms. Madison that she had been "out of line" and that she had had no business interfering with his procedures. Ms. Madison stated that Dr. Gray was so upset

that he was shaking. Ms. Madison testified that, when Dr. Gray opened the door to leave, he knocked over a coat rack and broke a picture on the wall. (Tr. at 503-505, 511-512).

Ms. Madison testified that she had seen Dr. Gray very angry on other occasions, and that Dr. Gray had a reputation of being “volatile.” (Tr. at 506-509, 511-512).

56. Mr. Thornhill testified that he recalls the events surrounding the circumcision of Patient 2. Mr. Thornhill testified that he had been in his office when Ms. Munger informed him that a physician assistant was performing a circumcision with Dr. Gray. Mr. Thornhill asked Ms. Munger to find Ms. Madison and ask her to stop the surgery if it was, in fact, occurring. (Tr. at 179-180).

Mr. Thornhill testified that, shortly thereafter, Ms. Madison had advised him that she had stopped Mr. Hunter from further performance of the circumcision, and that Dr. Gray had completed it. She further advised that there had been a confrontation between her and Dr. Gray. (Tr. at 180).

Mr. Thornhill testified that, shortly thereafter, Dr. Gray had come to the office and “slammed the door open.” In doing so, Dr. Gray had broken the frame of a picture hanging on the wall. Mr. Thornhill stated that Dr. Gray had been “obviously upset.” Dr. Gray advised Mr. Thornhill that he would not have his procedures interrupted again “by Ms. Madison or anyone else.” Mr. Thornhill asked Dr. Gray to come into the office and calm down. (Tr. at 180-181).

Mr. Thornhill testified that, during the ensuing conversation, he had asked Dr. Gray two or three times whether the physician assistant had cut skin. Dr. Gray had denied that Mr. Hunter had cut skin and stated that he had only cut string. The conversation ended and Dr. Gray left the office. Mr. Thornhill stated that Dr. Gray had been angry, but had controlled his anger by the end of the conversation. (Tr. at 180-181).

After Dr. Gray left, Mr. Thornhill read the hospital’s credentialing file on Mr. Hunter. At that point, Mr. Thornhill found Ms. Hacker’s name on the physician assistant utilization plan, and he called her. Mr. Thornhill testified that that he had told Ms. Hacker that he had a problem and that it involved conflicting stories about a circumcision. Moreover, he testified that he had asked Ms. Hacker if physician assistants have a “surgical capability” and that she had said “no.” Shortly thereafter, Mr. Thornhill also discovered that Mr. Hunter had been denied surgical privileges at Paulding County Hospital. (Tr. at 181-182).

Mr. Thornhill testified that Ms. Hacker later advised him that Dr. Gray had admitted to her that Mr. Hunter had performed the circumcision. She further advised that Dr. Gray had stated that, in his opinion, “it was a matter of interpretation whether a circumcision would

be considered a surgical procedure.” Ms. Hacker informed Mr. Thornhill that the Board would be initiating an investigation. (Tr. at 183).

Mr. Thornhill further testified that, the next morning, Dr. Gray had informed Mr. Thornhill that Dr. Gray had spoken to Ms. Hacker. Mr. Thornhill told Dr. Gray that he had also spoken to Ms. Hacker. Mr. Thornhill advised Dr. Gray that Ms. Hacker had informed Mr. Thornhill that Dr. Gray had admitted that Mr. Hunter had performed a circumcision. At that time, Dr. Gray told Mr. Thornhill that there had been a misunderstanding, and that Dr. Gray had not said that to Ms. Hacker. (Tr. at 183-184).

60. Mr. Thornhill stated that he had written a letter to Dr. Gray advising that he had concerns about Dr. Gray’s behavior. Mr. Thornhill further advised Dr. Gray that he believed Dr. Gray’s behavior had been “intended to intimidate.” Finally, Mr. Thornhill advised Dr. Gray that the two of them would have to work together in a professional manner if they were going to be able to work together at all. Mr. Thornhill stated that he has not received any response to the letter from Dr. Gray. (Tr. at 184-185).
61. Cathy Hacker testified at hearing on behalf of all parties. Ms. Hacker testified that she is employed by the Board as a Physician Assistant Program Administrator. Ms. Hacker further testified that she had received a telephone call from Mr. Thornhill on May 11, 2000. She stated she does not remember the entire conversation but believes that Mr. Thornhill had told her that a nurse had seen a physician assistant performing a circumcision. Mr. Thornhill also told her that he had spoken to the physician and that the physician had denied the allegation. (Tr. at 529, 533, 928-931 [Condensed transcript (CT) at 70-73]).

Ms. Hacker testified that Mr. Thornhill had asked if it was appropriate for a physician assistant to perform a circumcision. Ms. Hacker stated that she had informed Mr. Thornhill that it was not appropriate. Moreover, Ms. Hacker had reviewed Mr. Hunter’s utilization plan, and discovered that the “assisting in surgery” box had not been checked. Nevertheless, Ms. Hacker testified that her answer to Mr. Thornhill would have been the same regardless of whether the assisting in surgery box had been checked. She stated that performing a circumcision is a surgery; it is not assisting in surgery. Therefore, what Mr. Thornhill described to her was a physician assistant performing a surgery. (Tr. at 928-931 [CT at 70-74]).

Ms. Hacker stated that, while she was talking with Mr. Thornhill, she had received a voice mail message from either Mr. Hunter or Dr. Gray. She stated that she had returned the call to Dr. Gray based on the voice mail message. (Tr. at 533).

Ms. Hacker testified that Dr. Gray told her that his physician assistant had performed a circumcision. Dr. Gray further questioned whether physician assistants were authorized to perform circumcisions. (Tr. at 533-534, 932-933 [CT at 74-75]).

Ms. Hacker testified that she had spoken again to Mr. Thornhill that same day. She advised Mr. Thornhill that she had spoken with Dr. Gray and that Dr. Gray had admitted that Mr. Hunter had performed the circumcision. (Tr. at 939-940 [CT at 81-82]).

62. The mother of Patients 2 and 3 testified at hearing on behalf of Dr. Gray. She testified that she is a stay-at-home mom with three sons. She further stated that she has a four-year-old son and sixteen-month-old twins. She testified that Dr. Gray has been her physician for over thirteen years and that she has frequently seen Mr. Hunter when she has gone to Dr. Gray's office. (Tr. at 517-518).

The mother of Patients 2 and 3 testified that, on the day of her twins' circumcisions, Dr. Gray had told her that "they" would be taking the boys for their circumcisions. Therefore, she had assumed that Dr. Gray and Mr. Hunter would be working together. She stated that she had had no reservations about Mr. Hunter working with Dr. Gray in performing the circumcisions. (Tr. at 521-522).

The mother of Patients 2 and 3 testified that Dr. Gray and Mr. Hunter had brought the babies back to her after the circumcisions. She stated that she had understood that Dr. Gray had performed Patient 3's circumcision and that Mr. Hunter had performed Patient 2's circumcision. She stated that there had been no complications with the circumcisions. (Tr. at 524-525).

63. By letter dated June 27, 2000, Evarista C. Nnadi, M.D., then Chief of Medical Staff at Paulding County Hospital, advised Dr. Gray that the hospital's Medical Executive Committee had convened to discuss Mr. Hunter's involvement in the circumcision of Patients 2 and 3. In the letter, Dr. Nnadi further advised as follows:

[T]he Medical Executive Committee has decided that at no time will a Physician Assistant be allowed to perform a surgical procedure or obstetrical delivery at Paulding County Hospital until approval has been sought and received from the State Medical Board of Ohio. In the event such approval is received, the current hospital privileges held by Physician Assistant Hunter will require modification and approval by the Paulding County Hospital Medical Executive Committee and Board of Trustees before such privileges are placed into effect.

Failure to comply with the above decision will result in immediate sanctions by the Medical Executive Committee.

(Resp. Ex. D). Dr. Gray signed the letter to acknowledge his "[r]eceipt and understanding."
(Resp. Ex. D).

A similar letter was sent to Mr. Hunter. Mr. Hunter signed his letter to acknowledge his “[r]eceipt and understanding.” (Resp. Ex. E).

64. Dr. Gray testified that he had been aware at the time of the circumcisions that there had been conflict regarding Mr. Hunter’s involvement in the circumcision of Patient 2. Dr. Gray testified that he had not made notes regarding the incident other than the circumcision report for Patient 2. He stated that the circumcision report would be the most accurate report of what had transpired. Dr. Gray acknowledged, however, that he had made no mention of Mr. Hunter’s involvement in the procedure other than that he had “assisted.” (Tr. at 1103-1104; St. Ex. 2 at 33).

Dr. Gray was also questioned about his discharge summary for Patient 3, which states, “[Patient 3] had a circumcision on 5/11 and this went without incident. I had Tom Hunter, PAC, glove and assist me * * *,” and his discharge summary for Patient 2, which states, “This patient had a newborn circumcision done by me and since this twin and his brother were small and would wriggle out of the circ board Tom Hunter, PAC, assisted me * * *.” [emphasis added] Dr. Gray testified that had written the note for Patient 2 in this manner because he believes that he performed Patient 2’s circumcision and that Mr. Hunter assisted. Dr. Gray did not explain why he had not written similar language in the note for Patient 3. (Tr. at 73-74, 1108-1109; St. Ex. 2 at 38; St. Ex. 3 at 38).

Regarding his May 11, 2000, progress notes for Patients 2 and 3, Dr. Gray acknowledged that he had added to the progress note for Patient 2 a statement that Mr. Hunter had assisted with the circumcision because Patient 2 was small and squirming. Dr. Gray further acknowledged that he had not added a similar statement to the progress note for Patient 3. Dr. Gray testified that he could not explain why he had added the statement to Patient 2’s record, but not to Patient 3’s record. Dr. Gray stated, “Looking back, I have never been so flustered I think in my life to be doing a procedure and having a nurse come in behind you and start yelling. I think I was just so distraught that I don’t know exactly why I didn’t do this, but that was just a very upsetting day.” (Tr. at 76-77, 1105, 1106; St. Ex. 2 at 37; St. Ex. 3 at 37).

Dr. Gray was also questioned regarding the portions of his note which stated that Mr. Hunter had assisted with the circumcisions because the babies were small and wriggling out of the circ board. The question presented pertained to the steps Mr. Hunter had performed to prevent the babies from wriggling out of the circ boards. Dr. Gray testified that Mr. Hunter “may have” restrained the babies at some point during the procedures. (Tr. at 1109-1110).

65. At hearing, Dr. Gray provided a number of reasons for his decision to allow Mr. Hunter to participate in the circumcision of Patient 2. These reasons include the following:
- a. Dr. Gray had not wanted Mr. Hunter to lose his skills in performing circumcisions. Dr. Gray testified that Mr. Hunter had assisted in circumcisions as a physician assistant student. Dr. Gray stated that, when assisting in circumcisions as a student, Mr. Hunter had held hemostats and retracted tissue. Dr. Gray stated that Mr. Hunter had never performed a circumcision independently and that Mr. Hunter had never before cut skin. (Tr. at 63-65, 1097-1098).
 - b. Dr. Gray testified that he had believed that Mr. Hunter had been assisting in the circumcision and that Dr. Gray had performed it. Dr. Gray stated that he still believes that if, during the course of a circumcision performed by an assistant, the physician is gloved and advising the assistant of each step of the procedure, the physician is performing the procedure and the assistant is assisting. Because that was his belief, he did not seek guidance from the Board before having Mr. Hunter “assist” in performing the circumcision. (Tr. at 52-57, 72-73).
 - c. Dr. Gray testified that, at the time of the circumcision of Patients 2 and 3, he had believed that “assisting in surgery” as referenced on the utilization plan and by the Paulding County Hospital credentialing process had meant assisting in the actual surgical suite. Dr. Gray testified that the circumcisions took place in the newborn nursery; therefore, he had not thought that Mr. Hunter needed assisting in surgery privileges to participate in a circumcision. (Tr. at 46, 58-60).
66. Mr. Hunter testified that Dr. Gray had wanted him to help in the circumcision because it was a learning experience for Mr. Hunter and because Dr. Gray wanted Mr. Hunter to “keep up his skills.” When asked what he meant by keeping up his skills, Mr. Hunter testified that he had obtained skills in circumcisions during his rotations with Dr. Gray as a student. Mr. Hunter stated that, as a student, he had observed and held retractors. (Tr. at 158, 609-610).

Mr. Hunter testified that prior to Ms. Madison walking into the room he had believed that what he was doing was permissible. Mr. Hunter stated that he had thought that the assisting in surgery portion of a standard utilization plan was directed at major, not minor, procedures. He further testified that he had not believed that a circumcision was a major procedure which would require authorization to assist in surgery. In addition, Mr. Hunter believed that he had been “implementing a treatment plan” as allowed under a standard utilization plan. Mr. Hunter emphasized that he had not been trying to hide anything. (Tr. at 141-142, 569, 580-581, 623-624).

Mr. Hunter acknowledged that the Paulding County Hospital application for privileges had been granted but that privileges for assisting in surgery had been denied. (Tr. at 140; State's Exhibit 10).

67. Mr. Hunter testified that, at the time of the circumcisions, it had been his understanding that he could do anything that was involved in implementing a treatment plan. The limitations were that the procedure had to be performed under the supervision specified in the agreement, and it had to be within the scope of the physician's practice. Mr. Hunter stated that he had believed that, if the procedure was within the scope of Dr. Gray's practice, and was within Mr. Hunter's realm of clinical skills and knowledge, then it was something that Mr. Hunter would be authorized to perform. Mr. Hunter testified that this is no longer his understanding. (Tr. at 625-626).
68. Dr. Gray testified that requesting supplemental privileges for Mr. Hunter to perform a circumcision was a "catch 22." He stated that it was his understanding that in order to get approval in a supplemental utilization plan, the physician assistant has to have performed a certain number of procedures or has to have had a certain amount of training. He further stated that if a physician is not allowed to train someone to do a procedure, then the physician assistant cannot get the training necessary to practice under a supplemental utilization plan. (Tr. at 63-65).
69. Dr. Baggish testified that a circumcision is a surgical operation in which the foreskin of the penis is removed. Dr. Baggish testified that it is a surgical procedure regardless of whether it is performed in a surgical suite, the nursery or a physician's office. (Tr. at 303-305, 315).

Dr. Baggish described the steps in performing a circumcision. He testified that clamped skin is not dead or devitalized skin. He stated that it is normal skin with blood vessels in it. (Tr. at 303-305, 315).

Dr. Baggish testified that bleeding and infection are the most common complications of a circumcision. He stated that there are also more serious, but less common, complications. (Tr. at 309, 311-312, 362-365).

70. Dr. Bachelder testified that, in his opinion, Mr. Hunter did not perform the circumcision of Patient 2. He stated that it was a training procedure directly observed by Dr. Gray. Therefore, Dr. Gray had performed the circumcision. (Tr. at 1213-1214).

Dr. Bachelder testified that a circumcision requires preparing the area, using a probe to release adhesions from the foreskin, using a clamp to determine the depth and length of the circumcision, placing a clamp at the right position, debriding and removing the foreskin, cleansing the area, and monitoring for complications. Dr. Bachelder testified that these skills are within the abilities of a physician assistant. (Tr. at 1214-1215).

When asked if the cutting of skin, either cutting the dorsal slit or trimming the foreskin, is also within the abilities of a physician assistant, Dr. Bachelder responded that cutting the skin is not the most important step in performing a circumcision; rather, placing the hemostat to devitalize the area that will be cut for the dorsal slit is the most important step. Dr. Bachelder further stated that, "Once the instruments have been positioned, the cutting of the skin becomes really a secondary matter because the tissue is devitalized." Accordingly, Dr. Bachelder testified that it is his opinion that the cutting of skin, under these circumstances, is within the skills of a physician assistant. (Tr. at 1216-1217).

71. Dr. Bachtel testified that, in his opinion, it had not been inappropriate for Dr. Gray to utilize Mr. Hunter in performing the circumcision. Dr. Bachtel testified that his opinion was based on his understanding that Dr. Gray had been teaching Mr. Hunter the process of doing a circumcision, that Dr. Gray had been documenting that teaching, and that Dr. Gray had intended to apply for a supplemental plan to include circumcision. Dr. Bachtel concluded that, if Mr. Hunter was being taught how to perform a circumcision by his supervising physician, that would not be a violation of his utilization plan. (Tr. at 1299-1300, 1317-1318).
72. Dr. Bachtel testified that, when training a physician assistant to perform a circumcision, the physician should document the training of the physician assistant while performing the circumcision. Dr. Bachtel testified that he would document the specifics of what the physician assistant had done in the infant's chart. Dr. Bachtel further stated that he would make a second copy of the note, or keep a log, to track the procedures performed by the physician assistant, in order to show evidence of training when later applying for privileges. (Tr. at 1318-1319).

Nevertheless, when asked if it is dishonest to fail to document that the procedure had been performed by the physician assistant or by a student, Dr. Bachtel answered:

I don't believe it's dishonest. I believe it is pretty much customary for what I see when teaching is done.

In the litigious society in which we live, it's really not done that physicians who are teaching students will document the student did the bulk of this procedure or the student did this or the student did that. You're exposing yourself to all sorts of litigation and malpractice, and so it's customary to say what was done because ultimately the physician is the one who's responsible for what was done if something goes wrong.

(Tr. at 1323-1324).

73. Dr. Bachtel explained that he had believed that, before submitting a supplemental utilization plan for a procedure, one must document a particular physician assistant's training in that procedure. He stated that, under such a process, not allowing a physician assistant to train in a procedure prior to requesting a supplemental utilization plan would not be sensible. He stated that, if one has to document training before applying for a supplemental utilization plan, but cannot train without first getting a supplemental utilization plan, the physician assistant could never learn anything new. (Tr. at 1300-1301).

Nevertheless, Dr. Bachtel testified that his understanding has changed regarding the statutes and laws governing the use of physician assistants. Dr. Bachtel testified that:

[I]f a physician assistant is going to learn a new procedure then a supplemental utilization plan should be applied for first before teaching the procedure.

I previously thought that it was the other way around, that you had to document the training of the physician assistant before such supplemental plan would even be considered by the Medical Board.

(Tr. at 1315-1316). Dr. Bachtel concluded that the process has been very confusing to him, even with the extensive involvement he has had with the physician assistant process. Dr. Bachtel further concluded that it must have been very confusing to Dr. Gray also. (Tr. at 1300-1301).

74. Dr. Bachtel testified that his understanding of the assisting in surgery box is that it indicates that the physician assistant will be working in a hospital surgical suite or in an outpatient surgical facility. Dr. Bachtel testified that his notion of assisting in surgery "involves a surgical suite, gowns and gloves, a patient who's having a major procedure." (Tr. at 1294, 1299).

Moreover, Dr. Bachtel testified that it is his opinion that, if the assisting in surgery box is approved in a standard utilization plan, it would be acceptable for the physician assistant to perform all the steps of a circumcision so long as the supervising physician was present and directing the physician assistant. (Tr. at 1294, 1299, 1310-1312).

75. Dr. Bachtel testified that, in most cases, assistance is not required in performing a circumcision. It is performed by one person. (Tr. at 1310).

2022 JUL - 2 P 13 41

Dr. Gray's June 2000 Request for Amendment of his Utilization Plan

76. On June 26, 2000, Dr. Gray submitted a letter to the Board requesting that Mr. Hunter be authorized to assist in surgery. Dr. Gray testified that the Board has not yet responded to his request. (Tr. at 39-40, 45; Resp. Ex. NN).
77. Ms. Hacker stated that she remembers Dr. Gray asking what needed to be done to obtain approval for Mr. Hunter to assist in surgery. She stated that she had advised him that he could write a request to amend his application, and that is consistent with what she would have told anyone who had asked her that question. Ms. Hacker further testified that she had received such a letter from Dr. Gray requesting that authority. (Tr. at 895-896, 934-935 [CT at 37-38, 76-77]).

Ms. Hacker testified that, once she received Dr. Gray's letter, she referred it to the Board's Executive Director and the Board's Enforcement Coordinator who was handling the investigation. (Tr. at 936 [CT at 78]). Ms. Hacker testified that she has not responded to Dr. Gray's request and is not aware if anyone else at the Board had done so. (Tr. at 938 [CT at 80]).

78. Dr. Gray testified that Ms. Hacker had not told him anything about submitting a request to amend a utilization plan. He stated that the first time he heard it was during Ms. Hacker's testimony. (Tr. at 1048-1049).

Conflict Regarding the Role of a Physician Assistant at Paulding County Hospital

79. Mr. Hunter testified that, when he first started working with Dr. Gray, he had considered also working for the Paulding County Hospital on a part-time basis. Mr. Hunter stated that he had attended a meeting with Ms. Madison and Mr. Thornhill to discuss the issue. (Tr. at 146).

Mr. Hunter testified that, during the meeting, Ms. Madison had told him that he "would not be delivering babies at the hospital." Mr. Hunter stated that he had felt that the decision was not Ms. Madison's to make, and that the decision would be made by the Board. Mr. Hunter also stated that Paulding County Hospital has a credentialing committee; therefore, his hospital credentials were not Ms. Madison's concern. Nevertheless, Mr. Hunter acknowledged that the credentialing committee had not given him privileges to deliver babies. Mr. Hunter further acknowledged that he did not know if Ms. Madison had simply been implementing a previously established policy of the credentialing committee. (Tr. at 145-146).

Mr. Hunter testified that he had been offended by Ms. Madison's comment. He stated that he had left the meeting and did not explore the possibility of working for the hospital any

2012 FEB -02 P 10:41

further. Mr. Hunter stated that he had felt that Ms. Madison had a grudge against physician assistants and he did not want to work in that atmosphere. (Tr. at 147).

Mr. Hunter testified that his conversation with Ms. Madison had not led him to question whether there were limitations on the scope of physician assistants' practice. Mr. Hunter testified that, instead, he had felt that Ms. Madison's actions were motivated by a desire for power over physician assistants. Mr. Hunter testified as follows:

I had known since I was in physician assistant school that there has always been friction between nurses and PAs, territorial issues. That's what I thought this was all about was that [Ms. Madison] had an issue not with me but as a physician assistant. That this was more of a nursing area instead, and also of a power control that she is director of nurses and that she is going to exhibit that power over me, a physician assistant.

(Tr. at 623).

80. Dr. Gray testified that he had had a discussion with Ms. Madison regarding the role of physician assistants and the functions they are allowed to perform at Paulding County Hospital. Dr. Gray was also aware that Ms. Madison had spoken to Mr. Hunter about the fact that a physician assistant could not participate in deliveries at the hospital. Dr. Gray thought that Ms. Madison's comments to Mr. Hunter were "very unprovoked." Dr. Gray stated that he had spoken to Ms. Madison about it. Dr. Gray further stated that he believed Ms. Madison had felt "threatened by physician assistants." Dr. Gray stated he was perturbed because he did not believe a manager "should attack a person and say you won't be delivering any babies while you're here." (Tr. at 106-108, 1069-1070).
81. Ms. Madison testified that she had explained to Mr. Hunter that delivering babies was beyond the scope of his license and that he should be careful not to practice beyond his scope in the OB department. She stated that she had also warned him about jeopardizing his license. (Tr. at 501).

Ms. Madison further testified that, shortly after her conversation with Mr. Hunter, Dr. Gray approached her. Dr. Gray advised Ms. Madison that it was "not her place" to talk with Mr. Hunter and that she had been "out of line" in having the discussion with him. Ms. Madison stated that Dr. Gray had been very angry and agitated. (Tr. at 499, 501-502).

Ms. Madison testified that she and Dr. Gray had had a good working relationship. She testified that the relationship changed whenever they discussed issues of physician assistants. She stated that they have had numerous disagreements as to the boundaries of the physician assistant. (Tr. at 498-499).

STATE MEDICAL BOARD
2007-01-10 P 4:41

82. Ms. Munger testified that part of her duties and responsibilities as the head of the OB department is to ensure that what happens in the department complies with hospital rules and policies. (Tr. at 463).

Ms. Munger testified that she had had a conversation with Dr. Gray during which she had attempted to discuss with Dr. Gray the fact that physician assistants were not allowed to perform deliveries and obstetrical procedures. She stated that the conversation had ended because Dr. Gray became angry with Ms. Munger. She stated that Dr. Gray had been adamant that physician assistants were allowed to perform deliveries and obstetrical procedures so long as Dr. Gray was present, directing the physician assistant, and taking responsibility for the physician assistants' actions. (Tr. at 462).

Ms. Munger testified that she had had this conversation with Dr. Gray because she had heard that Dr. Gray was allowing the physician assistants to put their hands on babies heads during deliveries and were helping Dr. Gray with circumcisions. (Tr. at 462-463).

Assistance in Obstetrical Delivery by Mr. Hunter

83. Mr. Hunter testified that he had assisted in the delivery of a baby on one occasion while he was a physician assistant student in a rotation with Dr. Gray. (Tr. at 138).

Regarding the Board's allegation that Mr. Hunter had participated in the delivery of a human infant in January 2000, Mr. Hunter acknowledged that, in his April 14, 2000, deposition, he had testified that he had done so. Mr. Hunter stated that, since reviewing the dates, he is certain that the delivery in which he participated had taken place in March 1999, at a time when Mr. Hunter was still a physician assistant student. (Tr. at 575-577).

Mr. Hunter testified that, during the delivery of the baby in March 1999, Dr. Gray had been sitting in a chair at the foot of the bed. Mr. Hunter was standing behind him. As the baby's head crowned and started to emerge, Dr. Gray told Mr. Hunter to "get in here." Mr. Hunter testified that Dr. Gray had kept his hands on the baby's head until Mr. Hunter was able to insert his hands. (Tr. at 637-638).

Mr. Hunter testified that he had placed hands on the baby's head as the baby emerged from the vagina. He stated he had put his left hand on the back of the baby's head and his right hand was cradling the baby's face. Dr. Gray placed his hands on top of Mr. Hunter's. Mr. Hunter stated that he had had his hands in that position for approximately ten to fifteen seconds. He further stated that he had not applied any pressure to the baby's head and the head had emerged on its own. He stated that while his hands were on the baby's head, the baby's head turned sideways in restitution. Thereafter, the shoulders rapidly emerged.

After the shoulders emerged, the rest of the baby's body started to emerge. Mr. Hunter testified that Dr. Gray had slid his hands onto the baby's body and Dr. Gray caught the baby. (Tr. at 579, 640-642).

84. Mr. Hunter stated that he had been seeing Patient 1 in Dr. Gray's office on a regular basis. Dr. Gray asked Mr. Hunter to attend the delivery. Mr. Hunter testified that he had assisted in the delivery in order to learn how to deliver a baby in case an emergency should arise. Mr. Hunter also felt that a student has a responsibility to expose himself to as many opportunities and procedures as possible. Mr. Hunter stated he had not expected to be delivering babies in the normal course of working as a physician assistant with Dr. Gray. (Tr. at 139, 150, 619-621).

Mr. Hunter testified that, prior to the delivery in which he had his hands on the baby's head, he had observed deliveries and had been instructed on the procedure for deliveries. He also stated that his physician assistant training had included a course in obstetrics. During that course, doctors had come to the class and discussed the complications of delivery. Therefore, he had been exposed to obstetrics as a student. (Tr. at 620-621).

85. Dr. Gray testified that it is important for a physician assistant to be aware of the mechanics of a delivery in case the physician assistant is someday faced with an emergency delivery. Dr. Gray stated that the chances of having a healthy baby would be influenced by whether the physician assistant had been trained to handle the emergency. (Tr. at 26, 1029).

Dr. Gray testified that he had learned to perform deliveries in medical school, after observing many, by placing his hands on the baby's head with the attending or resident physician's hands on top of his. Dr. Gray further testified that, when teaching a student to assist in a delivery, he asks the student to put the student's hands on the baby's head as it emerges after crowning, so that the head does not precipitously "pop out." He stated that when he teaches students how to deliver the babies' shoulders, he places his hands over the students' hands. (Tr. at 985-986, 1017-1028).

Dr. Gray testified that he talks to the students throughout the entire process. He explains to the students what he wants them to do with their hands. Prior to even touching a baby, the students watch several deliveries while Dr. Gray talks them through. It is only after watching several deliveries that the students are allowed to touch the babies' heads. Dr. Gray stated that he puts his hands over the hands of the physician assistant students and guides the delivery of the head and shoulders. He stated that he does this only with the full permission of the mother. (Tr. at 26, 1028-1029).

Dr. Gray testified that approximately four of his physician assistant students have been able to place their hands on the heads of babies during the course of deliveries. (Tr. at 29).

86. Dr. Baggish testified that, in a normal delivery, hands go on the baby's head at the point of crowning. The person whose hands are on the baby's head as the head is emerging from the vagina is the person who is controlling the delivery. Dr. Baggish testified that, in Patient 1's delivery, it was Mr. Hunter who had control of the delivery. Dr. Baggish testified that, even if Dr. Gray's hands had been on top of Mr. Hunter's hands, Mr. Hunter would have been the one delivering the baby. (Tr. at 316, 321).

Dr. Baggish presented somewhat confusing testimony regarding what he considers to be the delivery. At one point, Dr. Baggish testified that the delivery occurs when the head exits the vagina, and anything that occurs beyond that point, even the emergence of the shoulders, is not part of the delivery process. Later, however, Dr. Baggish testified that the delivery begins with the appearance of the presenting part and ends upon the delivery of the entire fetus. (Tr. at 318-319, 393).

Dr. Baggish also presented confusing testimony regarding how he teaches students to deliver a baby. Dr. Baggish testified that, when he is teaching medical students how to deliver, the student's hands are placed on the baby's head after the head is delivered. Dr. Baggish testified that if the student is going to deliver the shoulders, Dr. Baggish would either watch the student or put his hands over the student's hands to guide the student into doing what Dr. Baggish wanted the student to do. (Tr. at 321). Later, however, Dr. Baggish testified that he would place his own hands on the head of the baby, and ask the student to place his or her hands over Dr. Baggish's hands. (Tr. at 383-384).

87. Dr. Baggish testified that, when a physician assistant is not authorized to deliver a baby, as in the State of Ohio, there is no reason to teach a physician assistant how to deliver a baby in the normal course of practice. (Tr. at 323).
88. In a memorandum dated September 20, 2001, Dr. Abramovitz stated as follows:

As past Director of Medical Education in OB-Gyn at Grant Hospital and an active practitioner in the specialty for 25 years, I have been involved in teaching the technique of vaginal delivery to hundreds of residents and medical students. I do not recall ever having a student or resident placing their hands over mine during the teaching of a delivery. I * * * feel that I can more accurately teach the proper amount of tractive force and appropriate movements by placing my hands OVER the student's hands and guiding the student during the delivery. If Dr. Baggish likes to have the student's hands over his and that teaching method works for him, I have no problem with that. However, it is important to note that his teaching technique is not the only method of instruction.

(Resp. Ex. BB) (emphasis in original).

At hearing, Dr. Abramovitz testified that the most common teaching technique in delivering a baby is to place the student's hands on the baby's head and the teacher's hands on top of the student's hands. Dr. Abramovitz stated that, in that position, the teacher can direct the amount and direction of force during the delivery. Dr. Abramovitz testified that he has used the teacher's-hands-over-student's-hands technique for many years. (Tr. at 768, 773).

Dr. Abramovitz stated that he has never used a technique where the student's hands are placed over the teacher's hands. Dr. Abramovitz testified that such a technique is illogical because the student would be merely a passive observer. The student would not be able to feel the strength and force asserted by the teacher, the student would not know the amount of traction being used, and the student's hands would simply be following the motions of the teacher's hands. (Tr. at 773-774).

Dr. Abramovitz testified that the person who has control of the delivery is the person whose hands are on the outside. Dr. Abramovitz testified that he would consider himself doing the delivery if he were a teacher whose hands were on top of the student's hands. (Tr. at 775-776).

89. Dr. Abramovitz testified that, even if a medical student delivers a baby, it would be the attending physician who had delivered the baby. (Tr. at 789-790).
90. Dr. Bachelder testified that, when teaching students to deliver infants, he places his hands over the student's hands on the infant's head as it emerges from the peritoneum. Dr. Bachelder stated, "It's the only way I know of that [the student] can physically feel the amount of force and pressure and direction that needs to be applied to the head to allow delivery." Dr. Bachelder testified that he had never heard of a teaching method in which the student's hands are placed over the instructor's hands until he reviewed Dr. Baggish's testimony. (Tr. at 1204-1205).

Dr. Bachelder testified that, in documenting a delivery in which a medical student had assisted, Dr. Bachelder would describe the delivery itself and note whether there had been any complications. He stated that he would also document that he had been present at the delivery and assisted by the medical student. He stated that he would identify the student by name. (Tr. at 1208).

Dr. Bachelder testified that he has trained obstetrical nurses at Morrow County Hospital to deliver infants. Dr. Bachelder testified that, in a small rural community, it is more likely that a patient will deliver without an attending physician being available. Dr. Bachelder distinguished the situation from that of a teaching hospital in a large community where there are always physicians, residents, and students available. He concluded that, in a small community hospital, there must be other people available who are competent to assist in a

delivery when needed. Dr. Bachelder testified that, in the past eighteen years, obstetrical nurses have delivered infants in his absence on five occasions. (Tr. at 1206-1207).

91. Dr. Bachelder was questioned about the propriety of training a physician assistant to perform a procedure that the physician assistant is not legally allowed to perform independently, such as delivering a baby. Dr. Bachelder testified that

[T]here needs to be a distinction between training for what is expected to occur and yet training a person for the potential problems and complications that you can run into on the fringes of medicine in a rural setting.

So, from the standpoint of your question can a physician assistant be trained to do deliveries in the expectation of doing that procedure on their own in an independent fashion, no.

On the other hand, does the physician assistant working in a primary care setting that includes obstetrics need to know what's expected during the normal course of events in a delivery to assist those patients to the best outcome they can have, that's probably legitimate, but not in the sense you're training them for the practice of obstetrics but rather for that disaster that's going to happen in a rural setting.

(Tr. at 1257-1258).

Issuance of Prescriptions by Mr. Hunter

92. Dr. Gray admitted that he had pre-signed blank prescription forms and given them to Mr. Hunter. Dr. Gray stated that the pre-signed blank prescription forms had not contained patients' names or dates. Moreover, there had been no indication of the type of medication, the quantity to be prescribed, or directions for use. The only thing on the pre-signed blank prescription forms given to Mr. Hunter had been Dr. Gray's signature. (Tr. at 109-110).

Dr. Gray believes that he had started using pre-signed blank prescription forms in the summer of 2000, approximately eight to ten months after Mr. Hunter had started working for him. Dr. Gray testified that he had started the practice after a patient complained after not receiving a prescription when Dr. Gray was out of the office on an emergency. (Tr. at 109-110, 1063).

Dr. Gray testified that he had authorized Mr. Hunter to use the pre-signed blank prescription forms while Dr. Gray was out of the office. He had done so because many of his patients traveled great distances to reach Dr. Gray's office. Dr. Gray stated that the

STATE MEDICAL BOARD
2002 FEB -0 P 10:41

pre-signed blank prescription forms were to be used on an emergency basis only and were not to be used for controlled substances. Dr. Gray stated that he had reviewed Mr. Hunter's prescriptions as soon as he returned to the office. Dr. Gray acknowledged, however, that, by the time that he returned to the office, the patients could have already had their prescriptions filled at a pharmacy. (Tr. at 109-110, 1054, 1062-1063).

When asked if he had known that giving a physician assistant pre-signed blank prescription forms violated the Medical Practice Act, Dr. Gray answered,

I'm not so certain I knew at first. And, I could say, yes, I did read the statutes when I first hired PAs, but I'm not so certain that it was wrong when I first did it or when I did find out, and I'm not sure at which time. I don't know if being an emergency, that I could bend the rules. I don't know. But, it was wrong and if I didn't know it was wrong, certainly ignorance is no excuse.

(Tr. at 1076). Dr. Gray acknowledged, nonetheless, that even after he had realized that giving a physician assistant pre-signed blank prescription forms violated the Medical Practice Act, he had continued to give Mr. Hunter pre-signed blank prescription forms. (Tr. at 1077).

93. Mr. Hunter testified that he had prescribed medications on blank prescription forms that had been pre-signed by Dr. Gray. Mr. Hunter testified that this practice had started in approximately July or August 2000. (Tr. at 582).

Mr. Hunter testified that, at the time he started issuing the pre-signed blank prescription forms, he had been aware that he was not legally authorized to prescribe medications. He stated that, despite the illegality, he had done so for the convenience of Dr. Gray's patients in emergency situations. When asked what he had considered an emergency, Mr. Hunter testified:

If I had a patient come in that needed a refill on medicine, that needed to be mailed away which takes a few weeks to get in and they were coming from a long distance, I thought it was compassionate of us to give that patient a prescription so we wouldn't have to make that elderly patient drive all the way back after Dr. Gray got back in the office to get that prescription.

Mr. Hunter also stated that an emergency situation may have presented "where a patient had run out of thyroid or heart medicine or was down to their last one and they needed it before they went to work." Mr. Hunter acknowledged that there had been no reason that Dr. Gray couldn't have reviewed the records when he returned to the office and then called the prescription to the pharmacy. (Tr. at 164-165, 582, 584).

102 FEB -0 P 10:41

Mr. Hunter testified that he and Dr. Gray had set up parameters for use of pre-signed prescription forms. He stated the pre-signed prescription forms were only to be used when Dr. Gray was called to the hospital in emergency situations, and only for patients who had traveled a great distance. In addition, the pre-signed prescription forms were not to be used for narcotics or other controlled substances. Finally, the pre-signed prescription forms were to be used only for refills; Mr. Hunter had not been permitted to write a prescription for a drug that Dr. Gray had not already prescribed. (Tr. at 166-167, 583-584).

Mr. Hunter testified that, if a patient was on a medication and needed a refill, he would prescribe it. When asked how he had made the determination that it was appropriate to refill a medication and that the patient did not need to be reevaluated before the new prescription was issued, Mr. Hunter stated that he would make the determination by assessing the patient's condition. Mr. Hunter further testified that Dr. Gray frequently reevaluates patients on long-term medications. Therefore, Mr. Hunter would review that patient's records to see when the patient's last blood work had been done, when the patient's blood pressure had been taken, and what the patient's symptoms had been. Mr. Hunter stated that he would do all those things before making a decision whether or not to prescribe. (Tr. at 642-643).

Mr. Hunter stated that he always returned the pre-signed blank prescription forms to Dr. Gray upon Dr. Gray's return to the office. Mr. Hunter further testified that Dr. Gray had always reviewed Mr. Hunter's charts and discussed the medications that Mr. Hunter had prescribed. (Tr. at 584, 587-588).

94. Mr. Hunter testified that, at the time he was completing pre-signed prescriptions forms, he had known that what he was doing was wrong. He stated that he had been aware that physician assistants do not have prescriptive authority in Ohio. (Tr. at 167, 646).

The Standard Utilization Plan as Revised by the Board in December 2000

95. Ms. Hacker testified that the standard utilization plan used by the Board in 1999 is no longer being used by the Board. She stated that the new plan became effective in December 2000. She stated that the change was made in response to changes in the administrative rules regarding physician assistants. These changes came into effect in September and October 2000. (Tr. at 915-917 [CT at 57-59]; St. Ex. 9; St. Ex. 15).
96. In the revised standard utilization plan, more information is provided regarding assisting in surgery than was provided in the 1999 standard utilization plan. The additional information includes the following:
- A physician assistant shall function as a physician assistant assisting in surgery only when under the direct supervision of the surgeon who is

2001 FEB - 2 P 4: 41

present during the surgery and only when the participation of a physician assistant assisting in surgery is indicated on the informed consent form. The performance of the following listed tasks is solely for the purpose of assisting the surgeon in performing a safe operation and shall not be construed to allow the physician assistant to perform surgery. The tasks a physician assistant assisting in surgery may perform include, but are not limited to, the following:

- Handling of tissue;
 - Using instruments (e.g., retractors);
 - Providing hemostasis; and
 - Placing sutures as part of the surgical procedure.
- A physician assistant functioning as a physician assistant assisting in surgery may close subcutaneous tissue and skin when the surgeon who performed the surgery provides supervision in close proximity within the surgical suite.
- * * *
- No physician assistant shall perform a surgical task or procedure which is the primary purpose of the surgery.

(St. Ex. 15 at 6).

97. Dr. Bachtel testified that the standard utilization plan that he used when he first hired a physician assistant in 1995 was less specific than the Board's current standard utilization plan. Dr. Bachtel testified that, prior to the revisions, the standard utilization plan "gave a general framework in which to operate, but the new version is much more specific and, candidly, I think much better, much easier to follow, much easier to understand even though it's more voluminous." (Tr. at 1281-1282).

The Standard Utilization Plan Submitted by Dr. Gray in March 2001

98. On March 9, 2001, Dr. Gray filed a new standard utilization plan with the Board. In the utilization plan, Dr. Gray requested the Board's authorization to employ a physician assistant to perform all of the basic tasks. Dr. Gray also requested that the physician assistant be allowed to assist in surgery. (St. Ex. 15).

Dr Gray acknowledged that the new standard utilization plan included a request to have the physician assistant assist in surgery. Dr. Gray stated that had been planning to hire a new physician assistant and had hoped to have the new physician assistant assist him in surgery.

2011 FEB -07 P 11:42

He stated that, at that time, he had believed that each standard utilization plan referred to a particular physician assistant. Therefore, Dr. Gray had not expected that Mr. Hunter would have been able to assist in surgery based on the new plan. (Tr. at 42-43).

99. Ms. Hacker testified that she was aware that Dr. Gray had submitted a new standard utilization plan in March 2001. Mr. Hacker testified that she had not processed the new plan because there had been a pending investigation involving Dr. Gray and Mr. Hunter. She stated that she had turned over Dr. Gray's new standard utilization plan to the persons at the Board who were involved with the ongoing investigation. (Tr. at 942-944 [CT at 84-86]).

The Scope of Practice of a Physician Assistant Pursuant to a Standard Utilization Plan

100. Ms. Hacker testified that, as part of her responsibilities as the Physician Assistant Program Administrator for the Board, she reviews utilization plans to be submitted to the Board members for their consideration. She stated that she also reviews physician assistant applicants' registrations and approves supervision agreements. Ms. Hacker attends policy meetings, both the physician assistant policy committee and the Board's physician assistant committee, as well as the monthly Board meeting. She stated that she has served in this capacity since September 1997. (Tr. at 529-530).
101. Ms. Hacker stated that, as part of her job, she answers questions by physicians and physician assistants regarding which procedures are covered under the standard utilization plan. Ms. Hacker testified that, in answering those requests, she refers to the list of functions listed in a standard utilization plan to help her determine the appropriate answer. (Tr. at 898-901 [CT at 40-43]).

Ms. Hacker testified that she will not answer scope of practice questions unless the answer is clear from the standard utilization plan. She further stated that, when the answer is unclear from the standard utilization plan so that she is unable to answer the question, she instructs physicians and physician assistants to write a letter and request clarification. Mr. Hacker then directs the letter to the Executive Director of the Board. (Tr. at 901-902 [CT at 43-44]).

102. Ms. Hacker noted that the standard utilization plan, as it existed prior to December 2000, provided that if the assisting in surgery box had been checked and approved, a physician assistant may assist in surgery provided that procedures the physician assistant will perform "have been delineated within the scope of practice of a physician assistant" and "approved by an appropriate committee of the hospital or out-patient surgical care center where such services are to be rendered." (Tr. at 587-589; St. Ex. 9 at 3).

Ms. Hacker testified that, prior to the rules revision in 2000, she did not know what tasks could be performed by a physician assistant who had been approved to assist in surgery.

2017 JUL -8 P 11:42

Ms. Hacker further testified that, prior to the rules revision in 2000, there was no document that she is aware of which would have detailed for a supervising physician what tasks a physician assistant was allowed to perform if the assist in surgery box had been checked. She stated that she is not aware how a physician would have known what responsibilities a physician assistant could perform other than by referring to the hospital's credentialing committee. (Tr. at 893-895, 897-898 [CT at 35-40]).

103. Ms. Hacker testified that, during Board committee meetings that she attended, some of the discussion among committee members had indicated to her that it is not always clear whether something is included or is not included in a standard utilization plan. (Tr. at 914-915[CT at 56-57]; Resp. Ex. RR).
104. Ms. Hacker testified that she has never seen a standard or supplemental utilization plan which approved a physician assistant performing circumcision. She further stated that she has never seen a standard or supplemental utilization plan which permitted a physician assistant to deliver a baby. (Tr. at 535, 984 [CT at 88]).

Training Physician Assistant Students

105. Dr. Bachtel testified that he is not aware of any law or regulation governing the teaching of physician assistant students. (Tr. at 1288).
106. Dr. Bachelder testified that he has worked with residents, medical students, and physician assistant students in his practice. Dr. Bachelder testified that he is not aware of any rules or guidelines pertaining to the teaching of residents, medical students, or physician assistant students. Dr. Bachelder testified that the biggest parameter for teaching students is the comfort level the physician has with the student. (Tr. at 1189-1191).

Dr. Bachelder testified that, as a medical student, he completed a surgery rotation. He stated that while in the surgery rotation, he had performed procedures that are outside the scope of his practice today. Dr. Bachelder testified that he recalls "scrubbing in" on an abdominal aortic aneurysm. He stated that what he witnessed that day was far beyond anything that a family physician would do. Nevertheless, he stated that,

that type of training was necessary because, in being able to visualize that pathology and seeing the care that was given, it helps me to give better care to my patients as a primary care physician knowing what that patient will be going through.

(Tr. at 1194-1197).

Dr. Bachelder was asked questions regarding who actually performs the procedure when a student or resident is involved. Dr. Bachelder testified that you must distinguish between the one who physically performs the procedure and the one who is ultimately responsible for performance of the procedure. Dr. Bachelder stated that the attending physician is always the one responsible for the performance of the procedure, no matter who physically performs the procedure. (Tr. at 1197-1199).

Dr. Bachelder testified that none of the hospitals with which he is familiar has a process for credentialing students. He stated, "It somewhat begs the question do you need to have the training before you can get the privilege? Which comes first, the chicken or the egg? And to apply for a privilege that you don't yet have the ability to do seems somewhat nonsensical." (Tr. at 1199; 1241-1242).

107. Ms. Hacker testified that physician assistant students are not required to practice according to a utilization plan. Moreover, Ms. Hacker testified that she is aware of no Board rule or statute which governs the practice of a physician assistant student. (Tr. at 879-88).

Training a Physician Assistant: Before or After Obtaining a Supplemental Utilization Plan

108. Dr. Bachelder testified that his opinion that it had been appropriate for Mr. Hunter to perform the circumcision was based on his belief that "the physician assistant should be trained even prior to having a supplemental plan approved." Dr. Bachelder testified that he is not aware of any requirement which states that a physician assistant must have a supplemental utilization plan in place before the physician assistant may be trained to perform a procedure. (Tr. at 1242-1243, 1256).

Dr. Bachelder acknowledged that, if a physician trains a physician assistant in a specific procedure before applying for a supplemental utilization plan to cover that procedure, it may be that the physician has trained the physician assistant in a procedure that the Board will never approve a physician assistant to perform. Dr. Bachelder further acknowledged that not every supplemental utilization plan application will necessarily be approved by the Board. (Tr. at 1242-1244).

When asked who determines whether a physician assistant has the necessary skills to perform a particular task, or to learn to perform a particular task, Dr. Bachelder answered:

That seems to be the crux of the dilemma right now in the sense that it doesn't seem the Medical Board is giving us direction. It doesn't seem that there [are] standards for students who are medical students or PAs, and what's being proposed at least I think through this case is whether there needs to be a supplemental plan prior to the educational process.

I have not seen or heard the Medical Board previously determine or make that determination as to whether that needs to be applied [for] beforehand or afterwards. So, prior to this case, it seems to me that the determination was left to the practitioner as to what skill levels were appropriate.

(Tr. at 1247-1248).

109. Dr. Bachtel testified that, as a result of his participation in this hearing, he had come to a new understanding of the statutes and laws governing the use of physician assistants. Dr. Bachtel testified that:

[I]f a physician assistant is going to learn a new procedure then a supplemental utilization plan should be applied for first before teaching the procedure.

I previously thought that it was the other way around, that you had to document the training of the physician assistant before such supplemental plan would even be considered by the Medical Board.

(Tr. at 1315-1316).

The Board's May 13, 1998, Position Paper: Delegation of Medical Tasks

110. Effective May 13, 1998, the Board passed a position paper entitled Delegation of Medical Tasks. The paper defined delegation as "the transfer of authority by one in whom such authority is vested to another person who does not have that authority." The paper further stated that "delegation occurs if the person by whom a task will be performed is * * * a licensed or registered health care professional, but performance of the task requires a specific order by a physician." The paper provides a number of considerations to be made before determining that a task is appropriate to be delegated. These include the following:
- a. the task to be delegated must be within the authority of the physician;
 - b. the physician must determine that the task is indicated for the patient;
 - c. the level of supervision must be appropriate for the specific circumstances;
 - d. the physician must be certain that no other law prohibits the delegation;

2012 FEB -8 P 10:42

- e. the physician must be assured that the person to whom the task will be delegated is competent to perform that task;
- f. the task can be performed without requiring the exercise of judgment based on medical knowledge;
- g. the results of the task are reasonably predictable; and
- h. the task can safely be performed according to exact, unchanging directions.

In addition, the paper advises that “the physician may rely on the hospital credentialing process to ensure that an appropriately trained and competent person will be carrying out the physician’s orders, and that, if a license is required to perform the task in question, the hospital ensures that an appropriately licensed person will perform that task.”

Finally, the paper advises that “[i]nappropriate delegation, whether or not it results in actual harm to a patient, may subject the delegating physician to disciplinary action by the State Medical Board for violation of the minimal standards of care, for aiding and abetting the unlicensed practice of medicine, or for violating other applicable statutes. Therefore, it is advised that decisions concerning delegation not be made lightly, but with serious consideration for the possible ramifications.” (Resp. Ex. PP) (emphasis omitted).

Character Testimony and Exhibits

111. David Paul Schlueter, M.D. testified by telephone on behalf of Dr. Gray. Dr. Schlueter testified that he had received a medical degree from the University of Cincinnati in 1965. Thereafter, he served in the Navy for two years. Dr. Schlueter completed a residency in urology at Indiana University in 1972. Dr. Schlueter is board certified, and has been practicing in Fort Wayne and Paulding for thirty years. (Tr. at 1154-1155).

Dr. Schlueter testified that he has practiced at Paulding County Hospital on Tuesday mornings since 1974. Dr. Schlueter operates a clinic there, and performs diagnostic and small urologic procedures. Dr. Schlueter testified that larger surgeries are performed in Fort Wayne. (Tr. at 1156-1157).

Dr. Schlueter testified that he knows Dr. Gray well, basically as a colleague. He stated that he sees Dr. Gray’s patients in consultation. Dr. Schlueter testified that Dr. Gray is enthusiastic and competent. Dr. Schlueter further testified that he has “never heard a negative word” about Dr. Gray. Moreover, he believes that Dr. Gray “energizes” Paulding County Hospital which is “very important for the survival of a small community hospital.” Dr. Schlueter also testified that he has seen Dr. Gray’s patients, and Dr. Gray has contacted

him for consultations. Dr. Schlueter stated that Dr. Gray is a good doctor, "a cut above" the average family physician. (Tr. at 1159-1163, 1170-1171).

112. Mr. Derck, the insurance agent from Antwerp, testified that he trusts Dr. Gray immensely. He stated that Dr. Gray has a very good character. Dr. Gray is held in high regard in the community, and no one speaks ill of him. (Tr. at 706; Resp. Ex. U).
113. Mr. Bagley, the Superintendent of Schools of the Antwerp Local School District, testified that he has been familiar with Dr. Gray through his role in the school system and in the community. Mr. Bagley testified Dr. Gray has contributed generously to the schools. Mr. Bagley testified that Dr. Gray has purchased athletic equipment and uniforms and has performed student physicals for a minimal sum. Moreover, Dr. Gray frequently offers a check to cover the needs of the school. (Tr. at 834-837; Resp. Ex. T).

Mr. Bagley testified that Dr. Gray also donates his time. Mr. Bagley testified that, last year, Dr. Gray worked with the girls' basketball coach in setting up a training program and demonstrating to them how to build stronger bodies. Dr. Gray is always available when there are athletic injuries. (Tr. at 837- 838).

Mr. Bagley testified that he is a patient of Dr. Gray's and his whole family sees Dr. Gray. (Tr. at 839).

Mr. Bagley testified that Dr. Gray is an honest person. Dr. Gray is very sincere and would never "cover anything up." He concluded that Dr. Gray is "a boy scout." (Tr. at 848-849).

114. Mr. Munger testified that she has known Dr. Gray for fifteen or sixteen years. She stated that he has a good sense of humor and that she likes him. She also believes he is a good physician and that he takes care of her family. She stated that patients liked Dr. Gray. She also stated that Dr. Gray has contributed toward the annual Paulding County Hospital Christmas party and has helped the OB department at Paulding County Hospital with painting and wall papering and other physical tasks. (Tr. at 476-477).
115. The mother of Patients 2 and 3 testified that Dr. Gray has been her physician for over thirteen years. She stated that when she first chose Dr. Gray as her physician she had had difficulty finding a physician. She said that she was very pleased with Dr. Gray because he is very caring and thoughtful. She stated that he takes the time to listen, that he is very comfortable to be with, and that he is very thorough. She stated that she trusts him because he looks out for her best interests. She testified that Dr. Gray also cares for her husband and her children also. (Tr. at 517-520).
116. Dr. Gray submitted a number of letters written on his behalf. (Resp. Ex. V, X, Y, Z).

117. Dr. Gray presented a videotape entitled, "Inner View: A Human Touch." The videotape consists of a Cleveland area television news documentary regarding three physicians who believe that "it is the human touch that keeps the health care system going and helps patients heal faster." One of the physicians depicted is Dr. Gray. (Resp. Ex. AA; Tr. at 964-975 [CT at 106-117]).

Testimony Regarding the Impact on Paulding County Should Dr. Gray Cease Practicing

118. In a letter dated September 17, 2001, and addressed to "To whom it may concern," the Paulding County Hospital Board of Trustees advised that:

Dr. Gray is Hospital's largest admitter. During the period from January 1, 2000, through June 30, 2001, Dr. Gray's admissions have constituted 21% of total inpatient admissions; in addition, he has been responsible for ordering or referring approximately 19% of total outpatient revenue.

Obviously, any time a hospital loses a top admitter, an adverse financial impact will be felt. We are concerned that Dr. Gray's cessation of practice will adversely affect our admissions, which in turn will directly affect our financial performance.

(Resp. Ex. S).

119. Gary Wayne Adkins testified by telephone on behalf of the Dr. Gray. Mr. Adkins testified that he is currently the Chief Executive Officer at Paulding County Hospital. He stated that he has held this position since September 2001. Previously, he was the Chief Financial Officer at Paulding County Hospital and had served in that capacity for five years. (Tr. at 816-818).

Mr. Adkins testified that Paulding County Hospital is a twenty-five bed acute care, critical access hospital. He stated that the hospital serves all aspects of inpatient and outpatient care. They do not, however, have an intensive care unit. The payor mix is fifty percent Medicare, ten percent Medicaid, and twenty-five commercial. The remainder includes self-pay, workers' compensation, and Champus. Mr. Adkins further testified that Paulding County Hospital has approximately seven hundred patient, admissions and approximately one hundred ten infants are delivered each year. The gross annual revenue is approximately fifteen million dollars per year. (Tr. at 819-822; Resp. Ex. Q).

Mr. Adkins testified that in 1999, Paulding County Hospital had had 725 admissions. He stated that 182 of those had been Dr. Gray's patients. Mr. Adkins stated that that would be

twenty-five percent of the total admissions for the year. Mr. Adkins further testified that Paulding County Hospital had had 104 births in 1999, and thirty-two of those had been Dr. Gray's patients. Mr. Adkins quoted similar figures for 2000 and 2001. (Tr. at 822-823, 825).

Mr. Adkins further testified that, in 1999, Dr. Gray's patients generated \$2,028,369.79 for Paulding County Hospital. In the year 2000, Dr. Gray's patients generated \$2,548,545.48. (Tr. at 826-827).

Mr. Adkins concluded that Dr. Gray is the number-one admitter and number-one in revenue generated for by any physician at Paulding County Hospital. He stated that the loss of Dr. Gray's services would be devastating to the facility. (Tr. at 828-829).

120. In a November 2001 letter, Mr. Adkins advised that Dr. Nnadi had tendered her resignation to Paulding County Hospital, effective February 1, 2002. Mr. Adkins further advised that:

Dr. Nnadi is one of only three doctors who practice within the county that delivers babies. Obviously with her departure and the possibility of losing Dr. Gray for an undetermined amount of time, the hospital would have a difficult time servicing the patients of our community with regards to OB work.

(Resp. Ex. SS).

121. Mr. Thornhill testified that if Dr. Gray was forced to leave Ohio it would be a loss for Paulding County. He stated that Paulding County does not have a lot to offer and it is very difficult to draw physicians there. Mr. Thornhill stated that Dr. Gray's patients could not be absorbed by the existing physicians. (Tr. at 230).

Mr. Thornhill further testified that Dr. Gray is a cornerstone in the community. Dr. Gray has a thriving practice and he is one of the largest contributors from the standpoint of admissions and surgical work at Paulding County Hospital. (Tr. at 187).

122. Mr. Derck testified that Dr. Gray has contributed greatly to the financial success of Paulding County Hospital. He testified that Paulding County Hospital grosses fifteen million dollars a year and that Dr. Gray provides about twenty percent of that amount. He stated that if Dr. Gray were unable to provide medical services, it would probably jeopardize the existence of the hospital. In the least, it would cause a drastic reduction in employment and the services offered by the hospital. (Tr. at 709; Resp. Ex. U).

Mr. Derck testified that the loss of Dr. Gray would also impact the community. He testified that Dr. Gray provides about forty percent of the prescriptions filled at the local

pharmacy. Other businesses in the town would be affected by the decrease in people coming to town to see Dr. Gray. (Tr. at 709-710).

123. The mother of patients 2 and 3 testified that she was testifying at hearing not only to support Dr. Gray, but also for her own benefit as well as the benefit of her family and all of Dr. Gray's patients. She stated that she was testifying on behalf of her whole community. In addition, she stated that she is familiar with people who are looking for physicians but have been unable to find one because so many physicians' practices are closed to new patients. She further stated that she is aware of people who travel to Dr. Gray's office from other counties. Finally, she stated that she did not know what she would do if Dr. Gray was not there to take care of her and her family. (Tr. at 526-528).
124. State Senator Lynn R. Wachtmann submitted a letter to the Board on behalf of Dr. Gray. Sen. Wachtmann is the representative from Ohio District 1, which includes Paulding County. Sen. Wachtmann advised that Dr. Gray is a critical health care provider in the community. Sen. Wachtmann stated that he is "personally aware of the many excellent tasks [Dr. Gray] has performed to serve his community as well as the amount of time he devotes to his patients." Sen. Wachtmann further stated that:

[T]he Paulding County Hospital needs [Dr. Gray's] services to keep their doors open. Dr. Gray is responsible for over two million dollars of the hospital's revenues for the previous year. The hospital may not survive the loss of his practice. As you know, Paulding County is a very rural area and without the ability of its residents to receive treatment at the Paulding County Hospital, the entire community would be at risk.

I cannot stress upon you enough the importance of Dr. Gray continuing his practice of medicine in Paulding County. His patients require his medical supervision and expertise. It is imperative that Dr. Gray's license is not suspended or revoked for any amount of time, as that would be punishing his patients and community in the process. He is not a danger to the profession; rather, he is a pillar of his community.

(Resp. Ex. HH).

FINDINGS OF FACT

1. James Harold Gray, Jr., D.O., entered into a notice of employment with Thomas L. Gemmer, P.A., effective September 3, 1991. Dr. Gray's standard physician assistant utilization plan then in effect did not permit any physician assistant employed by Dr. Gray

to engage in the delivery of human infants or to perform surgery. Dr. Gray did not have a supplemental plan at that time.

On August 11, 1994, at approximately 1:30 a.m., Patient 1 was admitted at Paulding County Hospital in labor. At 8:00 a.m., Dr. Gray performed a vaginal examination on Patient 1 and noted that her cervix was completely effaced. At some time after 8:00, Dr. Gray left Patient 1 in the labor room and engaged in a tonsillectomy procedure on another patient. Dr. Gray was notified in surgery at approximately 9:00 that Patient 1 was ready to deliver. Dr. Gray could not leave the patient in surgery and could not locate another physician to attend Patient 1's delivery. Thus, Dr. Gray directed Mr. Gemmer to the delivery room. Mr. Gemmer performed an episiotomy on Patient 1 and delivered the human infant. Dr. Gray continued the tonsillectomy.

2. In September 1999, Dr. Gray entered into a supervision agreement with Thomas A. Hunter, P.A. Pursuant to that supervision agreement, Dr. Gray certified that he would supervise Mr. Hunter in accordance with both Dr. Gray's standard physician assistant utilization plan, as approved by the Board, and the rules and regulations set forth by the Board regarding physician assistants. Dr. Gray's standard utilization plan, as approved by the Board, did not permit any physician assistant under Dr. Gray's supervision to engage in the delivery of human infants, to engage in surgery, or to assist in surgery.
3.
 - a. On or about May 11, 2000, Dr. Gray allowed Mr. Hunter to perform, in part, a circumcision on Patient 2 in the nursery of Paulding County Hospital.
 - b. Upon being confronted by staff at Paulding County Hospital with allegations that Dr. Gray had allowed Mr. Hunter to perform a circumcision, Dr. Gray falsely told Paulding County Hospital staff that Mr. Hunter had only "cut the string" on the plastibell.
4. Dr. Gray authorized Mr. Hunter to issue prescriptions for dangerous drugs to patients without Dr. Gray's or any other physician's specific approval. Dr. Gray facilitated Mr. Hunter's prescribing of dangerous drugs by signing otherwise blank prescription forms and leaving the forms with Mr. Hunter. Dr. Gray did so with the understanding that Mr. Hunter would complete the otherwise blank pre-signed prescription forms and give those forms to patients with the intention that those patients present the forms to pharmacies.
5. During one of Mr. Hunter's clinical rotations with Dr. Gray, while Mr. Hunter was a physician assistant student, Dr. Gray allowed Mr. Hunter to participate in the delivery of a human infant at Paulding County Hospital by using Mr. Hunter's hands to guide the infant while Dr. Gray's hands were over Mr. Hunter's hands.

Although the notice of opportunity for hearing alleged that this incident had occurred in or about January 2000, evidence at hearing demonstrated that the delivery had taken place in 1999, during one of Mr. Hunter's clinical rotations with Dr. Gray while Mr. Hunter was a student. The Board made the allegation that the delivery had occurred in January 2000 as a result of confusing testimony by Mr. Hunter during his April 2000 deposition. Therefore, testimony was presented regarding Mr. Hunter's participation in the delivery in 1999. The Respondent did not object to the substitution of the date for the purposes of this hearing.

CONCLUSIONS OF LAW

- A. The evidence presented at hearing supports the following allegations against James Harold Gray, Jr., D.O., as set forth in the Board's June 13, 2001, notice of opportunity for hearing:
1. The conduct of Dr. Gray, in allowing Thomas A. Hunter, P.A., to perform the majority of the circumcision of Patient 2 and in allowing Mr. Hunter to cut skin during the course of that procedure, as set forth in Findings of Fact 3.a, constitutes the following:

- a "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.

Rule 4731-4-02(A), as in effect prior to September 1, 2000, provides that,

The physician's assistant shall perform only in the manner and to the extent set forth in the application of registration as approved by the state medical board. Further, the physician's assistant shall perform only within the degree of supervision specified in the application for registration as approved by the state medical board.

OAC 4731-4-02(A).

- b. "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code.

Section 4731.41, Ohio Revised Code, provides, in part, "No person shall practice medicine and surgery, or any of its branches, without the appropriate

STATE MEDICAL BOARD
200 PD - 0 P 10 42

certificate from the state medical board to engage in the practice.” Pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense.

- c. “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4730.02(E), Ohio Revised Code.

Section 4730.02(E), Ohio Revised Code, provides, “No physician shall authorize a physician assistant to perform services as a physician assistant in a manner that is inconsistent with the standard or supplemental physician assistant utilization plan under which that physician assistant practices.” Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

- d. “[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter,” as that clause is used in Section 4731.22(B)(32), Ohio Revised Code, to wit: Section 4730.21(C), Ohio Revised Code.

Section 4730.21(C), Ohio Revised Code, provides:

A supervising physician may authorize a physician assistant to perform a service only if the service is included in the physician assistant utilization plan approved for that physician and if the physician is satisfied that the physician assistant is capable of competently performing the service. A supervising physician shall not authorize a physician assistant to perform any service that is beyond the physician’s or the assistant’s expertise or normal course of practice.

RC 4730.21(C).

The evidence demonstrated that a circumcision is a surgical procedure which involves the cutting of skin. Although the procedure may not be a complex surgical procedure, it is, nonetheless, a surgical procedure. Mr. Hunter performed the majority of the circumcision, including the cutting of skin. The evidence further suggests that Mr. Hunter would have performed all of the procedure if he had not been interrupted by Ms. Madison. Arguments that Dr. Gray was teaching Mr. Hunter to perform

2002 FEB - 2 10 43

circumcision do not negate the fact that Mr. Hunter did, in fact, perform the procedure.

Even if one were to consider Mr. Hunter's conduct as merely assisting in surgery, it is clear that the standard utilization plan under which Mr. Hunter was practicing did not permit him to assist in surgery.

Dr. Gray presented a number of arguments supporting his contention that it had not been inappropriate to allow Mr. Hunter to participate in the circumcision of Patient 2. First, Dr. Gray argued that allowing Mr. Hunter to perform portions of the circumcision was an appropriate delegation of tasks pursuant to the Board's May 13, 1998, position paper on delegation of medical tasks. (See Resp. Ex. UU at 23-24).

In Dr. Gray's argument, however, he fails to note that, before a physician may delegate a task, the physician must first assure that no other law prohibits the delegation. As noted above, Sections 4730.02(E) and 4730.21(C), Ohio Revised Code, as well as Rule 4731-4-02(A), Ohio Administrative Code, prohibit a physician from allowing a physician assistant to practice in violation of the utilization plan governing that physician assistant's practice. Moreover, the delegation position paper requires that a delegatee practicing in a hospital must practice in accordance with the delegatee's credentials as approved by that hospital. Accordingly, Dr. Gray's delegation of portions of the circumcision of Patient 2 to Mr. Hunter did not comport with the requirements for delegation of medical tasks as set forth in the Board's position paper.

In addition, Dr. Gray also argued that allowing Mr. Hunter to perform portions of the circumcision under Dr. Gray's close observation was "an appropriate means for training a physician assistant to perform a procedure." He further suggested, as did a number of the expert witnesses, that "such training was a prerequisite for any request of the Board for approval of more independent performance of that procedure pursuant to a supplemental utilization plan." (See Resp. Ex. UU at 24-25, 29) (emphasis in original). Testimony of Dr. Gray, Dr. Bachtel, and Dr. Bachelder suggests that a number of physicians are confused regarding this issue.

Relatedly, Dr. Gray also argued that the rules governing the practice of physician assistants prior to September 2000 were difficult to decipher and required interpretation by experts and Board committee members. Dr. Gray presented expert testimony, the testimony of Ms. Hacker, and copies of the Board's physician assistant committees' minutes in support of this contention. (See Resp. Ex. UU at 26-30).

Nevertheless, the Board will approve a standard or supplemental utilization plan only for a task that is within the scope of a physician assistant's practice. Mr. Hunter's role in the circumcision of Patient 2 constituted performing a surgery. Performing a surgery goes far beyond assisting in surgery and there is no evidence that the Board has ever approved a utilization plan that allows a physician assistant to perform surgery. Moreover, Mr. Hunter did not even have the authority to assist in surgery. Therefore, even if Dr. Gray had been unsure of the law as it applies to physician assistants performing circumcision, he should have at least contacted the Board before allowing Mr. Hunter to perform one.

In mitigation, however, it should be considered that Dr. Gray did supervise Mr. Hunter as closely as possible. In addition, Dr. Gray allowed Mr. Hunter to perform the procedure in full view of other hospital staff and advised the Board that he had allowed Mr. Hunter to cut the skin, which suggests that Dr. Gray did not, at first, realize that this conduct violated his utilization plan. Moreover, the mother of Patient 2 was aware that Mr. Hunter would be performing the procedure. Finally, no harm occurred to Patient 2 as a result of Mr. Hunter's participation.

2. The evidence presented supports a conclusion that the conduct of Dr. Gray, in falsely reporting to Paulding County Hospital staff that that Mr. Hunter had only "cut the string" on the plastibell, as set forth in Findings of Fact 3.b, constitutes "[m]aking 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, podiatry, 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," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. The evidence presented supports a conclusion that the conduct of Dr. Gray, in authorizing Mr. Hunter to issue prescriptions for dangerous drugs to patients without Dr. Gray's or any other physician's specific approval, as set forth in Findings of Fact 4, constitutes the following:
 - a. "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense. Section 4731.41, Ohio Revised Code, as noted above, prohibits any person from practicing medicine and surgery without appropriate licensure.

2012 FEB -0 P 10:43

- b. “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-03(C), Ohio Administrative Code as in effect prior to September 1, 2000.

Rule 4731-4-03, Ohio Administrative Code, as in effect prior to September 1, 2000, provides, in pertinent part:

The physician’s assistant shall not perform functions or acts including, but not limited to, the following:

- (C) Prescribe medication; sign or stamp prescriptions on behalf of the employing physician; have prescription blanks available that have been presigned or stamped by the physician; or dispense or order medication[.]

OAC 4731-4-03.

- c. “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-04(C), Ohio Administrative Code, as in effect on or after September 1, 2000.

Rule 4731-4-04, Ohio Administrative Code, as in effect on and after September 1, 2000, provides, in pertinent part, as follows:

A physician assistant shall not perform services or acts including, but not limited to, the following:

* * *

- (C) Prescribe medication; sign or stamp prescriptions on behalf of the supervising physician; have prescription blanks available that have been presigned or stamped by the physician; or dispense or order medication[.]

OAC 4731-4-04.

- d. “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised

Code, Complicity, to wit: Section 4729.51, Ohio Revised Code, Persons who may sell, purchase, distribute, or deliver dangerous drugs.

Dr. Gray contends that his practice of allowing Mr. Hunter to issue pre-signed prescriptions does not constitute a violation of Section 4729.51, Ohio Revised Code, for the reason that that section is used only to prosecute persons who sell or possess dangerous drugs. Dr. Gray argues that, since Mr. Hunter did not sell or possess dangerous drugs, but only wrote prescriptions for dangerous drugs, his conduct is not covered by the statute. (See Resp. Ex. UU at 34-35).

Nevertheless, in a case similar to the present matter, the Franklin County Court of Common Pleas recently held,

When a physician assistant prescribes drugs, it is conduct that could be charged as a felony. A physician assistant is not 'legally capable of prescribing drugs.' Therefore, when a physician assistant prescribes drugs, 'the drugs could not have been dispensed in the bona fide treatment of any patient.' In effect, the physician assistant is selling drugs.

Clayton H. Royder, D.O. v. Ohio St. Med. Bd. (Nov. 30, 2001), Franklin C.P. No. 00CVF08-7084, unreported at 9. Accordingly, Dr. Gray's conduct in allowing Mr. Hunter to prescribe medications constitutes selling, purchasing, distributing or delivering dangerous drugs as contemplated by Section 4729.51, Ohio Revised.

Dr. Gray contends that his practice of allowing Mr. Hunter to complete pre-signed prescriptions was intended to be a kind, considerate act for his poor and aged patients who traveled great distances to his office. Upon review of the record, however, it was clear that Dr. Gray failed to appreciate that allowing a person who was neither trained nor licensed to prescribe medications to do so was not only inconsiderate, but also created a great potential for harm to his patients.

- B. The evidence presented at hearing does not support the following allegations against Dr. Gray as set forth in the Board's June 13, 2001, notice of opportunity for hearing:
1. The conduct of Dr. Gray, in allowing Thomas L. Gemmer, P.A., to engage in the delivery of a human infant, as set forth in Findings of Fact 1, constitutes the following:
 - a. "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in

the course of practice” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, as in effect prior to October 20, 1994, to wit: Section 4731.41, Ohio Revised Code.

Section 4731.41, Ohio Revised Code, provides, in part, “No person shall practice medicine and surgery, or any of its branches, without the appropriate certificate from the state medical board to engage in the practice.” Pursuant to Section 4731.99(A), Ohio Revised Code, as in effect prior to March 9, 1999, violation of 4731.41, Ohio Revised Code, constitutes a misdemeanor offense.

- b. “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.

Mr. Gemmer did deliver a human infant. The standard utilization plan approved by the Board for Mr. Gemmer’s practice did not authorize Dr. Gray’s physician assistant to deliver human infants.

Nevertheless, Section 4731.36(A), Ohio Revised Code, provides that “Sections 4731.01 to 4731.46 of the Revised Code shall not prohibit service in case of emergency[.]” The evidence supports a conclusion that, at the time Dr. Gray requested Mr. Gemmer to attend Patient 1’s delivery, it was an emergency situation. Moreover, the evidence suggests that Dr. Gray had made a judgment call based on what he believed to be in the best interests of Patient 1.

There was much discussion at hearing regarding the appropriateness of Dr. Gray’s decision to leave Patient 1 when she had been in active labor for a significant amount of time. Dr. Gray objected to this testimony because the notice of opportunity for hearing did not allege any violations involving the minimal standards of care. The hearing examiner acknowledged the fact that the Board had not alleged any violations of minimal standards of care.

Nevertheless, the hearing examiner allowed the testimony for the limited purpose of assessing whether Dr. Gray had purposefully created the emergency with the intention of allowing Mr. Gemmer to perform the delivery. Upon review of the entire record, however, the evidence does not support such a conclusion. Accordingly, unless the Board should determine that Dr. Gray purposefully created the emergency situation for the purpose of sending Mr. Gemmer to perform the delivery, the Board should not consider the appropriateness of Dr. Gray’s decision to leave Patient 1 in order to perform the tonsillectomy.

2. The evidence presented did not support a conclusion that the conduct of Dr. Gray, in allowing Mr. Hunter to assist in the delivery of a human infant at Paulding County Hospital, as set forth in Findings of Fact 5, constitutes the following:
 - a. “[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter,” as that clause is used in Section 4731.22(B)(32), Ohio Revised Code, to wit: Section 4730.21(C), Ohio Revised Code.
 - b. “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.
 - c. “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense.
 - d. “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4730.02(E), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

Mr. Hunter was a physician assistant student at the time of the delivery. A number of the expert witnesses testified that the conduct of Dr. Gray in allowing Mr. Hunter to participate in one part of the delivery is an accepted method for teaching the delivery of a human infant. A number of the expert witnesses also testified that the person whose hands are on top of another person's hands after the baby's head crowns is the person who is delivering the baby. This testimony was persuasive. Accordingly, although Mr. Hunter participated in the delivery, he did not perform the delivery. Dr. Gray performed the delivery.

The question then presented is whether Mr. Hunter's participation in the delivery constitutes a violation of the statutes and rules. The evidence clearly demonstrated

that Dr. Gray's conduct violated Paulding County Hospital policy, but the Board did not charge Dr. Gray with violating Paulding County Hospital policy.

The question of whether Mr. Hunter's participation in the delivery constitutes a violation of the statutes and rules is not answered by the evidence presented. As noted by Ms. Hacker, there is no law or statute which states that a physician assistant student must practice in accordance with a Board-approved utilization plan. Moreover, none of the witnesses was aware of any rules or statutes that govern the practice of physician assistant students. Similarly, none of the witnesses was aware of any rules or statutes that govern the scope of practice of physician assistant students.

On the other hand, the evidence revealed that physician assistants are authorized to perform routine obstetric deliveries in many states. Nevertheless, although Dr. Gray is technically correct in stating that no law prohibits a supervising physician from requesting approval for a physician assistant to perform deliveries in Ohio, the Board has previously determined that the delivery of human infants is beyond the scope of practice of a physician assistant. Moreover, the Franklin County Court of Appeals has upheld the Board's right to make that determination. *Marion OB/GYN, Inc. v. State Med. Bd.* (2000), 137 Ohio App.3d 522.

The evidence further revealed that St. Francis University, located in Indiana, listed participation in obstetric deliveries as one of the skills Mr. Hunter was expected to develop as a student. Dr. Gray sponsored Mr. Hunter during his clinical rotation in obstetrics. Moreover, many of the experts testified that, while in medical school or residency, they had participated in procedures they knew they would not be performing once licensed. They noted, however, that the ability to experience these procedures as a student has benefited their overall practice and abilities. Furthermore, the State presented no evidence that the laws of Ohio prohibit the teaching of normal obstetric deliveries to physician assistant students who may or may not practice in Ohio once licensed. Accordingly, the State did not meet its burden in demonstrating that Dr. Gray's allowing Mr. Hunter, a physician assistant student, to participate in the delivery of a human infant constitutes a violation of law.

* * * * *

Dr. Gray allowed Mr. Hunter to practice beyond the scope of his certificate. Dr. Gray continued to allow Mr. Hunter to practice in this manner despite his knowledge that such practice was illegal and despite the efforts of Paulding County Hospital staff to advise him that such practice was in violation of Paulding County Hospital policy. The State noted in its closing argument that Dr. Gray views limitations with disdain and expresses an attitude that he can do anything he chooses. The evidence provides ample support for this statement, including Dr. Gray's allowing

Mr. Hunter to issue pre-signed prescriptions, and his refusal to heed the advice of Paulding County Hospital personnel.

Dr. Gray tried to argue that he had unknowingly exceeded the boundaries of the law, his utilization plan, and Paulding County Hospital policies and procedures. His testimony, however, was not credible. First, Dr. Gray testified that he had been unaware that physician assistants are prohibited by law from prescribing. Nevertheless, he stated that he had read the rules and statutes governing the practice of physician assistants in Ohio. Rule 4731-4-03, Ohio Administrative Code, clearly prohibits such practice. Moreover, Dr. Gray acknowledged that he had continued to provide Mr. Hunter with pre-signed blank prescriptions forms even after he was aware that such practice was a violation of the law.

In addition, Dr. Gray allowed Mr. Hunter to participate in obstetrics at Paulding County Hospital despite hospital policies that prohibit such practice, and despite having been warned on numerous occasions that physician assistant students are not allowed to participate in obstetrics. Finally, Dr. Gray allowed Mr. Hunter to perform a surgical procedure at Paulding County Hospital despite hospital policies that prohibit such practice, and despite Mr. Hunter's hospital credentials which disallow such practice. All of these facts refute Dr. Gray's contention that he had unknowingly exceeded the boundaries of the law, his utilization plan, and Paulding County Hospital policies and procedures.

Dr. Gray's tendency to misrepresent the truth when caught violating law or policy is particularly troubling. Dr. Gray admitted that he lied to Mr. Thornhill when confronted about Mr. Hunter's participation in the circumcision. Moreover, his testimony that he had asked Mr. Hunter to assist with the circumcision of Patients 2 and 3 because the babies were "small" and "squirming," is wholly unsupported by the testimony of the people who witnessed the event, including Dr. Gray and Mr. Hunter. In addition, Dr. Gray presented testimony at his deposition that was inconsistent with that of Mr. Hunter, and inconsistent with Dr. Gray's testimony at hearing. Finally, Dr. Gray recorded inconsistent and misleading documentation in the medical records for Patients 1, 2, and 3.

Nevertheless, Dr. Gray presented significant mitigating evidence. First of all, there was no evidence of patient harm. Moreover, there was no evidence that Dr. Gray's conduct was motivated by the hope of financial gain. In fact, the record clearly demonstrates that Dr. Gray has chosen to serve an underprivileged and underserved area, which minimizes his opportunity for financial gain. Finally, the record is replete with testimony regarding Dr. Gray's generosity to his community.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of James Harold Gray, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Gray's certificate shall be SUSPENDED for sixty days.
- B. **PROBATION:** Upon reinstatement or restoration, Dr. Gray's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Modification of Terms:** Dr. Gray shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 2. **Obey the Law:** Dr. Gray shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 3. **Declarations of Compliance:** Dr. Gray shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 4. **Personal Appearances:** Dr. Gray shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 5. **Tolling of Probationary Period While Out of State:** In the event that Dr. Gray should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Gray must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

6. **Monitoring Physician:** Before engaging in any medical practice, or as otherwise determined by the Board, Dr. Gray shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Gray and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Gray and his medical practice, shall monitor Dr. Gray's utilization of any physician assistants in his employ, and shall review the charts of patients who have been seen by a physician assistant in Dr. Gray's employ. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Gray and his medical practice, on Dr. Gray's utilization of any physician assistants in his employ, and on the review of Dr. Gray's patient charts. Dr. Gray shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Gray's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Gray must immediately so notify the Board in writing. In addition, Dr. Gray shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Gray shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

7. **Record Services Provided by Physician Assistant:** Dr. Gray shall document with specific detail in the patient medical record the services provided by any physician in Dr. Gray's employ.
8. **Random Inspection of Dr. Gray's Practice:** Dr. Gray shall allow inspection of his practice by Board investigators on a random basis to assure that Dr. Gray and his physician assistant are practicing in accordance with Dr. Gray's utilization plan and with the law of the State.
9. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Gray shall provide acceptable documentation of

successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

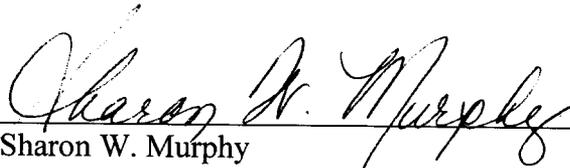
10. **Medical Records Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Gray shall provide acceptable documentation of satisfactory completion of a course on maintaining adequate and appropriate medical records, such course to be approved in advance by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
 11. **Examination on Law Relating to Practice of Physician Assistants**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Gray shall take and pass an examination to be administered by the Board or its designee related to the content of the Revised Code and the Administrative Code relating to the practice of physician assistants in Ohio.
 12. **Refrain From Teaching Physician Assistants**: Dr. Gray shall refrain from teaching physician assistants, unless otherwise determined by the Board.
 13. **Refrain From Submitting Requests for Additional or Amended Utilization Plans**: Dr. Gray shall refrain from submitting any requests for supplemental or additional standard utilization plans and from requesting any modifications or amendments to his current standard utilization plan, unless otherwise determined by the Board.
 14. **Withdraw Pending Application**: Dr. Gray shall withdraw his pending application for a new standard utilization plan and his request for an amended utilization plan.
 15. **Violation of Terms of Probation**: If Dr. Gray violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Gray's certificate.
- C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Gray's certificate will be fully restored.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gray shall

2002 FEB -8 P 4:43

provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Gray shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:**
Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gray shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Gray shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Gray shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF MARCH 13, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani 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 Richard De La Flor, M.D.; Stephen N. Fisher, M.D.; James Harold Gray, Jr., D.O.; Thomas A. Hunter, P.A.; and Willie L. Josey, M.D. A roll call was taken:

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

Dr. Somani 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. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Mr. Browning | - aye |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Agresta | - aye |
| | Dr. Garg | - aye |

Dr. Steinbergh - aye
Dr. Somani - aye

Dr. Somani 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. Somani 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.

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JAMES HAROLD GRAY, JR., D.O.

Dr. Somani directed the Board's attention to the matter of James Harold Gray, Jr., D.O. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Somani continued that a motion to correct the objections to include materials inadvertently omitted from the timely-filed objections has also been filed, but was not filed in a timely manner. These materials were previously distributed to the Board. The Assistant Attorney General has filed a response, indicating that she has no objection to the motion being accepted by the Board.

DR. BHATI MOVED TO ACCEPT THE CORRECTED OBJECTIONS AND THE MATERIALS SUBMITTED BY DR. GRAY. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:

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

The motion carried.

Dr. Somani stated that a request to address the Board has been timely filed on behalf of Dr. Gray. Five minutes would be allowed for that address.

Dr. Gray thanked the Board for allowing him to speak. He commented that he is nervous, and would read from a statement that he has prepared. Dr. Gray stated that his Physician Assistant, Tom Hunter, who is present, is also nervous, and that is why he chose not to speak to the Board.

Dr. Gray stated that he has been in practice for almost 17 years. During those 17 years, he thinks he's given medicine a good name in his county. It has been a mission for him, rather than a business. For that time, he has stepped up to the challenge and accepted new patients when the practice was full, establishing an indigent clinic when nobody else would see Medicaid patients, and making house calls on an every-day basis, because no one else would. He washed the feet of his dead and dying patients out of respect, and he's treated their injured children and grandchildren for no charge on the playing field.

Dr. Gray stated that his actions of May 2000 continue to haunt him and will do so for the rest of his life. He suddenly found himself in a hostile environment and he reacted poorly. He stated that he wishes that he could relive those events and make them right. He also realizes that he was wrong in allowing his P.A. some authority regarding prescriptions, though he is thankful that it occurred as infrequently as it did and that no patient harm resulted.

Dr. Gray stated that he believes Ms. Murphy's recommendations, while perhaps true to the law, do not reflect the rural situation. He made over 40 house calls over the month of January and charged for less than five. He has an elderly population, which is getting more frail, and young mothers who now have only two OB physicians from whom to choose, including him, after Dr. Nnadi returned to Africa last month. He is now the only physician who resides in their county who is able to perform C-sections.

Dr. Gray stated that he realizes that the Board has a very difficult job, and he does not envy the task it faces each time it meets. He understands that one of the Board's roles is to protect the public from bad medicine. Dr. Gray asked that the Board consider the impact on the citizens of Paulding and surrounding counties when it rules on his case.

Dr. Gray stated that he is here today to accept anything that the Board wants to do to him if he can continue, uninterrupted, to be available to his patients. He did make some mistakes and errors in judgment, and he is very, very sorry for that, but he is especially sorry if his patients suffer the consequences. Dr. Gray stated that he was fortunate that errors that he did make did not result in any patients being harmed. He is very concerned that loss of his services for 60 days could result in some harm to his patients.

Dr. Gray stated that he has two other requests. He stated that his attorneys offered a number of suggestions as alternatives to suspension of his license, including giving up his teaching responsibilities at the

University of St. Francis. Ms. Murphy adopted that suggestion, in addition to suspending his license. Dr. Gray stated that he can accept the restriction not to have P.A. students rotate through his practice while he is on probation, but he would like for the Board to consider allowing him to continue didactic teaching at St. Francis. It is an activity that he greatly enjoys. He thinks he is good at it, and the University needs it.

Dr. Gray added that he would like clarification, and possibly relief, from the reporting requirements in Ms. Murphy's Order. He stated that he understands and accepts the requirement to report to hospitals and licensing authorities. He's not sure whether it also requires him to report to every third party payor whose panel he is on. It will be difficult enough for him to get on new panels. He asked that he not be required to report to those payors who have already credentialed him. He expressed concern that he will be dropped from their panels. He believes his patients would suffer the consequences of that.

Dr. Gray stated that he is present to ask that the Board not suspend his license, and to ask for the Board's help in any way possible for his county. Dr. Gray concluded by offering to answer any questions the Board members might have in the time he has left.

Dr. Somani asked whether the Assistant Attorney General wished to respond.

Ms. Crawford stated that this case is one that has many aspects to it. Dr. Gray alluded to the issue of the underserved population in his county. The Hearing Examiner set forth very well in her Report and Recommendation those circumstances and the fact of the lack of physicians and inability to attract physicians to that area. The fact of the matter remains, however, that Dr. Gray did violate the Medical Practices Act. He admitted at hearing that he allowed his P.A. to prescribe medications in very rare circumstances when he was called out of the office, as a convenience to his patients. Dr. Gray admitted that that was wrong. Dr. Gray also admitted at hearing that he lied to the C.E.O. of the hospital when confronted about the issues of the circumcision. Dr. Gray admitted that circumcision is surgery. The evidence was very clear that the P.A. did perform all aspects of the circumcision up until the point in time when the chief of nursing came in and told him to stop. The evidence also shows that Dr. Gray was right there, directly supervising and instructing all along the way. Ms. Crawford stated that the evidence is clear that there were several violations of the Medical Practices Act.

Ms. Crawford stated that the third issue that the Hearing Examiner set forth very clearly in the Report and Recommendation is the fact that she had several concerns. One was Dr. Gray's reaction when there are limitations placed upon his ability to practice. The second concern that the Hearing Examiner raised was the issue of Dr. Gray's misrepresentation of exactly what happened with respect to the circumcision. In light of the overall concern and role of the Board on protection of the public, the Hearing Examiner crafted a recommendation that addressed the fact that Dr. Gray did violate the Medical Practices Act, took into consideration all of the mitigating circumstances, including the underserved population in the county, and also took into consideration ways that Dr. Gray could be monitored should the Board allow Dr. Gray to continue practicing.

Ms. Crawford concluded that, taking into consideration all of the various aspects of this somewhat unique

case, the State supports the Report and Recommendation of the Hearing Examiner.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES HAROLD GRAY, JR., D.O. DR. AGRESTA SECONDED THE MOTION.

Dr. Somani stated that he would now entertain discussion in the above matter.

Dr. Egner stated that she spent an incredible amount of time on this case and she hopes that she has interpreted it correctly. She wanted Dr. Gray to come to the Board today and say exactly what he said. It does help her to make the suggestions that she wants to make.

Dr. Egner stated that she is not saying that what Dr. Gray did was not wrong. He did violate the Medical Practices Act.. She also thinks that the Board has to look at the circumstances of it. The Board is not considering standard of care issues, nor did Dr. Gray do what he did for any financial gain. She can't really recall cases the Board has considered before when looking at a P.A. scope of practice and how a physician utilized the P.A. when it wasn't really about financial gain for the physician and the practice.

Dr. Egner stated that her overall impression is that Dr. Gray had a very close working relationship with his P.A., that he became his P.A.'s mentor, and that the lines became blurred as to how much knowledge he's imparting to his P.A. They're practicing together. Dr. Egner stated that she doesn't get the sense that Dr. Gray was showing the P.A. how to do a circumcision so that he would never have to do one again. It was a case of it being something he felt the P.A. was capable of learning. It is not a difficult procedure to teach. She got the same sense when reading about Dr. Gray's teaching Mr. Hunter how to deliver a baby. Having Mr. Hunter's hands, with Dr. Gray's hands over his, is the way you teach how to deliver a baby. Dr. Egner stated that she doesn't see a problem with that.

Dr. Egner stated that the prescription writing is definitely a problem. The circumcision is a problem in the sense that he knew that the P.A. shouldn't do it. Dr. Egner noted that Dr. Gray had applied for a supplemental plan for his previous P.A., but hadn't this time. This shows that he did know the system.

Dr. Egner stated that the six mitigating factors for her are very compelling. There was no evidence of patient harm, no evidence that he practiced below minimal standards, his conduct was not motivated by financial gain, and he serves in an underprivileged and underserved area. The Board must be cognizant of what it means to take Dr. Gray out of practice. It was clear that Dr. Gray has had an inability to attract additional physicians to work with him. In a sense, he probably has had a hard time finding a P.A. to work so closely with him also. Dr. Egner stated that it is also clear that Dr. Gray is a major contributor to the medical community and his community at large. She thought about requiring community service, but she believes Dr. Gray already does community service.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER BY:

1. **Amending paragraph A by removing the Permanent Revocation and by reducing the period of suspension in Paragraph A to 15 days.**
2. **Delete Paragraph B.6. which requires Dr. Gray to find a monitoring physician.**
3. **Amend paragraph 8 to add language requiring Dr. Gray to make his records available for inspection upon request by the Board.**
4. **Delete paragraphs 12, 13 and 14.**

Dr. Egner stated that Paragraph B.6. begs the very issue with which the Board is dealing in this case. Where will Dr. Gray find a monitoring physician? They can't even find a physician to work in the area. She thinks that this is not a good set up and she's not really sure that the monitoring physician is going to be able to do the things the Board wants. She believes that monitoring can be done by the Board under paragraph 8.

Dr. Egner stated that she doesn't know what the Board would gain from restricting Dr. Gray from teaching P.A.s, so she is recommending deletion of paragraph 12.

Dr. Egner added that she would delete paragraph 13 because what the Board really wants is for Dr. Gray to follow the rules. Dr. Egner stated that, as seen by Dr. Gray's previously employed P.A., there are times when Dr. Gray may need an amended form. She believes that this is a restriction that doesn't add to the case at all.

Dr. Egner advised Dr. Gray that she does believe that he needs to report this to everyone. That's part of the process.

Dr. Egner stated that paragraph 14 is being deleted because she wants him to be able to have his P.A. practice with him. He does have a supplemental form in the process somewhere, and that should be reviewed.

Dr. Egner stated that she knows that she is proposing a lot of changes and she knows that it makes the Order much more lenient than the Hearing Examiner proposed, but she searched her soul and she feels this is the proper thing to do.

DR. STIENECKER SECONDED THE MOTION.

Dr. Steinbergh stated that she would like to make one technical adjustment to paragraph B.7. Instead of saying "...physician in Dr. Gray's employ," it should say "...physician assistant in Dr. Gray's employ."

Dr. Steinbergh stated that she does not totally agree with Dr. Egner's motion. Taking into consideration

the social circumstances of Dr. Gray's practice, when she approaches a case she looks to see what the concerns are and tries not to feel that there's any one physician in this state different from any other. The law is the law. Although there may be different circumstances that the Board can consider, the bottom line for her in reviewing this case is that in 1994 Dr. Gray caused a P.A., Mr. Gemmer, to do a vaginal delivery. Mr. Gemmer was not licensed nor credentialed by the hospital to do obstetrics. Dr. Gray knew, or should have known, that the patient would deliver soon. It was not a precipitous delivery. Dr. Steinbergh stated that Dr. Gray should have postponed an elective tonsillectomy until he had safely delivered Patient No. 1 or he should have arranged for another physician to do the delivery. By going into the operating room, Dr. Gray did put the patient at risk. The patient was delivered by someone who was not licensed nor credentialed to do that service. Then Dr. Gray failed to properly document it in the medical record, as if he did the delivery. Dr. Steinbergh stated that she finds that that was deceptive and negligent on Dr. Gray's part.

Dr. Steinbergh continued that in May 2000 Dr. Gray caused a P.A., Mr. Hunter, to perform an infant circumcision, which is a surgical procedure, that he was neither licensed nor credentialed to do. He knew it was illegal, and yet he did it. Again, the medical record did not clearly reflect who did the circumcision. He subsequently lied to the hospital administrator about the procedure, and there was no question about who did the circumcision. It was, in fact, Mr. Hunter. During this time he allowed Mr. Hunter to prescribe dangerous medications by pre-signing his prescriptions. These are all things that cannot be looked upon in a lenient fashion. Dr. Steinbergh stated that the 15-day suspension proposed by Dr. Egner is much, much too lenient. She added that the proposed two-month suspension was too lenient for her. With all of the social information and the plea by the respondent about the hospital and how the hospital will suffer, he did, in fact, provide the Board with some interesting information about the hospital and some of the financial problems that the hospital has. Yet, Mr. Gary Atkins, the hospital's Chief Executive Officer, said that even if the hospital loses the \$900,000 in another case, it wouldn't lay off anyone or bounce any checks. Mr. Atkins indicates that the money has not yet been pledged, but the hospital was going to be fine and will continue to operate as normal. Dr. Steinbergh stated that when you take a look at a case like this, although the social responsibility is a concern, and she recognizes that Dr. Gray performs a great service to this county and to his community, physicians should not be singled out as being different or that they provide something in a way that no one else can or no one else does. Dr. Gray has, in fact, broken the law several times, and, in her mind, even a 60-day suspension is too light for this case.

Dr. Bhati agreed with Dr. Steinbergh. Time after time after time, Dr. Gray broke the law. The Board cannot just ignore it. Also, there cannot be a two-tiered system. He agreed with Dr. Steinbergh that the acts warrant a suspension greater than 60 days.

Dr. Talmage stated that he greatly admires people who practice in rural areas with indigent patients; however, it's very dangerous to set a precedent of a two-tiered standard. He doesn't think that there was lack of compassion for these patients, but certainly someone else who wants to cut corners could have a similar situation and come up with very similar findings. If the Board lets Dr. Gray off without any kind of suspension, that presents a precedent this Board wouldn't want to follow in other cases. The message to practitioners should be that the Board greatly admires what they do, but they should do it the same as they

would do it in any city or suburb. Take care of your patients properly, do not train P.A.s to do things they're not supposed to do, don't pre-sign prescriptions – all these things that Dr. Gray has done need to be addressed.

Dr. Talmage added that, in his mind, the length of suspension is very flexible because it's the idea of suspension that is more in keeping with what he would like to see. He doesn't think the number of days matters. It's the idea that there is a suspension attached, and that there should be. Dr. Talmage stated that he would agree with Dr. Egner's motion in part. He spoke against deleting paragraph B.12., stating that anyone who has taught P.A.s improperly should not be allowed to teach them, at least for the period of suspension. Once the suspension is over, then he can go back and teach P.A.s and teach them properly. He can teach them the things that they are allowed to do and not the things that they are not allowed to do.

Dr. Egner stated that teaching P.A.s in areas that they aren't allowed to do is a critical point, and she asked if Dr. Buchan would address this issue.

Dr. Buchan stated that he's not sure he can answer that question, but he would like to speak to that issue. The Board is asking a gentlemen to take an examination on the laws relating to the practice of P.A.s within a year. He doesn't feel that it would be unreasonable during that year to say that he cannot teach P.A.s. Dr. Buchan suggested leaving paragraph B.12. in until the Board is sure that Dr. Gray is up to speed regarding the law for use of P.A.s.

Dr. Buchan spoke in favor of Dr. Egner's amendment. He stated that he does believe that suspension is not unreasonable, but 15 days is fair. The issuance of pre-signed prescriptions is severe, and for that he was in favor of leaving the permanent revocation, but suspending for 15 days. He feels that the language should be harsh, but it is not unreasonable to lessen the suspension. He asked that Dr. Egner keep the revocation language and B.12 in place.

Dr. Egner agreed to accept Dr. Buchan's friendly amendment. Dr. Stienecker also agreed.

Dr. Buchan stated that the last comment he wants to make in this case is that Dr. Gray is performing a great service in his community, and he acknowledges that. It is for that reason that he is a bit more lenient in his view of the case. Dr. Buchan stated that he also looks at Dr. Gray as being overworked and looking for relief. It wasn't that Dr. Gray couldn't perform the procedure that was asked of him. He was just simply stepping off the podium and asking the P.A. to take over during a moment. Dr. Buchan stated that he sees this as being a fellow who is simply overworked. He suggested that Dr. Gray evaluate his schedule and the commitments that he's made so that he doesn't put himself in this very, very compromising position again.

Dr. Stienecker spoke in agreement with what has been said. He added that being in an underserved area does not justify being poorly served. Going ahead with one surgery when you have a patient in labor, delegating improperly to people who do not have authority to do things, signing prescriptions for expeditious care results in underserved, poorly served patients.

Dr. Stienecker stated that he also thinks that Dr. Gray has a problem with boundaries. He carries his teaching processes into unauthorized areas, carrying the teaching of P.A.s into the hospital where they're not authorized to do those kinds of things. Dr. Stienecker stated that he thinks Dr. Gray has too many irons in the fire, and that seems to be part of the problem. Dr. Stienecker added that there is probably hospital and patient pressure for Dr. Gray to do that. There are too many people to be served by the number of people available to serve. Still, the hospital is not on the verge of collapse, nor is there anyone who is not expendable. If Dr. Gray were not in the picture, Dr. Stienecker stated, the hospital would somehow survive. The administrators' discussion and remarks are those of an administrator, but administrators have their own point of view.

Dr. Stienecker concluded his statement by stating that he is willing to accept Dr. Egner's amendment.

Dr. Bhati asked whether Dr. Egner would accept a friendly amendment to suspend Dr. Gray's license for 30 days instead of 15 days.

Dr. Egner stated that she would not like to change that. She does believe that Dr. Gray needs a suspension, but she doesn't think that it's the amount of time that is of issue. He deserves a suspension, and 15 days out is sufficient. She doesn't believe that the Board is any better served by Dr. Gray's being out of practice longer. She does think that there could be some poor consequences to it. She reminded the Board that this is not a case of practicing below minimal standards.

Dr. Egner stated that she does not believe in a two-tiered system either, and she doesn't make the proposed amendments just because Dr. Gray is in such an underserved area. However, she also thinks that it is part of what happens. Having been a solo practitioner herself for a very long period of time, and comparing it to what it's been like with physicians to share the workload with her, the mindset is very different. She's not saying that this justifies what Dr. Gray did. If it did, she would have asked for a reprimand.

Dr. Egner stated that, as far as teaching P.A.s goes, this isn't just Dr. Gray's struggle, but it's the Board's struggle every month. She noted that, when the Board reviews supplemental requests, it asks the question of how P.A.s get trained to do things if they're not allowed to do them. The Board has discussed that many times. The Board has changed so much in the time she has been on the Board regarding what P.A.s are allowed to do. She's not saying that Dr. Gray had the power to do that, but the Board has struggled with the same issues, and it is an evolving process.

Dr. Agresta stated that he agrees with the proposed amendments, but he questioned whether Dr. Egner would be saying the same thing if Dr. Gray had been practicing in a normal setting and had done the same thing. He stated that Dr. Egner is saying that she's not basing some of her decision-making process on the fact that Dr. Gray's in an underserved area, but the fact is that she is. If he was doing this in Columbus, Ohio, he'd probably have a permanent revocation or be out of practice for a year. This is a very lenient order considering what Dr. Gray did. Before the Board makes that final decision, it has to consider that.

Dr. Stienecker stated that if ever there was an area that needs physician extenders, this is one. He believes

that Dr. Gray should be allowed to continue to teach P.A.s. That is his access to P.A.s.

Dr. Bhati stated that this is a case where the physician broke the law. Where he did it isn't the issue. The issue is taking care of the patients in the same way you would somewhere else. The Board can't set the precedent that a physician can break the law and get away with a 15-day suspension. He again expressed concern that the Board would be setting an unacceptable precedent.

Dr. Steinbergh stated that she doesn't think that the Board should be treating Dr. Gray any differently from anyone else. In regard to teaching the P.A.s, she agrees with Dr. Buchan that there ought to be a time-out from this. Say what you will about suspension, 15 days is a two-week vacation. There's no sense of a suspension here. Dr. Steinbergh stated that she thinks this is not consistent with how the Board feels about these kinds of cases. She could not possibly vote for that.

Dr. Talmage stated that when people apply for supplemental privileges, they apply to train their P.A. to do those things. The Board requires a certain process of training. The Board doesn't give them privileges to do what they've already been doing, although the Board fully realizes that the P.A.s have probably already been doing it. Had Dr. Gray applied to train the P.A.s to do deliveries, the Board would have judged that on its merit. If the record shows that Dr. Gray has been suspended, the time is immaterial. The record shows that his license has been suspended, and that's a lesson to someone else not to get into an area where that person's license could get suspended. Dr. Talmage stated that he doesn't feel the importance of the number of days.

Dr. Somani reviewed Dr. Egner's motion to be as follows:

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER BY:

- 1. Amending paragraph A by reducing the period of suspension in Paragraph A to 15 days**
- 2. Delete Paragraph B.6. which requires Dr. Gray to find a monitoring physician.**
- 3. Amend paragraph 8 to add language requiring Dr. Gray to make his records available for inspection upon request by the Board.**
- 4. Delete paragraphs 13 and 14.**

A vote was taken on Dr. Egner's motion to amend:

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|-------|-------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Bhati | - nay |
| | Dr. Buchan | - aye |

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|----------------|-----------|
| Mr. Browning | - aye |
| Ms. Sloan | - aye |
| Dr. Stienecker | - aye |
| Dr. Agresta | - aye |
| Dr. Garg | - abstain |
| Dr. Steinbergh | - nay |
| Dr. Somani | - nay |

The motion carried.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JAMES HAROLD GRAY, JR., D.O. DR. STIENECKER SECONDED THE MOTION. A vote was taken:

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|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Bhati | - nay |
| | Dr. Buchan | - aye |
| | Mr. Browning | - aye |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Agresta | - aye |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - nay |
| | Dr. Somani | - nay |

The motion carried.



State Medical Board of Ohio

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

June 13, 2001

James Harold Gray, Jr., D.O.
204 Woodland Drive
PO Box 1045
Antwerp, OH 45813

Dear Doctor Gray:

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) You entered into a notice of employment with Thomas L. Gemmer, P.A., effective on or about September 3, 1991. Your physician assistant utilization plan then in effect did not permit any physician assistant employed by you to engage in the delivery of human infants or to engage in surgery.

On or about August 11, 1994, at approximately 1:30 a.m., Patient 1 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure), who was your patient, was admitted at Paulding County Hospital. Patient 1 had an estimated date of confinement of August 3, 1994; her contractions were at four minutes. At approximately 3:10 a.m., you were notified of Patient 1's admission. You were notified at 5:15 a.m. of the patient's progress; at that time, Patient 1 was 80% effaced, dilated 8 cm, and with contractions at 2 minutes. You arrived at the labor room at approximately 5:50 a.m., and stated that Patient 1 could push. You performed a vaginal examination on Patient 1 at approximately 8:00 a.m., at which time Patient 1 was completely effaced. At some time after 8:00 a.m., you left Patient 1 in the labor room and engaged in a tonsillectomy procedure. You were notified in surgery at approximately 9:00 a.m. that you needed to come to the delivery room. You directed Thomas L. Gemmer, P.A., to go from the surgery to the delivery room. Mr. Gemmer performed an episiotomy on Patient 1 and delivered the human infant, while you continued the tonsillectomy on another patient.

Mailed 6-14-01

- (2) You entered into a supervision agreement with Thomas A. Hunter, P.A., effective on or about September 22, 1999. Pursuant to that supervision agreement, you certified that you would supervise Mr. Hunter in accordance with both your Physician Assistant Utilization Plan, as approved by the Board, and the rules and regulations set forth by the State Medical Board of Ohio regarding physician assistants. Your Physician Assistant Utilization Plan, as approved by the Board, did not permit any physician assistant under your supervision to engage in the delivery of human infants, nor to engage in surgery or assist in surgery.
- (3)
 - (a) On or about May 11, 2000, you allowed Mr. Hunter to perform, in part, a circumcision on Patient 2 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) in the nursery of Paulding County Hospital.
 - (b) Upon being confronted by staff at Paulding County Hospital with allegations that you allowed Mr. Hunter to perform a circumcision, you falsely told Paulding County Hospital staff that Mr. Hunter only “cut the string” on the Plastabell.
 - (c) On or about April 13, 2001, at an investigatory deposition in the offices of the State Medical Board of Ohio, you falsely testified that you advised the Chief Executive Officer of Paulding County Hospital that Mr. Hunter had cut some of the foreskin during the aforementioned circumcision.
- (4) On more than ten but less than twenty occasions between in or about July 2000 and April 2001, you authorized Mr. Hunter to issue prescriptions for dangerous drugs to patients without your or any other physician’s specific approval. You facilitated Mr. Hunter’s prescribing of dangerous drugs by signing otherwise blank prescription forms and leaving the forms with Mr. Hunter with the understanding that Mr. Hunter would complete the otherwise blank signed prescription forms and give those forms to patients with the intention that those patients present those forms to pharmacies.
- (5) In or about January 2000, you allowed Mr. Hunter to assist in the delivery of a human infant at Paulding County Hospital by using his hands to guide the infant while your hands were over Mr. Hunter’s hands.

Your acts, conduct, and/or omissions as alleged in paragraphs (3)(b) and (3)(c) above, individually and/or collectively, constitute “[m]aking 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, podiatry, 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,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3)(a), and (5) above, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4730.02(E), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3)(a) and (5) above, individually and/or collectively, constitute “[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter,” as that clause is used in Section 4731.22(B)(32), Ohio Revised Code, to wit: Section 4730.21(C), Ohio Revised Code.

Further, your acts, conduct, and/or omissions that occurred prior to September 1, 2000, as alleged in paragraph (4) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-03(C), Ohio Administrative Code as in effect prior to September 1, 2000.

Further, your acts, conduct, and/or omissions that occurred on or after September 1, 2000, as alleged in paragraph (4) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-04(C), Ohio Administrative Code.

Further, your acts, conduct, and/or omissions that occurred prior to September 1, 2000, as alleged in paragraphs (1), (3)(a) and (5) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3)(a), (4) and (5) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code.

Pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, as in effect prior to October 20, 1994, to wit: Section 4731.41, Ohio Revised Code. Pursuant to Section 4731.99(A), Ohio Revised Code, as in effect prior to March 9, 1999, violation of 4731.41, Ohio Revised Code, constitutes a misdemeanor offense.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4729.51, Ohio Revised Code, Persons who may sell, purchase, distribute, or deliver dangerous drugs.

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.”

James Harold Gray, Jr., D.O.

Page 5

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anand G. Garg', written in a cursive style.

Anand G. Garg, M.D.
Secretary

AGG/dpk

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 6083
RETURN RECEIPT REQUESTED

cc: Jim Flynn, Esq.
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5140 6090
RETURN RECEIPT REQUESTED