



State Medical Board of Ohio

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July 12, 2000

Richard M. Donnini, D.O.
1550 Yankee Park Place, Suite A
Centerville, OH 45458

Dear Doctor Donnini:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2000, 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 may be taken to the Franklin County Court of Common Pleas only.

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 833
RETURN RECEIPT REQUESTED

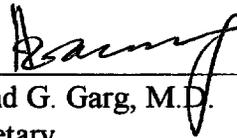
cc: Douglas E. Graff, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 839 834
RETURN RECEIPT REQUESTED

Mailed 8/2/00

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2000, 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 Richard M. Donnini, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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



Anand G. Garg, M.D.
Secretary

(SEAL)

JULY 12, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

RICHARD M. DONNINI, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 12, 2000.

Upon the Report and Recommendation of Daniel Roberts, 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:

1. The certificate of Richard M. Donnini, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less twenty-one months. This period of twenty-one months is retroactive to October 12, 1998.
2. Except as modified by paragraph 1 of this Order, the Board's Order of September 9, 1998, shall remain in effect.

(SEAL)



Anand G. Garg, M.D.
Secretary

JULY 12, 2000
Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF RICHARD M. DONNINI, D.O.**

The Matter of Richard M. Donnini, D.O., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on April 10 and 17, 2000.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated November 17, 1999, the State Medical Board of Ohio [Board] notified Richard M. Donnini, D.O., that it had proposed to determine whether to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

On or about October 12, 1998, Dr. Donnini's license to practice osteopathic medicine and surgery had been suspended for a period of not less than one year. Dr. Donnini has since applied for reinstatement, that application is pending and his license remains suspended.

During this period of suspension, Dr. Donnini practiced medicine as defined by Section 4731.34, Ohio Revised Code. In particular, he interpreted radiological studies, reviewed patient charts, and dictated correspondence in which he rendered medical opinions about patients' current conditions, diagnoses, prognoses, treatments, and/or disabilities. He received compensation in the form of profits from his corporation, the Pain Evaluation and Management Center of Ohio, Inc., that had been derived in part from fees charged in connection with the patients and/or the disability or health claims referenced in the correspondence.

Further, Dr. Donnini authorized the placing of his signature stamp, "Richard M. Donnini, D.O.," on correspondence, and authorized sending said correspondence, regarding Patients 1 through 7 to third parties under circumstances that would induce the belief that he was engaged in the practice of medicine, on or about the following dates:

Patient 1	November 2, 1998	Patient 5	July 6, 1999
Patient 2	December 1, 1998	Patient 6	September 13, 1999
Patient 3	April 16, 1999	Patient 7	September 14, 1999
Patient 4	June 28, 1999		

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The Board alleged that Dr. Donnini's acts, conduct, and/or omissions that occurred prior to March 9, 1999, 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 March 9, 1999, to wit: Section 4731.43, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, as in effect prior to March 9, 1999, violation of Section 4731.43, Ohio Revised Code, constitutes a misdemeanor offense."

The Board further alleged that Dr. Donnini's acts, conduct, and/or omissions that occurred on or after March 9, 1999, 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 4731.43, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, as in effect on or after March 9, 1999, violation of Section 4731.43, Ohio Revised Code, constitutes a felony offense."

The Board also alleged that Dr. Donnini's acts, conduct, and/or omissions that occurred prior to March 9, 1999, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, as in effect prior to March 9, 1999."

Additionally, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions that occurred on or after March 9, 1999, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, as in effect on or after March 9, 1999."

The Board alleged that Dr. Donnini's acts, conduct, and/or omissions, 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: Section 4731.43, Ohio Revised Code."

Accordingly, the Board advised Dr. Donnini of his right to request a hearing in this matter. (State's Exhibit 8A)

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- B. On December 2, 1999, James W. Wiggin, III, Esq., submitted a written hearing request on behalf of Dr. Donnini. (State's Exhibit 8C)

II. Appearances

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

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
- Richard M. Donnini, D.O., as if on cross examination
- B. Presented by the Respondent
1. Donald E. Kovich, Esq.
 2. Amy Hoeffel
 3. Richard M. Donnini, D.O.

II. Exhibits Examined

- A. Presented by the State
- * 1. State's Exhibits 1, 2A-2B, 3A-3D, 4-7: Patient records.
2. State's Exhibit 8A-8V: Procedural exhibits. [Exhibit 8B is the patient key and is sealed to protect patient confidentiality.]
3. State's Exhibit 9: Certified copy of September 9, 1998, Entry of Order, Report and Recommendation, and excerpt of draft Minutes from the case captioned *In the Matter of Richard M. Donnini, D.O.*, before the State Medical Board of Ohio.
4. State's Exhibit 10: Copy of November 4, 1999, Decision and Entry on Merits of Appeal in the Franklin County Court of Common Pleas case

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Patient 6. Attached is a copy of a September 13, 1999, cover letter to Patient 6.

- * 18. State's Exhibit 24: Copy of October 12, 1999, transcript of deposition of Dr. Donnini. [Note: only portions of three pages were admitted to the record. The remainder was redacted by the Attorney Hearing Examiner.]
 - * 19. State's Exhibit 25: Copy of September 14, 1999, letter to the UFCW Unions and Employers Health and Welfare Plan of Central Ohio from Dr. Donnini in reference to Patient 7.
 - * 20. State's Exhibit 26: Copies of 18 paychecks issued by Pain Evaluation and Management Center of Ohio, Inc. to Dr. Donnini between October 13, 1998, and August 17, 1999. [Exhibit sealed due to private financial account information.]
- B. Presented by the Respondent
- 1. Respondent's Exhibit A: List of chiropractors with whom Dr. Donnini had a referral relationship.
 - 2. Respondent's Exhibit B: List of physicians with whom Dr. Donnini had a referral relationship.
 - 3. Respondent's Exhibit C: List of attorneys with whom Dr. Donnini had a referral relationship.
 - 4. Respondent's Exhibit D: Copy of September 25, 1998, Certificate of Amended Articles of Incorporation [for] Pain Evaluation and Management Center of Ohio, Inc.
 - * 5. Respondent's Exhibit K: Copy of October 1, 1998, letter to the Dayton Metropolitan Housing Authority from Dr. Donnini.

Exhibits or portions of exhibits marked with an asterisk "*" are sealed to protect patient confidentiality or other protected privacy interests.

PROFFERED EXHIBITS

The following exhibits were neither admitted to the hearing record, nor considered, but are being held as proffered exhibits.

- * I. Respondent's Exhibit E: April 6, 2000, affidavit of Mordy Pelleg, President, MBS, Cleveland, Ohio.
- * II. Respondent's Exhibit F: April 7, 2000, affidavit of Richard S. Sutton, Esq.
- * III. Respondent's Exhibit G: January 31, 2000, affidavit of Jack Cervay, Esq.
- * IV. Respondent's Exhibit H: April 7, 2000, affidavit of Alan J. Shapiro, Esq.
- * V. Respondent's Exhibit I: April 6, 2000, affidavit of Kiran D. Shirsat, M.D.
- * VI. Respondent's Exhibit J: April 6, 2000, affidavit of Deborah J. Adler, Esq.
- VII. Board Exhibit A: Pages 177-203, 207-215, and 229-244 of the transcript containing testimony of Dr. Donnini as well as arguments of both counsel.

Exhibits or portions of exhibits marked with an asterisk "*" are sealed to protect patient confidentiality or other protected privacy interests.

PROCEDURAL MATTERS

Pages 177 through 199 of the transcript contain arguments of counsel relevant to testimony and exhibits which were not admitted to the record by the Attorney Hearing Examiner. It had been the intent of the Attorney Hearing Examiner to include these pages in the separate proffered portion of the transcript. However, the court reporter included them in the main transcript. The court reporter also included a portion of page 229 and pages 230-244 in the main transcript when they should have been placed in the proffer transcript. The Attorney Hearing Examiner removed these pages post hearing and marked them as Board Exhibit A. These pages will be held as proffered material.

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.

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1. On October 12, 1998, the license of Richard M. Donnini, D.O., to practice osteopathic medicine and surgery in Ohio was suspended by the Board for a period of not less than one year. Prior to his suspension, Dr. Donnini had practiced for, and managed, an Ohio corporation known as "Pain Evaluation and Management Center of Ohio" [PEMCO]. Dr. Donnini testified that he is the sole shareholder of PEMCO. Other physicians have been employed by PEMCO at various times. Dr. Donnini described PEMCO as serving a number of patients with workers compensation claims and a small number of personal injury patients. The balance of patients are treated for a variety of other pain problems. (Transcript [Tr.] at 20-24, 174; State's Exhibits [St. Ex.] 9-11; Respondent's Exhibit [Res. Ex.] D)

Dr. Donnini testified that, after his suspension went into effect he would spend only a few hours a day in his office answering telephone messages and completing administrative duties. Dr. Donnini remained President of PEMCO. (Tr. 24)

2. On January 14, 1998, the Board approved a position paper entitled "Permissible Activities During License Suspension." This paper was posted to the Board's publicly accessible web site on or before October 30, 1998. This document contains a rendition of applicable sections of the Ohio Revised code and contains a note that a licensee who has been suspended may not engage in the practice of medicine as defined by Section 4731.34, Ohio Revised Code. The Board notes in this document that Sections 4731.43 and 4731.60 contain related prohibitions. The Board also notes that "Permissibility of chart review activities would *** turn upon whether or not those activities are tantamount to the practice of medicine as defined by Section 4731.34, Ohio Revised Code." The Board concludes by noting that, "In no event may the practitioner hold him or herself out or use designations that suggest that he or she holds a current license or in any way consult on or direct patient care." There is no evidence in the record to suggest that Dr. Donnini was aware of the existence of this document. (St. Ex. 12)
3. By letter dated October 18, 1999, William S. Fein, Esq., communicated with the Board on behalf of Dr. Donnini. Mr. Fein stated that the purpose of his letter was to clarify what Dr. Donnini had done and not done while under suspension. Mr. Fein advised the Board that he had attended an October 12, 1999, investigatory deposition of Dr. Donnini conducted by the Board. Mr. Fein stated that the Board's Enforcement Coordinator would not disclose the specific allegations being investigated. However, Dr. Donnini and Mr. Fein concluded that the Board's concerns had focused on the alleged practice of medicine by Dr. Donnini while under suspension and were primarily based on various letters Dr. Donnini had written while under suspension. (Tr. 24-25; St. Ex. 13)

Mr. Fein conceded that Dr. Donnini had participated in the administration of PEMCO while under suspension and had dealt with requests from physicians and attorneys concerning historical information about patients. He also stated that Dr. Donnini had

supervised office staff and spoken to patients about billing and administrative issues. At hearing, however, Dr. Donnini testified that Mr. Fein's representation was not correct because Dr. Donnini did not in fact provide any historical information to other physicians. (Tr. 46-47; St. Ex. 13)

4. Dr. Donnini testified that he had taken steps to educate himself about what he would be able to do while under suspension. He elaborated that he first contacted his attorney, Mr. Fein. Dr. Donnini testified that he spoke with Mr. Fein, took notes on Mr. Fein's advice, had another employee present during the conversation, and asked Mr. Fein to forward additional material in writing, in an effort to conform with the suspension order. (Tr. 173-174)
5. Dr. Donnini testified that he spoke to his business attorney, Mr. Carlisle, about the status of his medical corporation. Several months before the suspension, Dr. Donnini converted the medical corporation into a regular corporation. Dr. Donnini testified that he had been advised by counsel that one did not have to be a physician to own and administer a medical practice that was incorporated as a regular corporation. (Tr. 174; St. Ex. 26; Res. Ex. D)
6. In his October 18, 1999, letter to the Board, Mr. Fein had stated that Dr. Donnini had sent letters to all referring physicians and to attorneys representing patients telling them that his license had been suspended. Dr. Donnini testified that his letter to Anil Agarwal, M.D., was similar to the letters sent to all referring physicians and lawyers. This letter summarizes the reasons Dr. Donnini believed that his medical license had been suspended for one year effective October 11, 1998. This letter also contains the following statement: "I am permitted to furnish medical reports detailing patient care information and medical opinions covering the period of time the patients were under my care." Dr. Donnini explained that this assertion was based on the advice he had received from his counsel. Dr. Donnini explained that he did not know who he could have contacted at the Board for advice and that his previous attempts to obtain information from the Board had been unsuccessful. As a result he did not attempt to contact the Board to determine what he was permitted to do while under suspension. (Tr. 24-29; St. Exs. 12-14)

In his letter to Dr. Agarwal, Dr. Donnini had stated that he would "remain in the office for patient quality assurance, patient care issues and administrative issues." At hearing, Dr. Donnini explained that he does not know exactly what an administrator does. However, he asserted that his intent had been to provide only administrative services to the practice. Dr. Donnini also explained that he had intended to perform quality assurance reviews which involved the review of patient charts generated by practice employees to assure that they were complete. Dr. Donnini testified that he had never engaged in direct patient care. Dr. Donnini also testified that he had not believed that it was inappropriate to consult with other physicians in the clinic about ongoing patient care issues while he

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was under suspension. He further testified that no such consultations had ever taken place (Tr. 29-31, 45-46; St. Exs. 13, 14, and 17)

7. Dr. Donnini testified concerning standard practice for handling outgoing letters at PEMCO. He explained that he will dictate a letter which is then prepared by Nancy Whitley. When a letter is ready to be sent out, Ms. Whitley asks Dr. Donnini if he wants to sign the letter himself or have her use his signature stamp. Dr. Donnini further explained that the usual practice is for copies to be retained on plain paper, not letterhead. Dr. Donnini stated that he could not be certain that these procedures had always been followed. Dr. Donnini noted that some of the letters included in the hearing record were generated directly from computer disks in response to the Board's subpoena because no paper copies had been retained. (Tr. 36-39; St. Ex. 16)

8. A letter dated October 14, 1998, appears in the record. This letter is addressed "Dear Patient:" and announces that a "Dr. Palmer" is being added to the staff of PEMCO. The letter explains that all workers compensation patients will become patients of the PEMCO rather than an individual physician. The letter also notes that Dr. Donnini and Dr. Saleh will both continue to see patients at PEMCO. Dr. Donnini testified that he had been mystified by this letter. However, he also testified that, by speaking with members of the office staff, he was able to determine what had happened to generate this letter. He explained that when a letter is printed out, the computer software inserts the date it is printed rather than the date it was actually written. Dr. Donnini could not explain why his signature stamp appears on this letter. He was adamant that it had to have been added without his consent because he would not have consented to this letter on October 14, 1998. He further explained that this letter had been prepared prior to his suspension, at a time when the office was considering hiring Dr. Palmer. He noted that Dr. Palmer had never actually been hired and that the changing of workers compensation patients' primary physician to the corporation rather than an individual physician, never occurred. Dr. Donnini testified that this proposed letter was never distributed to patients. [Note: No additional information about Dr. Palmer is contained in the record.] (Tr. 31-35, 39-40, 172-173; St. Exs. 14 and 15)

9. Dr. Donnini testified that a November 4, 1998, "Dear Patient" letter was distributed to patients who came into his office. This letter had announced that Dr. Donnini would be "taking a several month leave of absence from active medical practice, but [would] remain in the clinic full time for administrative and patient quality assurance." In this letter Dr. Donnini had noted that he would "remain available to the physicians in the clinic on a regular basis for consultation regarding [the patient's] care through this period." Dr. Donnini had offered to speak with patients "regarding this matter" and suggested that they telephone him directly if they had questions. (Tr. 40-41; St. Exs. 13, 15, and 17)

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At hearing, Dr. Donnini conceded that, in his November 4, 1998, letter to patients, he had not stated that he had been suspended by the Board. However, he testified that he had told patients to whom he spoke directly that he had been suspended. He noted that he had personally spoken to hundreds of his patients. He explained that he did not feel it would have been appropriate to include this information in the letter because copies of the letter were left sitting out on a desk and were available to patients who had not been his patients. Dr. Donnini further explained that he was not aware of any obligation to disclose his suspension to patients and that he took it upon himself to notify them. (Tr. 40-45; St. Ex. 17)

10. By letter dated November 2, 1998, Dr. Donnini advised Richard S. Sutton, Esq., of the condition of Patient 1. In this letter, Dr. Donnini requested that Mr. Sutton review a 1995 letter about Patient 1. Dr. Donnini then noted that Patient 1's condition had not improved since that time and that Patient 1 "still has documented constant lower back pain." Dr. Donnini concluded by noting that Patient 1 "remains permanently and totally disabled since he is not capable of any sustained remunerative employment." Lastly, Dr. Donnini noted, "If I can provide any additional information regarding [Patient 1], please do not hesitate to contact me." (Tr. 48-49; St. Ex. 1 at 162; St. Ex. 18)

Dr. Donnini testified that the November 2, 1998, letter to Mr. Sutton had been sent out over Dr. Donnini's signature on PEMCO stationary. Dr. Donnini explained that Mr. Sutton had requested "a disability report on Patient [1] pertaining to his issue of permanent total disability." Dr. Donnini further explained that, in order to prepare this letter, he had reviewed his original physical examination of Patient 1, prior correspondence, prior letters to Mr. Sutton, progress notes prior to October 1998, and any other consultation reports and diagnostic studies anywhere in the chart. Dr. Donnini further testified that he had not provided any new diagnosis or treatment recommendations in this letter that were not in the original patient records. He conceded that the letter had been written in the present tense. He further conceded that it contained no language which would suggest that it only reflected the current state of Patient 1's condition in October rather than November 1998. (Tr. 49-55, 59-63, 219-221, 228-229; St. Exs. 1 and 18)

Dr. Donnini testified that he did not know how Mr. Sutton had intended to use the November 2, 1998, letter. Dr. Donnini also testified that Mr. Sutton had been notified by letter that Dr. Donnini's medical license had been suspended and that Dr. Donnini may have also spoken to Mr. Sutton about the suspension. (Tr. 55, 229, 245-247; St. Ex. 1 at 162; St. Ex. 18)

11. By letter dated December 1, 1998, Dr. Donnini advised Don E. Kovich, Esq., of the condition of Patient 2. Dr. Donnini's letter made reference to a Bureau of Workers Compensation [BWC] case number for Patient 2. Dr. Donnini noted that Patient 2 had no

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history of low back problems prior to the date of her injury. Dr. Donnini further noted that an MRI had been conducted in May 1998, which revealed degenerative disc changes. Dr. Donnini offered his opinion that “with medical certainty, [Patient 2] has sustained a lumbosacral sprain/strain, flow-through degenerative disc disease of L5-S1 and flow-through lumbosacral radiculitis.” Dr. Donnini also stated, “If I can provide any additional information or verification regarding [Patient 1], please do not hesitate to contact me.” Attached to this letter is a second letter, also dated December 1, 1998, and addressed to Mr. Kovich. In this cover letter Dr. Donnini had noted that an original letter concerning Patient 1 had been misplaced and that the December 1, 1998, letter was a replacement for the missing letter. Dr. Donnini testified that he had written the December 1, 1998, letter to Mr. Kovich which had been sent out over Dr. Donnini’s signature on PEMCO stationery. (Tr. 63-64; St. Ex. 2 at 68-69; St. Ex. 19)

Dr. Donnini testified that he had reviewed the medical records of Patient 2 before writing the December 1, 1998, letter. Dr. Donnini also testified that all of the information in this letter is based on the contents of Patient 2’s medical records prior to October 12, 1998. He conceded that the letter had been written in the present tense. He further conceded that it had contained no language which would suggest that it only reflected the current state of Patient 2’s condition in October rather than December 1998. (Tr. 63-64, 247-250; St. Ex. 2 at 68-69; St. Ex. 19)

Dr. Donnini testified that his understanding was that Mr. Kovich had been seeking this letter in connection to a workers compensation claim. Dr. Donnini testified that it appeared that the purpose of the December 1, 1998, letter was to address additional conditions that had not been covered in a letter Dr. Donnini had sent to Mr. Kovich on July 17, 1998. (Tr. 64-67; St. Ex. 2 at 65-69; St. Ex. 19)

12. By letter dated April 16, 1999, Dr. Donnini advised Deborah J. Adler, Esq., of the condition of Patient 3. Dr. Donnini noted that Patient 3 had had “an ongoing back problem.” He described this in detail and advised that Patient 3’s workers compensation claim “needs to be amended to include herniated nucleus pulposus L4-5 with secondary lumbar radiculopathy.” Dr. Donnini opined, “with medical certainty, that these injuries in her lower back are directly related to her work condition.” Dr. Donnini also advised Ms. Adler, “Most recently, we repeated an MRI which does show herniated nucleus pulposus and neural compression at L5-S1 nerve root left. (Please refer to the enclosed MRI report.)” Lastly, Dr. Donnini noted, “Should you have any questions or concerns, please do not hesitate to contact me.” This letter contains the notation that a copy (or copies) had been sent directly to “Bureau of Worker’s Compensation” and “Insurance Co.” (Tr. 71-74; St. Ex. 3B at 34; St. Ex. 3C at 13, 20; St. Ex. 20)

Attached to Dr. Donnini’s April 16, 1999, letter to Ms. Adler is a copy of a report by Eric C. Bourekas, M.D., concerning an MRI conducted by “rydic Open MRI of America-

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Kettering,” dated April 14, 1999. This report is addressed to Richard Donnini, D.O., and states, “We had the pleasure of examining your patient, [Patient 1] on April 14, 1999.” Dr. Donnini testified that this is the report he had been referring to in his April 16, 1999, letter. Dr. Donnini explained that he had not reviewed the MRI test, but rather “only referred to the report.” Dr. Donnini asserted that the April 1999 MRI merely confirmed the diagnosis he had reached prior to October 1998. He further asserted that he had been attempting to get this MRI performed since before October of 1998. Dr. Donnini conceded that an MRI performed prior to October 1998 did not show herniated nucleus pulposus and neural compression. However, he denied that the new MRI formed a basis for his diagnosis of Patient 3. (Tr. 72-74, 250-253; St. Exs. 3A-3C and 20)

Dr. Donnini conceded that this letter had also been written in the present tense. The letter had contained no language which would suggest that it only reflected Patient 1’s condition in October 1998 rather than April 1999. (Tr. 74; St. Ex. 3B at 34; St. Ex. 3C at 13, 20; St. Ex. 20)

Dr. Donnini testified that Harold C. Stratton, M.D., had been employed at PEMCO beginning in about December 1998. Dr. Stratton had seen Patient 3 on a number of occasions including August 12 and September 9, 1999. In his August 12, 1999, progress note for Patient 3, Dr. Stratton had commented that Patient 3 had seen Dr. Goodall and that Dr. Stratton would discuss this with Dr. Donnini. Dr. Donnini testified that he had in fact discussed Patient 3 with Dr. Stratton. Dr. Donnini explained that they had only discussed administrative issues. Specifically, Dr. Stratton, who was not experienced in dealing with the workers compensation system, had sought advice on how to get the system to see Patient 3’s condition the same way that Dr. Stratton saw it. (Tr. 74-77; St. Ex. 3B at 15-16; St. Ex. 20)

Dr. Donnini testified that sometime after October 1998 he had discussed his suspension with Ms. Adler. He also testified that Ms. Adler had acknowledged receiving a letter from Dr. Donnini about his suspension. (Tr. 251-252)

13. By letter dated June 28, 1999, Dr. Donnini advised Jack Cervay, Esq., of the condition of Patient 4. In this letter, Dr. Donnini noted that Patient 4 “had been actively under his care until October 1998.” Dr. Donnini described the specific details of Patient 4’s condition and commented, “Based on Dr. West’s reports, MRI, evaluations/reports from Dr. Heitkemper as well as my personal evaluation and knowledge of [Patient 4], he is permanently and totally incapable of any sustained remunerative employment.” Dr. Donnini also opined that, “In all my years of practice, I have never seen a more clearly defined case of total disability.” Lastly, Dr. Donnini noted, “If you need additional information, please do not hesitate to contact me.” (Tr. 77-78; St. Ex. 4 at 14-18; St. Ex. 21)

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Dr. Donnini testified that he had written the June 28, 1999, letter to Mr. Cervay and that it had been sent out over Dr. Donnini's signature on PEMCO stationary. Dr. Donnini further testified that he had not reviewed any medical records for Patient 4 dated after October 1998. He asserted that his opinion, as voiced in the letter, had been based entirely on treatment and evaluation occurring prior to October 1998. He conceded that the letter had been written in the present tense. Dr. Donnini noted that, if he had the opportunity to examine Patient 4 again, his opinion of Patient 4's condition might change. (Tr. 77-81, 257; St. Ex. 4 at 14-18; St. Ex. 21)

Dr. Donnini testified that he had written this letter because he had been asked to write it. However, he testified that he does not know what the intended use of the letter had been. Dr. Donnini explained that this letter had been written in response to a letter addressed to Dr. Stratton, who is employed by the clinic, from James R. Piercy, an associate of Mr. Cervay. Dr. Donnini noted that the PEMCO actually sent another report and cover letter to Mr. Cervay on the same date as the letter from Dr. Donnini. He further noted that this second letter and report had been authored and signed by Dr. Stratton. (Tr. 253-256; St. Ex. 4 at 14-18; St. Ex. 21)

Dr. Donnini testified that both Mr. Piercy and Mr. Stratton had been aware that Dr. Donnini's license had been suspended. He explained that he did not know if they had been notified in writing but that he had spoken to both about the suspension "earlier in the process." (Tr. 256-257; St. Exs. 4 and 21)

14. By letter dated July 6, 1999, Dr. Donnini advised Alan J. Shapiro, Esq., of the condition of Patient 5. Dr. Donnini noted that Patient 5 had been treated periodically for severe lower back pain and "requires ongoing treatment to help control his pain." Dr. Donnini opined that:

Based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Chapter Three and considering the allowed conditions, residual subjective complaints and objective findings and within a reasonable degree of medical probability, [Patient 5] has a permanent partial impairment of the left lower extremity of 19%.

(Tr. 81-83; St. Ex. 5 at 13; St. Ex. 22)

Dr. Donnini testified that he had written the July 6, 1999, letter concerning Patient 5, on that date and that it had been sent out over Dr. Donnini's signature on PEMCO stationary. Dr. Donnini explained that, when Mr. Shapiro's request arrived, he had reviewed his January 1998 examination of Patient 5 and extrapolated the necessary information. Dr. Donnini asserted that his opinion of Patient 5's condition had not changed between October 1998 and July 1999. Dr. Donnini conceded that the letter had been written in the

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present tense. He further conceded that it had contained no language which would suggest that it only reflected the current state of Patient 5's condition in October 1998 rather than July 1999. Dr. Donnini explained that Mr. Shapiro had been aware of Dr. Donnini's license suspension and thus he did not feel it necessary to include an explanation of his situation in this letter. Dr. Donnini asserted that he had told Mr. Shapiro about the suspension and that Mr. Shapiro had acknowledged receiving the October 1998 letter from Dr. Donnini announcing the suspension. (Tr. 81-84, 257-260; St. Ex. 5 at 13; St. Ex. 22)

15. A letter dated September 13, 1999, and addressed to the Dayton Metropolitan Housing Authority stated that Patient 6 required overnight assistance due to a chronic pain condition. This letter further stated that, as a result, she required a two bedroom apartment. The copies of this letter in the record contain the typewritten name "Richard M. Donnini, D.O.," in the signature block with room to insert Dr. Donnini's signature. A second letter, also dated September 13, 1999, and addressed to Patient 6, is a cover letter for the first letter. (Tr. 84-85; St. Ex. 6 at 84-85; St. Ex. 23)

At hearing, Dr. Donnini testified that he had not authorized the sending of the September 13, 1999, letters. Nevertheless, during his October 12, 1999, deposition, Dr. Donnini had testified that he had authorized the sending of these two letters after consulting with either Dr. Stratton or Dr. Shirsat who had actually treated Patient 6 in September 1999. At his deposition, Dr. Donnini had explained that he had simply reported Patient 6's condition as reported to him by the treating physician. (Tr. 84-96, 260-263; St. Ex. 6 at 47, 84-85, 92; St. Exs. 13 and 23; St. Ex 24 at 65-67; Res. Ex. K)

Dr. Donnini testified that the discrepancy between his hearing and deposition testimony was simple error. Dr. Donnini explained that he has since been able to determine that he had dictated similar if not identical letters for Patient 6 in 1998. At hearing, Dr. Donnini identified Respondent's Exhibit K as a copy of one of the October 1, 1998, letters he had drafted. Dr. Donnini explained that Dr. Shirsat had been Patient 6's treating physician in September 1999 and had ordered the letter for the Metropolitan Housing Authority. Dr. Donnini opined that the September 1999 letter had inadvertently been sent out over his signature stamp instead of the signature of Dr. Shirsat. (Tr. 84-96, 260-263; St. Ex. 6 at 47, 84-85, 92; St. Exs. 13 and 23; St. Ex 24 at 65-67; Res. Ex. K)

16. By letter dated September 14, 1999, Dr. Donnini addressed the UFCW Unions & Employers Health and Welfare Plan of Central Ohio [UFCW]. In this letter, Dr. Donnini had described the history and condition of Patient 7. He described her chief complaints as being "constant lumbar back pain, constant cervical back pain, constant right wrist pain, and occasional left wrist pain." Dr. Donnini described the medications that Patient 7 had received and noted that "We have also performed facet blocks, sacroiliac injections, occipital nerve blocks and paravertebral nerve blocks." Dr. Donnini added, "We will

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continue to see Patient 7 on a regular basis and prescribe medications. We will also perform blocks as felt necessary.” Lastly, Dr. Donnini noted, “If you require any further information, please do not hesitate to call.” (Tr. 96, St. Exs. 7 at 95-96; St. Ex. 25)

Dr. Donnini testified that the September 14, 1999, letter to UFCW had been sent out over Dr. Donnini’s signature on PEMCO stationary. Dr. Donnini also testified that it was his belief that this letter had been dictated by William Booth, P.A. Dr. Donnini explained that he had signed it in his administrative capacity. Dr. Donnini testified that this letter could have been sent out by an office manager or any other employee of the practice. He elaborated that it is normal practice for staff members in the billing department to write this type of letter to insurance companies summarizing and explaining the care provided. He noted that physicians do not normally write this type of letter unless specifically requested to write one. Dr. Donnini characterized this letter as being for the purpose of securing payment for services already rendered, and thus an administrative matter. (Tr. 96-102, 263-265; St. Exs. 7 at 95-96, 121; St. Exs. 13 and 25)

17. In his October 18, 1999, letter to the Board, Mr. Fein had explained that Dr. Donnini had written five letters during his suspension to patients’ attorneys in which he expressed his medical opinion and described the patient’s condition and treatment prior to his suspension. Mr. Fein noted that two of these letters had been requested, but not prepared, prior to the suspension. At hearing, Dr. Donnini affirmed Mr. Fein’s description of the five letters. Dr. Donnini testified that, in writing the letters contained in State’s Exhibits 18 through 22, he had relied in part on older medical records which are not included in the patient medical records in the hearing record. (Tr. 47-48, 220-221; St. Exs. 13 and 18-22)
18. Donald E. Kovich testified on behalf of Dr. Donnini. Mr. Kovich is an attorney practicing in Dayton, Ohio. Mr. Kovich testified that his practice primarily represents plaintiffs in personal injury and workers’ compensation case and does some medical malpractice work. Mr. Kovich further testified that he has known Dr. Donnini for between five and ten years. He explained that many of his personal injury and workers’ compensation clients are treated by Dr. Donnini’s office. Mr. Kovich further explained that this professional relationship causes him to have frequent contact with Dr. Donnini by telephone and letter. (Tr. 124-125)

Mr. Kovich testified that Patient 2 is his client. Mr. Kovich explained that in the spring or early summer of 1998 he had requested some information regarding Patient 2 from Dr. Donnini’s office. In response to this request Mr. Kovich received a letter from Dr. Donnini on July 17, 1998. Mr. Kovich explained that the July 17, 1998, letter had not addressed certain issues that he had asked Dr. Donnini to address. As a result, Mr. Kovich made several unsuccessful attempts to obtain a letter form Dr. Donnini

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addressing these issues. Eventually, Dr. Donnini sent Mr. Kovich the December 1, 1998, letter. (Tr. 125-131,134-138; St. Ex. 2 at 66-67, 69-73; St. Exs. 8B and 19)

Mr. Kovich testified that the information he had requested from Dr. Donnini was needed to file a motion to add conditions to Patient 2's BWC claim. Mr. Kovich elaborated that the additional conditions were already in Dr. Donnini's chart but had not yet been recognized by the BWC. Mr. Kovich testified that recognition of the additional conditions by the BWC would not have affected Dr. Donnini's compensation. He further testified that neither Dr. Donnini nor PEMCO charged a fee for providing the December 1, 1998, letter. (Tr. 134-138, 140-141, 149-153)

Mr. Kovich testified that, in negotiating a settlement with the BWC, it was preferable to have a medical opinion that the additional conditions existed. Mr. Kovich further testified that an opinion letter from a secretary in Dr. Donnini's office would not have been sufficient. However, he also noted that he could have obtained the medical records from anyone in the office and that the BWC might have allowed the additional conditions based only on the records. (Tr. 144-146, 148)

Mr. Kovich testified that, at the time he received the December 1, 1998, letter, he was aware of Dr. Donnini's "licensure issues." At hearing, Mr. Kovich was unable to state when he had learned of Dr. Donnini's suspension. However, he also testified that it had become a matter of common knowledge in the Dayton legal community. Mr. Kovich testified that he did not recall if the subject of Dr. Donnini's suspension came up during his negotiations with BWC staff to resolve Patient 2's claim. However he asserted that "it was common knowledge at bureau." (Tr. 131-140, 153-154)

19. Amy Hoeffel testified on behalf of Dr. Donnini. Ms. Hoeffel is the office manager of PEMCO. She has been the office manager since June 1999. Previously she had been employed as the marketing representative for PEMCO for about 19 months. (Tr. 155-156, 166-167)

Ms. Hoeffel testified that she had been directed to assist in notifying professional contacts about Dr. Donnini's suspension from practice. She explained that she took the clinic's database of all referring sources and merged that database with a letter she had been given to distribute. Ms. Hoeffel testified that Respondent's Exhibit A is the list of chiropractors, Respondent's Exhibit B is the list of physicians, and Respondent's Exhibit C is the list of attorneys, to whom she had sent the letter. Ms. Hoeffel explained that the undated letter to Dr. Agarwal contained in State's Exhibit 14 is the letter she sent to all of the professional contacts in the database. Ms. Hoeffel testified that she did not participate in notifying patients about Dr. Donnini's suspension. However, she testified that she had seen the November 4, 1998, "Dear Patient" letter in an area where patients came and went. (Tr. 156-159, 161-162, 165-167, 170-171; St. Exs. 14 and 17; Res. Exs. A-C)

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Ms. Hoeffel testified that Dr. Donnini was never in the clinical areas of the office after his suspension. She also testified that she was not aware of what Dr. Donnini had been doing because she had busy with her own work. She explained that Dr. Donnini has a private office with separate entrance and that she would not know if Dr. Donnini was in his private office at any particular time. (Tr. 159-161)

Ms. Hoeffel testified that Dr. Donnini's patients had been transferred to Dr. Saleh when Dr. Donnini's suspension became effective. She also testified that patients who called were told that Dr. Donnini would not be seeing patients. Ms. Hoeffel elaborated that any patient who asked why Dr. Donnini was not seeing patients was directed to speak to Dr. Donnini directly. (Tr. 164-165, 168-170)

Ms. Hoeffel testified that she had never seen the October 14, 1998, "Dear Patient" letter until it had been brought to her attention during the first week of April 2000. Ms. Hoeffel further testified that Dr. Palmer had not been employed at the clinic in the two and one half years she had been employed there. (Tr. 162-164, 167-168; St. Ex. 15)

20. Dr. Donnini testified that he had reviewed the medical and billing records of Patients 1 through 7 prior to his testimony and that he found no fee slips in the records for any services provided by himself after October 12, 1998. Dr. Donnini also testified that he had not specifically billed anyone for writing the letters at issue in this matter. Dr. Donnini received checks from the corporation between October 13, 1998, and August 17, 1999. Dr. Donnini testified that these paychecks were issued to him as payment for the administrative tasks he had been performing for the corporation. Dr. Donnini agreed that the corporation's income came from fees collected for medical services performed by employees of the corporation. (Tr.-102-104, 176, 217-219; St. Ex. 26)

At hearing, in response to the question, "Is it your testimony that these letters that we have discussed today about Patients 1 through 7, that these were all a part of your administrative duties for the corporation?", Dr. Donnini responded:

I don't know that I can answer that question. I am not sure, to be quite honest with you, what administrative duties are. Obviously, I am a simple physician. I don't understand all this, a lot of these legal things that we're talking about. All I know is that I tried my hardest to comply with what the Medical Board asked me to do in every respect. I had letters that came and were requested by attorneys. I contacted a lawyer. I asked him what I should do with these and how I should handle them and did the best I could.

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As far as compensation goes, I was an administrator of the practice. An employee of the practice.

(Tr. 104-106)

Dr. Donnini conceded that, in the letters he had written that are at issue in this matter, he had often used the present tense. However, he denied that he ever attempted to express an opinion that was different from the one which he held prior to October 12, 1998.

(Tr. 266-267; St. Exs. 18-22)

Dr. Donnini testified that, during his suspension, he never used the letters "D.O." to indicate that he was currently practicing medicine. At hearing, Dr. Donnini opined that, "Every person that I came in contact with in terms of personal, business, or whatever was aware of my situation." (Tr. 268-269)

FINDINGS OF FACT

1. By Order approved September 9, 1998, effective October 12, 1998, the State Medical Board of Ohio [Board], suspended the license to practice osteopathic medicine and surgery of Richard M. Donnini, D.O., for a period of not less than one year. Dr. Donnini has applied for reinstatement. However, that application is pending and his license remains suspended.
2. During this period of suspension, Dr. Donnini practiced medicine as defined by Section 4731.34, Ohio Revised Code. In particular, he interpreted radiological studies, reviewed patient charts and dictated correspondence in which he rendered medical opinions about patients' current conditions, diagnoses, prognoses, treatments, and/or disabilities.
3. Dr. Donnini received compensation in the form of profits from his corporation, the Pain Evaluation and Management Center of Ohio, Inc., [PEMCO] that were in part derived from fees charged in connection with the patients and/or the disability or health claims referenced in the correspondence.

There is no evidence in the record that the specific letters at issue in this case were billed as separate services.

4. Dr. Donnini authorized the placing of his signature stamp, "Richard M. Donnini, D.O." on correspondence regarding Patients 1 through 5 and 7. Dr. Donnini authorized sending this correspondence to third parties under circumstances that would induce the belief that he was engaged in the practice of medicine.

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5. There is insufficient evidence in the record to find that Dr. Donnini authorized the September 13, 1999, letters in reference to Patient 6.

The Board was substantially justified in going forward with the adjudication in this action on all portions of the November 17, 1999, citation letter.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Richard M. Donnini, D.O., that occurred prior to March 9, 1999, as described in Findings of Fact 1 through 4, 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 March 9, 1999, to wit: Section 4731.43, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, as in effect prior to March 9, 1999, violation of Section 4731.43, Ohio Revised Code, constitutes a misdemeanor offense.
2. Dr. Donnini’s acts, conduct, and/or omissions that occurred on or after March 9, 1999, as described in Findings of Fact 1 through 4, 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 4731.43, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, as in effect on or after March 9, 1999, violation of Section 4731.43, Ohio Revised Code, constitutes a felony offense.
3. Dr. Donnini’s acts, conduct, and/or omissions that occurred prior to March 9, 1999, as described in Findings of Fact 1 through 4, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, as in effect prior to March 9, 1999.
4. Dr. Donnini’s acts, conduct, and/or omissions that occurred on or after March 9, 1999, as described in Findings of Fact 1 through 4, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, as in effect on or after March 9, 1999.
5. Dr. Donnini’s acts, conduct, and/or omissions as described in Findings of Fact 1 through 4, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any

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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: Section 4731.43, Ohio Revised Code.

* * * * *

Richard M. Donnini, D.O., held himself out to third parties as being currently licensed to practice osteopathic medicine and surgery. The fact that Dr. Donnini made significant efforts to notify those physicians, chiropractors, and attorneys with whom he had a direct relationship is laudable. However, these efforts did not protect third parties for whom the letters were obviously eventually intended.

Dr. Donnini received payments from PEMCO for providing "Administrative Services." Dr. Donnini testified that writing the letters at issue in this matter was part of the "Administrative Services" he provided to PEMCO. The evidence shows that medical services rendered by agents of PEMCO were the source of PEMCO's income.

The continued practice of medicine while under suspension would normally justify the most severe sanction by the Board. However, the limited nature of the violations proven by the evidence in the record, coupled with Dr. Donnini's efforts to notify his professional contacts of his suspension, merits a more lenient course of action.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Richard M. Donnini, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than two years. This period of two years is retroactive to October 12, 1998.
2. Except as modified by paragraph 1 of this Order, the Board's Order of September 9, 1998, shall remain in effect.

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



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JULY 12, 2000

REPORTS AND RECOMMENDATIONS

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

Dr. Egner asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Marty Devitt, L.M.T.; Richard M. Donnini, D.O.; Gayl Marie Godsell-Stytz, D.O.; Barbara C. Lohn, M.D.; Trudy J. Nelson, M.D.; Clayton H. Royder, D.O.; Jonathan W. Singer, D.O.; Saravana E. Sivashanker, M.D.; and Scott Thomas Stewart, P.A. A roll call was taken:

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

Dr. Egner asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

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

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

Dr. Egner stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....

RICHARD M. DONNINI, D.O.

Dr. Egner directed the Board's attention to the matter of Richard M. Donnini, D.O. She advised that objections were filed to Hearing Examiner Roberts' Report and Recommendation and were previously distributed to Board members; however, these objections were not filed in a timely manner. She asked whether the Board wished to accept these objections.

**DR. STEINBERGH MOVED TO ACCEPT THE OBJECTIONS FILED BY DR. DONNINI.
DR. BHATI SECONDED THE MOTION. A vote was taken:**

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Egner	- aye

The motion carried.

Dr. Egner continued that a request to address the Board has been timely filed on behalf of Dr. Donnini. Five minutes would be allowed for that address.

Mr. Graff thanked the Board for accepting the late-filed objections. He will not go through his objections again, except to highlight that this is an unusual case that will determine what the practice of medicine is. Dr. Donnini was under suspension and wrote letters concerning his past care. They were written in the

present tense, but sent to individuals who knew about his licensure difficulties with this Board. These letters were written after the Board had adopted its position paper on appropriate activities during suspension, but before that position paper had been disseminated by the Board to practitioners. Clearly the Hearing Examiner finds that Dr. Donnini did not bill for these services.

Mr. Graff continued that the question then became one of what type of compensation under the statute is appropriate to constitute the practice of medicine. Dr. Donnini had changed the type of corporation from a professional corporation to a regular corporation, on the advice of his counsel, so that he could maintain a relationship and derive profits and deal with administrative matters during the time of his suspension. The Board has charged that Dr. Donnini met the statutory definition of the practice of medicine by receiving compensation from that practice, which tangentially came from the practice of medicine, but not from the provision of services.

Mr. Graff stated that the matter came to hearing, and the Hearing Examiner has filed a recommendation. They have no objection to the recommendation but believe that Dr. Donnini should be returned immediately to the practice of medicine, as he has been out for an additional eight months while this matter was being resolved.

Dr. Donnini at this time addressed the Board. He stated that he wants to assure the Board that he took the Board's October 1998 action very seriously. It's been the most difficult period of his life. He did not know what to do with these letters. He asked his attorney. Prior to hiring this attorney, the attorney told him that he had been a Medical Board lawyer for thirteen years and had extensive experience in the area of Board medicine. Dr. Donnini stated that he did not know what to do with these six letters from attorneys who needed information on patients. He had not had time to complete them prior to, or the letters arrived after, the suspension took affect. His attorney told him that he was totally okay writing these letters. Dr. Donnini stated that he has proof that he was told that in that his business manager was present, and they took notes. The attorney didn't say that this was an area of concern, nor did he say that Dr. Donnini had to do anything different.

Dr. Donnini continued that, had he known there was any area of concern, he would not have done this. He did not want to be here. His worst nightmare over the first twelve months was that something would go wrong or he would mess something up. He's not using this as an excuse. It occurred, and he understands the Medical Board's position, having now seen the position paper. The attorney did not mention the position paper to him, and he doesn't think the attorney was aware of it, to be quite honest.

Dr. Donnini apologized for what occurred. He stated that he must take responsibility and will accept whatever punishment the Board imposes.

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

Mr. Wasserburger, in lieu of making of argument, read the following from State's Exhibit 20,

Dr. Donnini's April 16, 1999 letter to Deborah J. Adler, Esq., noting that the letter was written six months after Dr. Donnini's license was suspended:

An original MRI did show evidence of pathology at L4-5, but was not entirely indicative of an etiology. Most recently, we repeated the MRI, which does show herniated nucleus pulposus and neural compression at L5-S1 nerve root left. (Please refer to the enclosed MRI report.) (Patient 3)'s claim needs to be amended to include herniated nucleus pulposus L4-5 with secondary lumbar radiculopathy. It is my opinion, with medical certainty, that these injuries in her lower back are directly related to her work condition based on the onset of pain at the time of injury and objective findings persistent at that location and left side.

Mr. Wasserburger stated that that is all he has to say at this time.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF RICHARD M. DONNINI, D.O. DR. SOMANI SECONDED THE MOTION.

Dr. Egner stated that she would now entertain discussion in the above matter.

Dr. Steinbergh asked Dr. Donnini what he has been doing since being notified in November 1999 that the Board was investigating him again.

Dr. Donnini stated that he has not practiced under any circumstances. He has not written any letters. He hardly ever goes into his office, and only goes to answer messages.

Dr. Steinbergh stated that Dr. Donnini's letters were obviously inappropriate. Letters could have been written telling when the patient was last examined, but he should not have made any type of medical decision or given any medical impression. If a colleague had re-evaluated the patient, the letter should have gone over the colleague's name.

Dr. Steinbergh stated that she has reviewed the hearing record and finds that the Report and Recommendation is in order. She does, however, believe that the punishment has been served, with Dr. Donnini having now served an additional eight to nine months' suspension.

DR. STEINBERGH MOVED TO AMEND PARAGRAPH 1 OF THE PROPOSED ORDER IN THE MATTER OF RICHARD M. DONNINI, D.O., TO IMPOSE A 21-MONTH SUSPENSION, RETROACTIVE TO OCTOBER 12, 1998.

Dr. Steinbergh stated that this means that, provided that Dr. Donnini has met the reinstatement conditions of October 12, 1998, he would be eligible for reinstatement after July 12, 2000.

DR. TALMAGE SECONDED THE MOTION.

Dr. Stienecker stated that he found Mr. Graff's arguments meritorious from a couple of other points. He thinks that while Dr. Donnini was suspended and had, in fact, a legal corporation set up in which he was acting, essentially, as a medical director, consultant, whatever, it is in the patient's best interests that records of prior findings be made available to agencies and doctors who need these for the conduct of a patient's care. Dr. Stienecker stated that he believes that that is, in fact, what Dr. Donnini was doing with these letters. He also doesn't think that physicians should be precluded from pursuing remittance of funds earned prior to suspension. Dr. Stienecker stated that his fear would be that insurance companies who owe money for patient care might shut off all this kind of funding anytime a physician undergoes a disciplinary action. Dr. Stienecker stated that he believes Dr. Donnini was within his rights to go after funds owed him for work done prior to his suspension.

Dr. Stienecker stated that the other thing with which the Board must deal is that, right or wrong, the state has said that medical directors serving in that capacity are, in fact, not practicing medicine. He thinks that Dr. Donnini certainly could have been placed in that position of being that sort while he was going through this process. His motion would have been to dismiss this action. He is in concert with what Dr. Steinbergh has recommended at this time.

Dr. Somani stated that, when he read this case and the objections filed, he felt the same way. Basically, Dr. Donnini's choice of wording was totally inappropriate and got him into a lot of problems. He does feel that it was appropriate for Dr. Donnini to make his records available to other parties. Dr. Donnini could have been more careful in drafting and signing letters. Judging from the fact that he didn't get compensation for patient care and didn't see the patients, he more or less acted as a person making the records available to the parties who had an interest. Dr. Somani spoke in support of Dr. Steinbergh's motion.

Dr. Talmage agreed with previous comments made. He also noted that much was made of Dr. Donnini's including "D.O." after his name and using it in his signature. Dr. Talmage stated that he has difficulty in finding that to be reprehensible. "D.O.," "M.D.," and "J.D." are all letters that indicate educational qualifications. Unless the institution takes that away from somebody, he finds nothing wrong with having that after the name, as long as the physician doesn't say that he's a practicing physician if he is not. Therefore, the 21 months fits perfectly and he would favor that.

Dr. Agresta stated that he agrees with all that has been said. His only comment is that it doesn't make any difference whether or not Dr. Donnini received remuneration. His liability is the same. The interpretation of whether or not he is practicing is absolutely the same. If the physician sees a patient for nothing, his liability is the same as if he charged the patient. It's also still considered practicing medicine and making decisions. He thinks the Board should keep that in mind. It makes no difference if the physician receives money or doesn't receive money.

Dr. Bhati disagreed with previous Board members' statements. He stated that if members gave some attention to just the letter from which Mr. Wasserburger read, it wasn't simply an articulation or structural writing of the letter. It plainly and simply says that there was a theme of taking care of that patient. The letter didn't simply give a report. He added that had he been in Dr. Donnini's place, he probably would have simply picked up the record, made a copy and sent it on. He didn't have to write his opinion in a letter or say what he wanted to do.

Dr. Bhati stated that he does feel that Dr. Donnini has been punished enough for this and that he has learned a lesson. Returning Dr. Donnini's license as early as July 13 is reasonable.

Dr. Steinbergh stated that the amendment on the table would simply reduce the suspension period to 21 months, which would then allow Dr. Donnini, if in fact he has met the reinstatement conditions established by the October 1998 Board Order, to be reinstated after today.

Mr. Graff stated that Dr. Donnini had previously submitted information about his ability to be reinstated and his fitness under the conditions of the previous Order. He asked if that information needed to be brought back before the Board for a separate action, or if that could simply be verified with the staff?

Dr. Steinbergh stated that she feels that is a staff function.

Mr. Dilling stated that Dr. Donnini would otherwise remain suspended for another 30 days.

Dr. Steinbergh stated that Dr. Donnini should be reinstated as soon as he has met the reinstatement requirements set by his original Board Order.

Mr. Graff stated that documentation of that has been previously submitted. He asked if the Board would table this matter so that material could be obtained from staff and presented to the Board on Thursday.

Dr. Steinbergh indicated that she did not feel it was necessary to table the matter. She added that, regarding Dr. Stienecker's suggestion that the matter be dismissed, she does not think that dismissal is appropriate. She believes that this was not just a matter of transmitting information. The hearing record was clear about the language that was used. She does agree that "D.O." after the name does indicate a degree and Dr. Donnini does have every right to use that degree. The Board simply disagrees with the way that it was used.

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye

Dr. Somani	- aye
Mr. Browning	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF RICHARD M. DONNINI, D.O. DR. SOMANI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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

November 17, 1999

Richard M. Donnini, D.O.
1550 Yankee Park Place, Suite A
Centerville, OH 45458

Dear Doctor Donnini:

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

- (1) On or about October 12, 1998, your license to practice osteopathic medicine and surgery was suspended indefinitely, but for a period of not less than one year, by the State Medical Board of Ohio. Although you have applied for reinstatement, that application is pending and your license remains suspended as of this date.

During this period of suspension, you practiced medicine as defined by O.R.C. Section 4731.34. In particular, you interpreted radiological studies, reviewed patient charts and dictated correspondence in which you rendered medical opinions about patients' current conditions, diagnoses, prognoses, treatments, and/or disabilities. You received compensation in the form of profits from your corporation, the Pain Evaluation and Management Center of Ohio, Inc., that were in part derived from fees charged in connection with the patients and/or the disability or health claims referenced in the correspondence. Further, you also authorized the placing of your signature stamp, "Richard M. Donnini, D.O.," on said correspondence and authorized sending the correspondence regarding Patients 1 through 7 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) to third parties under circumstances that would induce the belief that you were engaged in the practice of medicine, on or about dates including, but not limited to, the following:

Patient #	Correspondence Date	Patient #	Correspondence Date
1	November 2, 1998	5	July 6, 1999
2	December 1, 1998	6	September 13, 1999
3	April 16, 1999	7	September 14, 1999
4	June 28, 1999		

Mailed 11/18/99

Your acts, conduct, and/or omissions that occurred prior to March 9, 1999, 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 March 9, 1999, to wit: Section 4731.43, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, as in effect prior to March 9, 1999, violation of Section 4731.43, Ohio Revised Code, constitutes a misdemeanor offense.

Further, your acts, conduct, and/or omissions that occurred on or after March 9, 1999, as alleged in paragraph (1) 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 4731.43, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, as in effect on or after March 9, 1999, violation of Section 4731.43, Ohio Revised Code, constitutes a felony offense.

Further, your acts, conduct, and/or omissions that occurred prior to March 9, 1999, as alleged in paragraph (1) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions that occurred on or after March 9, 1999, as alleged in paragraph (1) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, as in effect on or after March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) 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: Section 4731.43, Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #P 152 983 682
RETURN RECEIPT REQUESTED

cc: William S. Fein, Esq.
CERTIFIED MAIL #P 152 983 683
RETURN RECEIPT REQUESTED

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

1999 NOV 14 4 10:23
CIVIL DIVISION

CLERK OF COURTS

FINAL APPEALABLE ORDER

Richard M. Donnini,

Appellant,

Case No. 98CVF09-7302

v.

OHIO STATE MEDICAL BOARD

Judge Sadler

State Medical Board of Ohio

Appellee.

TERMINATION NO. 10
BY jc 11/3/99

Decision and Entry on Merits of Appeal

Rendered this October 28, 1999.

This action comes before the court upon appeal by Dr. Donnini from a decision of the State Medical Board of Ohio ("Board"). That decision, dated September 9, 1998, suspended Appellant's certificate to practice medicine and surgery for a period of at least one-year. Appellant was licensed to practice osteopathic medicine and surgery.

Appellant owns and operates the Pain Evaluation and Management Center of Ohio located in Centerville, Ohio. The Board notified appellant by notice in a letter dated February 11, 1999 of several alleged violations. It was stated that: he had failed to follow the requirements of his physicians assistant utilization plan, that he post-dated a Schedule II prescription and signed blank prescription forms which were left in the custody of his office manager. It was also charged that he allowed another physician's assistant, Linda Metzler, to practice without license, and practice without onsite supervision, and to prescribe medications to a patient who had not seen a physician.

A hearing was held on these charges before an Administrative Hearing Examiner on June 18 and 19, 1998. The Medical Board adopted his report and recommendation after Appellant was given the opportunity to address the Board. The Board concluded

that Appellant had in fact committed all of the violations charged. Appellant disputes, both legally and factually, the decision of the Board.

Appellant's first argument is that the Board erred as a matter of law in finding that Appellant had committed an offense that would have been a felony, R.C. 2925.23, illegal processing of drug documents. This argument relates to the charges that Appellant post-dated a prescription and signed a blank prescription forms.

Appellant's second argument is that the Board was in error in finding that he violated the physician's utilization plan by allowing his physician's assistant, William Booth, to see 20 to 40 patients per day. This violation was cited under R.C. 4730.02 (E), which prohibits a physician from authorizing a physician's assistant to perform services in a manner inconsistent with the approval plan. The violation of this section can be a misdemeanor.

Appellant's final argument is that the Board was in error in finding that he permitted Linda Metzler to practice as a physician's assistant without license or and that he allowed her to prescribe medications and practice without supervision. Appellant claims that he had no knowledge at the time that she was doing any of those of things without a license or without his supervision.

The Court's role in an appeal under Chapter 119 is to review the Board 's order to determine if there is reliable, probative, and substantial evidence to support the order. *University of Cincinnati v. Conrad*, (1980), 63 Ohio St.2d 108 and *Franklin Cty. Board of Commrs. V. State Emp. Rel. Board*. (1992) 92 Ohio App.3d 585. The Court is also required to review the adjudication to determine if it is in accordance with the applicable law. The Court is not entitled to substitute its judgment on issues of credibility or weight

of evidence if there is sufficient evidence to support the decision. The case law grants only limited authority to review the evidence as to weight or credibility. See *Conrad, supra*. The Court has plenary authority as to interpretation and application of the law. See *Univ. Hosp., Univ. Of Cincinnati College of Medicine v. State Emp. Relation Board* (1992), 63 Ohio St. 3d 3398 and *Westfall v. Ohio Dept. Of Commerce* (Jan. 25, 1994), Franklin App. No. 93 AP-1067. The standard of review also mandates that the Board be entitled to due deference in the exercise of its expertise and its discretion. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466 and *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619.

The Board is granted the right to impose discipline upon its practitioners for a number of reasons under R.C. 4731.22. The proposed disciplinary action in this matter, encompassed separate factual circumstances. Appellant had an approved physician's assistant utilization plan beginning in December 1994. Appellant was apprised that he allowed physician's assistant William Booth to practice with no on-site physician supervision while Appellant was on vacation in the Bahamas in March 1996. It was stated that Appellant had allowed Mr. Booth to practice without supervision on other occasions. The Board also cited as a violation, the number of patients seen on a given day by Mr. Booth.

Mr. Booth was allowed to see as many as 46 patients in one day. The Board also specified a violation with respect to post-dating a prescription for Percocet. The final matter giving rise to a charge was allowing Linda Metzler, a physician's assistant, to practice before she was registered, treat a patient without the patient first being examined

by Appellant, dispense a controlled substance without an examination, and allow Ms. Metzler to see patients without on-site supervision.

Appellant takes issue with the report and recommendation of the Administrative Hearing Examiner and the subsequent adoption by the Board. This Court will address the issues in the order as raised by Appellant.

Appellant does not deny that he post-dated a prescription for percocet for one of his patients or that he signed prescription blanks and left them in his office if an emergency arose. He denies that he knew there was any violation involved with these acts, and further contends that none of these acts would constitute a felony if charged under R.C. 2925.23, the criminal provision addressing illegal processing of drug documents. A review of the above section mandates the conclusion that the Administrative Hearing Examiner and the Board were in error in finding that the post-dating of the prescription or signing of the blanks would constitute a felony. R.C. 2925.23 (A) and (D) specifically do not apply to licensed health care professionals. While such actions may violate a standard of care under medical practice, there is no criminal culpability that this Court can discern from Appellant's admitted actions and the provisions of R.C. 2925.23. The language of that section in effect at the time states:

§ 2925.23 Illegal processing of drug documents. [Prior to 7-1-96]

(A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719. of the Revised Code.

(B) No person shall intentionally make, utter, or sell, or knowingly possess a false or forged:

(1) Prescription;

(2) Uncompleted preprinted prescription blank used for writing a prescription;

(3) Official written order;

(4) License for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(5) Registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(C) No person, by theft as defined in section 2913.02 of the Revised Code, shall acquire any of the following:

(1) A prescription;

(2) An uncompleted preprinted prescription blank used for writing a prescription;

(3) An official written order;

(4) A blank official written order;

(5) A license or blank license for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(6) A registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(D) No person shall knowingly make or affix any false or forged label to a package or receptacle containing any dangerous drugs.

(E) Divisions (A) and (D) of this section do not apply to practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4725., 4729., 4731., and 4741. of the Revised Code or section 4723.56 of the Revised Code.

There is no evidence that intention or knowledge of falsity or fraudulence existed so as to bring that statute's subparts (B) or (C) into effect. The Board relies upon R.C. 3719.06, which addresses the authority of licensed health care professionals and prescriptions. In particular, Section (C) states:

Each written prescription shall be properly executed, dated, and signed by the prescriber on the day when issued and shall bear the full name and address of the person for whom, or the owner of the animal for which, the controlled substance is prescribed and the full name, address, and registry number under the federal drug abuse control laws of the prescriber. If the prescription is for an animal, it shall state the species of the animal for which the controlled substance is prescribed.

(E) Whoever violates section 3719.05, 3719.06, 3719.13, or 3719.31 or division (B) of section 3719.172 [3719.17.2] of the Revised Code is guilty of a misdemeanor of the third degree. If the offender previously has been convicted of a violation of section 3719.05, 3719.06, 3719.13, or 3719.31 or division (B) of section 3719.172 [3719.17.2] of the Revised Code or a drug abuse offense, a violation of section 3719.05, 3719.06, 3719.13, or 3719.31 or division (B) of section 3719.172 [3719.17.2] of the Revised Code is a misdemeanor of the first degree.

While the Board seeks to distinguish *State v. Williams*, (1992,) 76 Ohio App. 3d 806, this Court can not agree that that case is not sufficiently on point to negate the charge. The *Williams* Court stated:

“There is nothing to indicate that those pre-signed uncompleted preprinted prescription blanks were in any way false or forged”. At 810 The instant matter is sufficiently similar to warrant application of that holding. Therefore Appellant’s assignment of error as to this charge is well taken.

Appellant’s second contention of error is that he did not violate the physician’s assistant utilization plan by allowing Mr. Booth to see more than 10 to 15 patients per day. The Court finds that Appellant’s argument in this regard is an exercise in sophistry. Appellant sought and obtained approval for the use of a physician’s assistant to see “10 to 15 patients per day, average.” Appellant takes the position that since Mr. Booth did not see patients everyday, his load should be divided by the number of available workdays in each week to obtain the average. While this may be mathematically sound, it certainly fails the test of logic and reasonability. The Court does not need to reach far to conclude

that the number of patients per day to be seen by a physician's assistant is limited in order to maintain adequate supervision and minimal patient care. Under Appellant's theory, if the practice operated six days per week, the physician's assistant could attend patients for one day in each week and treat 90 patients in that day. The Court refuses to accept this reasoning and while there may be some vagueness involved with the application of the plan requirements, it is more than sufficient to support the Board's determination. See *State v. McDonald* (1987), 31 Ohio St. 3d 47, and also 48 *United States ex rel. Shott v. Tehan* (C.A.6, 1966), 365 F.2d 191, 198, certiorari denied (1967), 385 U.S. 1012, 87 S. Ct. 716, 17 L. Ed. 2d 548.

Appellant also asserts that there is no evidence that he knowingly allowed Linda Metzler to practice while unlicensed or to practice without supervision, or treat new patients. The Court, upon examination of the uncontroverted evidence, must find to the contrary. Appellant placed Ms. Metzler in charge of the All Care office and her activities were apparently carried on under "telephone" supervision. The Board found this to be violation of R.C. 4731.22(B)(32), R.C. 4730.02(C) and O.A.C. 4731-04-01(A).

While there were numerous cited statutory or administrative code violations, the Court will cite to only those necessary for disposition of the assigned errors. The primary code section as issue in this action, beyond the claim of criminal culpability under R.C. 2925.33, is R.C. 4731.22, in particular (B)(32). That section pertains to the "Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter." The full section of prohibitions under R.C. 4730 is as follows: § 4730.02 Prohibitions.

(A) No person shall hold himself or herself out as being able to function as a physician assistant, or use any words or letters indicating or implying that the person is a physician assistant, without a current, valid certificate of registration or temporary certificate of registration as a physician assistant issued pursuant to this chapter.

(B) No person shall practice as a physician assistant without the supervision and direction of a physician.

(C) No physician shall act as the supervising physician of a physician assistant without having received the state medical board's approval of a physician assistant utilization plan and approval of a supervision agreement entered into with the physician assistant.

(D) No person shall practice as a physician assistant without having entered into a supervision agreement that has been approved by the state medical board.

(E) 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.

(F) No person shall practice as a physician assistant in a manner that is inconsistent with the standard or supplemental physician assistant utilization plan approved for the physician who is responsible for supervising the physician assistant.

(G) No physician assistant may advertise, except for the purpose of seeking employment.

(H) No physician assistant shall fail to wear at all times when on duty a placard, plate, or other device identifying himself or herself as a "physician assistant."

The final substantive provisions cited by the Board is that of O.A.C. 4731-4-01 and 02.

4731-4-01 Functions.

(A) A patient new to the physician's practice must be seen and personally evaluated by the employing physician prior to initiation of any treatment plan. An established patient with a new condition must be seen and personally evaluated by the employing physician prior to initiation of any treatment plan for that condition.

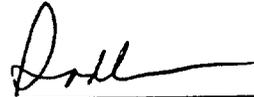
4731-4-02 General criteria.

(A) 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.

A review of the uncontested facts in this appeal mandates the determination that all of the Board's conclusions, with the exception noted above, are warranted. This Court's role is aptly described in *Gladieux, M.D. v. Ohio State Medical Board* (September 30, 1999), Franklin App. No. 98AP-1296, unreported. That Tenth District panel stated

“The General Assembly, through its police power, has bestowed upon the board administrative powers to "safeguard the public's interest in having competent, properly trained and educated, and experienced doctors." *Midwestern College of Massotherapy v. Ohio Med. Bd.* (1995), 102 Ohio App. 3d 17, 23, 656 N.E.2d 963. R.C. 4731.22(B)(6) grants the board the authority to discipline a physician for "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established***.”

After careful consideration of the arguments of Appellant, the Court must find that only the conclusion of the Board as to the charge relating to illegal processing of drug documents is unsupported by reliable, probative and substantial evidence and not in accordance with law. As to the other charges, the Court finds that the facts and the law support the Board's decision. The penalty assessed is within the discretion of the Board and the Court concludes that there is sufficient support in evidence to leave the penalty as imposed. Appellant must comply with the conditions as set forth by the Board in its September 9, 1998 meeting. The decision of that date is therefore AFFIRMED. This Decision and Entry is a final and appealable Order.



Judge Lisa L. Sadler

Appearances:

James W. Wiggins
10 West Broad Street
Columbus, OH 43215-3435
Attorney for Appellant

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

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
98 OCT 14 AM 10:20
CLERK OF COURTS

Richard M. Donnini, D.O., :

Appellant, :

vs. :

State Medical Board of Ohio, :

Appellee. :

Case No. 98CVF09-7302 HEALTH & HUMAN

Judge Lisa Sadler

OCT 20 1998

SERVICES SECTION

DECISION AND ENTRY DENYING APPELLANT'S MOTION FOR STAY PENDING APPEAL

Rendered this 13TH day of October, 1998.

SADLER, JUDGE.

This matter is before the Court on motion by the appellant; appellee has filed a memorandum contra. The State Medical Board of Ohio suspended appellant's license to practice medicine on September 9, 1998 for an indefinite period of time, imposed certain conditions on reinstatement, and placed appellant on probationary status for a period of five years. Appellant moves this Court to stay the suspension of his medical license while his appeal is pending.

The instant motion is governed by R.C. § 119.12. Where a license to practice medicine has been suspended, a stay of suspension is not automatically granted pending the outcome of an appeal. It is within the court's discretion to grant such a stay, but only after the appellant has demonstrated undue hardship resulting from the suspension. Furthermore, the appellant must show that the safety and welfare of the public will not be threatened by his or her continued practice of medicine pending the outcome of the appeal. R.C. § 119.12.

Appellant will doubtless suffer, both financially and otherwise, as a result of the suspension of his license to practice medicine. He has failed, however, to demonstrate the undue hardship required to stay such suspension pending appeal. As appellee notes, this Court recently articulated the standard to be applied in cases such as this one: "the mere denial of the right to practice medicine is not an 'unusual' hardship as contemplated by the General Assembly. . . . [S]omething greater than the obvious hardship is required by the statute." *Hazem S. Garada, M.D. v. The State Medical Board of Ohio* (July 9, 1998), Franklin C.P. Case No. 98-CVF06-4873, unreported (Sadler, J.). Financial losses that appellant may suffer as a result of this suspension do not rise to the level of undue hardship within the meaning of R.C. § 119.12.

Furthermore, appellant has failed to demonstrate that he will not endanger the safety or welfare of the public by continuing to practice medicine while his appeal is pending. The determinations of the Ohio State Medical Board with regard to the professions it regulates, as well as the conduct of professionals under its supervision, are entitled to deference by the courts, and the findings of the medical board should be upheld if they are supported by substantial, reliable evidence. See *Pons v. Ohio State Medical Board*, (1993) 66 Ohio St.3d 619, 621. This is especially true when those determinations apply to public welfare and safety.

The State Medical Board made extensive findings of fact with regard to appellant's routine professional activities. It found that appellant had engaged in practices which, if tried in a criminal proceeding, would be prosecuted as felonies, specifically his violation of laws regulating the prescription of controlled substances. Such practices alone give the Ohio State Medical Board the authority to discipline appellant under R.C. §§ 4731.22 (B)(2), (10). The Board also found that he had

engaged in other practices, not criminal in themselves, but nonetheless clearly enumerated in R.C. § 4731.22(B) as grounds for discipline by the Ohio State Medical Board, most notably his failure to abide by the rules regarding the use and supervision of physician's assistants under his direction. R.C. § 4731.22 (32). In determining whether allowing appellant to return to medical practice would endanger the public safety and welfare, this court must defer to the decisions of the Ohio State Medical Board.

Appellant is unable to meet the two part test set out in R.C. § 119.12. He is unable to show any undue hardship imposed upon him by the suspension of his license to practice medicine. Likewise, he cannot demonstrate that allowing him to resume the practice of medicine while his appeal is pending will not endanger the safety or welfare of the public. The State Medical Board of Ohio has arrived at its decision to suspend appellant's license to practice medicine on the basis of reliable and substantial evidence. Accordingly, appellant's motion is **DENIED**.



LISA L. SADLER, JUDGE

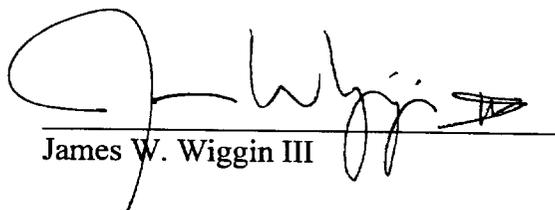
Copies to:

James W. Wiggin, III
Attorney for Appellant

Anne Berry Strait
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing *Notice of Appeal* to be served upon counsel for the State, Christopher E. Wasson, Assistant Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, OH 43215-3428, by ordinary United States mail this 21st day of September, 1998.


James W. Wiggin III

98 SEP 16 PM 4:39
STATE OF OHIO
CLERK OF COURT



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/
September 9, 1998

Richard M. Donnini, D.O.
1550 Yankee Park Place, Suite A
Centerville, OH 45458

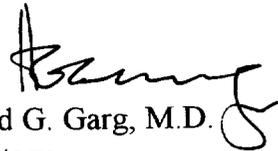
Dear Doctor Donnini:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 9, 1998, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO



Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 840 032
RETURN RECEIPT REQUESTED

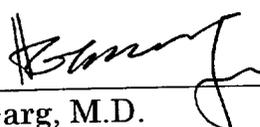
cc: James W. Wiggin, III, Esq.
William S. Fein, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 840 033
RETURN RECEIPT REQUESTED

Mailed 9/11/98

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 9, 1998, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Richard M. Donnini, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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



Anand G. Garg, M.D.
Secretary

(SEAL)

September 9, 1998

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

RICHARD M. DONNINI, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 9, 1998.

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

It is hereby ORDERED that:

1. The certificate of Richard M. Donnini, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year.
2. The State Medical Board shall not consider reinstatement of Dr. Donnini's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Donnini shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Donnini shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio statutes and Board rules relating to the practice of

physician assisting. If Dr. Donnini fails this examination, he must wait at least three (3) months between re-examinations. Dr. Donnini must pass this examination before submitting his application for reinstatement.

- c. In the event that Dr. Donnini has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Donnini's fitness to resume practice.
3. Upon reinstatement, Dr. Donnini's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Donnini shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. Dr. Donnini shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.
 - c. Dr. Donnini shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

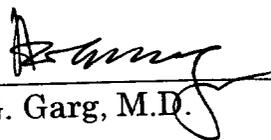
If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Donnini's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Donnini shall immediately submit to the Board a written request to be notified of his next scheduled appearance.
 - d. Dr. Donnini shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation.

The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- e. If Dr. Donnini violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Donnini's certificate will be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Donnini shall not undertake the care of any patient not already under his care.

(SEAL)



Anand G. Garg, M.D.
Secretary

September 9, 1998

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF RICHARD M. DONNINI, D.O.**

The Consolidated Matters of Richard M. Donnini, D.O., and William J. Booth, P.A., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on June 18 and 19, 1998. Although these matters share the same hearing record, a separate Report and Recommendation has been prepared for each Respondent.

INTRODUCTION

I. Basis for Hearing

A. By letter dated February 11, 1998, the State Medical Board of Ohio [Board] notified Richard M. Donnini, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery. The Board based its proposed action on the following allegations:

(1)(a) Dr. Donnini submitted a physician assistant utilization plan to the Board in October 1994, which was approved by the Board effective December 2, 1994. That plan required on-site supervision of physician assistants, and indicated that the daily patient load for physician assistants would be 10 to 15 patients.

(1)(b) Dr. Donnini permitted William J. Booth, P.A., to practice with no on-site physician supervision while Dr. Donnini was vacationing in the Bahamas. Thereafter, Dr. Donnini permitted Mr. Booth to practice without on-site physician supervision on other occasions during 1996.

On March 27, 1996, a Board inspector visited Dr. Donnini's office. Although no physician was in the office at that time, Mr. Booth had already seen Patients 1 through 4 (as identified in a confidential patient key to be withheld from public disclosure), and Mr. Booth's schedule indicated that he was scheduled to see an additional 36 patients. Moreover, Patient 4 had been given a prescription for Percocet, a Schedule II controlled substance.

(1)(c) During 1996, Dr. Donnini often permitted Mr. Booth to see twenty to forty patients per day.

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- (2) Dr. Donnini admitted under oath during an investigatory deposition that he had post-dated prescriptions for Schedule II controlled substances to be distributed by his staff to patients while Dr. Donnini was on vacation. Further, Dr. Donnini admitted that he had signed prescription blanks and left them in the custody of his office manager.
- (3) Dr. Donnini admitted under oath during an investigatory deposition that he had permitted Linda D. Metzler, P.A., to practice as a physician assistant while she was not registered as a physician assistant with the Board. Moreover, Dr. Donnini admitted that Ms. Metzler treated Patient 5, a patient new to Dr. Donnini's practice, without the patient being first examined by Dr. Donnini or another physician. Further, Dr. Donnini admitted that controlled substances were prescribed for Patient 5 without a physician having seen or examined the patient. Finally, Dr. Donnini allowed Ms. Metzler to see patients without on-site physician supervision although Dr. Donnini's physician assistant utilization plan required such supervision.

The Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraph (2), individually and/or collectively, constituted "[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 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents (as in effect for offenses committed prior to July 1, 1996)."

The Board also alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraph (2), individually and/or collectively, constituted "[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, to wit: Section 3719.06, Ohio Revised Code, Prescribing, dispensing and administering by dentist, physician, veterinarian or advance practice nurse."

Moreover, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraph (1), occurring on or after March 5, 1996, individually and/or collectively, constituted "[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with the 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 4730.02(E), Ohio Revised Code"

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Further, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraph (3), occurring on or after March 5, 1996, individually, and/or collectively, constituted "[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with the 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 4730.02(C), Ohio Revised Code"

In addition, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraph (3), individually and/or collectively, constituted "'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule adopted by the board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: [Rule] 4731-4-01(A), Ohio Administrative Code."

Furthermore, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraphs (1) and (3), individually and/or collectively, constituted "'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule adopted by the board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: [Rule] 4731-04-02(A), Ohio Administrative Code."

In addition, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraphs (1) and (3), occurring on or after March 5, 1996, individually and/or collectively, constituted "'[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, to wit: Section 4730.99, Ohio Revised Code to wit: Sections 4730.02(C) and (E), Ohio Revised Code."

Moreover, the Board alleged that Dr. Donnini's acts, conduct, and/or omissions as alleged in paragraphs (1) and (3), occurring on or after March 5, 1996, individually and/or collectively, constituted "'[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, to wit: Section 2923.03, Ohio Revised Code, Complicity to wit: Section 4730.99, Ohio Revised Code, to wit: Sections 4730.02(A), (D), and (F), Ohio Revised Code.

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

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- B. By letter received by the Board on March 12, 1998, James W. Wiggin III, Esq., requested a hearing on behalf of Dr. Donnini. (State's Exhibit 2)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Christopher E. Wasson and Anne B. Strait, Assistant Attorneys General.
- B. On behalf of the Respondent: James W. Wiggin III and William S. Fein, Esqs.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Colonel Jay Hunter
2. Penny Grubb
3. William J. Booth, P.A., as upon cross-examination
4. Richard M. Donnini, D.O., as upon cross-examination
5. Linda D. Metzler, P.A., as upon cross-examination
6. Linda Reed, L.P.C.C.

B. Presented by the Respondent

1. William J. Booth, P.A.
2. Richard M. Donnini, D.O.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1 through 21: Procedural exhibits concerning Dr. Donnini. [Note: State's Exhibits 11, 13, and 19, which include Patient Keys, have been sealed to protect patient confidentiality. Moreover, the Patient Key that was attached to the notice of opportunity for hearing, State's

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Exhibit 1, was removed from that exhibit, renumbered State's Exhibit 1A, and sealed to protect patient confidentiality.]

2. State's Exhibits 22 through 42: Procedural exhibits concerning Mr. Booth. [Note: State's Exhibits 32, 34, 40, which include Patient Keys, have been sealed to protect patient confidentiality.]
 3. State's Exhibit 43: Not presented.
 4. State's Exhibit 44: Copy of Dr. Donnini's October 19, 1994, physician assistant utilization plan, and related documents. (11 pp.)
 5. State's Exhibit 45: Copy of Dr. Donnini's January 16, 1996, notice of employment of Ms. Metzler as a physician assistant, and related documents. (16 pp.)
 6. State's Exhibit 46: Copy of Dr. Donnini's January 10, 1997, physician assistant utilization plan, and related documents. (16 pp.)
 7. State's Exhibit 46A: Copy of Ms. Metzler's February 2, 1996, application for physician assistant registration, and related documents. (24 pp.)
 - * 8. State's Exhibits 47 through 52: Copies of six of Dr. Donnini's patient medical records.
 - * 9. State's Exhibit 53: Copy of Mr. Booth's physician assistant log. (14 pp.)
 - * 10. State's Exhibit 54: Copy of Dr. Donnini's office schedule. (146 pp.)
 - * 11. State's Exhibit 55: Copy of an appointment book. (72 pp.)
 - * 12. State's Exhibit 56: Copy of an appointment book. (139 pp.)
 - * 13. State's Exhibit 57: Copy of Dr. Donnini's medical records for Patient 8. (71 pp.)
 - * 14. State's Exhibit 58: Copy of the physician assistant log of Linda D. Metzler, P.A. (23 pp.)
- * (Note: Exhibits marked with an asterisk (*) have been sealed to protect patient confidentiality.)

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B. Presented by the Respondent

1. Respondent's Exhibit 1: Curriculum vitae of Richard M. Donnini, D.O. (4 pp.)
2. Respondent's Exhibits 2 through 5: Not presented.
3. Respondent's Exhibit 6: Summary of Mr. Booth's workload from April through November 1996.
4. Respondent's Exhibit 7: Sample of Pain Management Contract used by Dr. Donnini before initiating treatment for pain. (3 pp.)

PROCEDURAL MATTERS

1. At the hearing in this matter, patients were identified according to a confidential patient key contained in State's Exhibit 19. This patient key differed from the patient key contained in the February 11, 1998, notice of opportunity for hearing sent to Dr. Donnini. (State's Exhibit 1A) However, the patient key contained in State's Exhibit 19 included patients not included in State's Exhibit 1A, and renumbered other patients. A comparison of State's Exhibit 1A, and State's Exhibit 19, is as follows:

<u>Hearing (State's Exhibit 19)</u>	<u>Dr. Donnini's notice letter (State's Exhibit 1)</u>
1	—
2	—
3	1
4	2
5	3
6	4
7	—
8	5

2. A portion of page 268 and the entirety of pages 269 through 276 of the hearing transcript, have been redacted. These pages contain legal arguments which may unfairly prejudice parties to this matter.

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SUMMARY OF THE EVIDENCE

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

1. Investigator Colonel Jay Hunter testified that he has been an investigator for the Board for 14 years. Investigator Hunter testified as follows concerning an inspection that he performed at the offices of Richard M. Donnini, D.O., on March 27, 1996:
 - a. Investigator Hunter arrived at Dr. Donnini's Centerville office in the morning of March 27, 1996. He asked Dr. Donnini's receptionist if he could speak to Dr. Donnini. The receptionist informed Investigator Hunter that Dr. Donnini was vacationing in the Bahamas. Investigator Hunter asked to speak to Dr. Saleh, Dr. Donnini's colleague, and was informed that Dr. Saleh was not in the office either. Investigator Hunter then asked the receptionist who was seeing patients. The receptionist told Investigator Hunter that Mr. Booth was seeing patients that morning. Investigator Hunter asked to see Mr. Booth. (Transcript at pages [Tr.] 26-28)

A short time later, Mr. Booth introduced himself to Investigator Hunter. Mr. Booth was dressed in a white lab coat with no name tag or other identifier indicating that Mr. Booth was a physician assistant. Mr. Booth told Investigator Hunter that Mr. Booth had been seeing patients, but that they were established patients, not new patients. Mr. Booth denied that he had written prescriptions for these patients, but admitted that he had had the office manager call in refills of medication. Investigator Hunter questioned Mr. Booth concerning Patient 6, a patient that Mr. Booth had already seen that morning. Investigator Hunter testified that Patient 6's chart indicated that Patient 6 had needed Percocet. Mr. Booth denied having written a prescription for Percocet for Patient 6, and stated that he had informed Patient 6 that Patient 6 would have to wait for Dr. Donnini to return before he received a refill of his Percocet. (Tr. 28-30)

Investigator Hunter asked Mr. Booth how many patients he was to see that day. Mr. Booth showed Investigator Hunter a schedule that indicated that he was to see 40 patients. Mr. Booth told Investigator Hunter that he had already seen four of those patients. (Tr. 30-31)

Investigator Hunter telephoned Board staff for instructions concerning how this matter should be handled. Based on those instructions, Investigator Hunter told Mr. Booth that Mr. Booth could not see any more patients until Dr. Saleh came in. Mr. Booth agreed that he would do nothing further until Dr. Saleh arrived. (Tr. 30-31)

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- b. After leaving Dr. Donnini's Centerville office, Investigator Hunter went to Dr. Donnini's second office [All Care] in Dayton to see if Dr. Saleh was there. She was not, although a physician assistant named Linda Metzler was working there. Ms. Metzler told Investigator Hunter that she had not seen patients because the office had not yet opened. (Tr. 31-32)
 - c. Investigator Hunter then contacted Patient 6, who informed Investigator Hunter that he had received a prescription for Percocet that morning but that it had not yet been filled. Patient 6 gave Investigator Hunter the name of his pharmacy. Board investigators followed up afterward and, to Investigator Hunter's knowledge, the prescription was never filled. (Tr. 32)
2. Penny Grubb testified that she has been Chief of Licensure for the Board for thirteen years. As Chief of Licensure, one of her responsibilities is the registration of physician assistants. Ms. Grubb testified that physician assistants are required to apply for registration with the Board before they can practice. Moreover, Ms. Grubb testified that the physician assistant utilization plan filed by the supervising physician must set forth, among other things, what the physician assistant's responsibilities will be, as well as the physician's overall patient load and the patient load for the physician assistant. (Tr. 36-37)
 3. Ms. Grubb identified State's Exhibit 44 as the physician assistant utilization plan submitted by Dr. Donnini in October 1994. Ms. Grubb noted that Dr. Donnini had indicated that his physician assistant would be seeing "10 to 15 [patients] per day average." Ms. Grubb testified that, as a matter of policy, the Board will usually not approve plans if the physician assistant will be seeing more than 25 patients per day. (State's Exhibit [St. Ex.] 44; Tr. 37-39)

Ms. Grubb testified that Dr. Donnini's plan was approved by the Board at its November 1994 meeting, conditioned upon Dr. Donnini's agreement to perform a monthly quality assurance review of at least 25 percent of the patient charts. Dr. Donnini agreed to abide by this condition. By letter dated December 2, 1994, the Board notified Dr. Donnini that his plan had been approved. (St. Ex. 44; Tr. 42)

Ms. Grubb stated that Dr. Donnini had not been notified that there was any problem with the proposed plan concerning the use of the word "average" in describing the physician assistant's patient load, or because he had used an application form intended for use by group practices. (Tr. 60-64)

4. Ms. Grubb testified that Dr. Donnini submitted a notice of employment of Linda D. Metzler, P.A., to the Board on January 16, 1996. However, by letter dated January 18, 1996, Ms. Grubb notified Dr. Donnini that he had already employed two physician assistants, and that a solo practitioner such as Dr. Donnini may not employ more than two physician assistants. In addition, Dr. Donnini was notified that Ms. Metzler had not been

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registered as a physician assistant, and that no person can legally practice as a physician assistant until registration has been approved by the Board. (St. Ex. 45; Tr. 44-45)

Ms. Grubb testified that Ms. Metzler was officially registered as a physician assistant on March 15, 1996. However, Ms. Grubb further testified that a registered physician assistant must still have a notice of employment approved by the Board before he or she can practice. The Board approved Ms. Metzler's notice of employment effective April 4, 1996. (St. Ex. 45; Tr. 52-53)

5. In February 1996, Dr. Donnini submitted a request to the Board to add a second office location to his utilization request, and a new physician assistant utilization plan to add Mervet Saleh, M.D., to his practice. Both of these requests were approved by the Board. (St. Ex. 45; Tr. 46-49)
6. Ms. Grubb noted that a change in the law concerning physician assistants became effective in March 1996. The new law required physicians who supervised physician assistants to submit new utilization plans by the end of January 1997. Dr. Donnini submitted his new plan to the Board on January 10, 1997. Ms. Grubb noted that Dr. Donnini had indicated in his new plan that his physician assistants would be seeing approximately 25 to 30 patients per day. (St. Ex. 46; Tr. 45-52)
7. Linda Metzler, P.A., testified that she had obtained her physician assistant degree in 1977 from Kettering College of Medical Arts. She worked as a physician assistant for a few years, then left the profession for 14 years to raise children. She worked for Dr. Donnini for a few months in 1996 beginning in January or February. Her job had been to set up a new family practice office and to work there as a physician assistant. (Tr. 158-159)
8. Ms. Metzler testified as follows concerning the events that gave rise to this matter:
 - a. Ms. Metzler signed an employment agreement prior to starting work with Dr. Donnini. Shortly thereafter, Ms. Metzler received a call from Dr. Donnini's office manager who told Ms. Metzler that she would have to register with the State. Ms. Metzler filled out the necessary forms and sent them to the Board. Ms. Metzler stated that she had thought that she had done everything necessary to be registered as a physician assistant, and that she had been told so by Dr. Donnini and his office manager. (St. Ex. 45; Tr. 165-167)
 - b. Ms. Metzler testified that she called the Board on the morning of April 4, 1996, out of concern for her status as a registered physician assistant. She further testified that the Board staff informed her at that time that the notice of employment that had been filed earlier was improper. She testified that she re-filed a corrected form by fax that morning and received word from the Board that her

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re-filed notice of employment had been approved and she could work. (St. Ex. 58; Tr. 171-172)

- c. Ms. Metzler saw Patient 8 on February 29, 1996. Dr. Donnini reviewed the chart for that visit, but Ms. Metzler could not recall when Dr. Donnini had reviewed it. (St. Ex. 57, p. 45; Tr. 162-163)

Ms. Metzler testified that Dr. Donnini did not supervise Ms. Metzler on-site at the All Care office, but that the patients were reviewed with him prior to any treatment being given. Ms. Metzler called Dr. Donnini during the day as necessary to review charts and patient requests, and physically brought the charts to Dr. Donnini's office each day for his review and signature. (Tr. 163-164)

9. Richard M. Donnini, D.O., testified that he had obtained his doctor of osteopathic medicine degree in 1984 from the University of Health Sciences College of Osteopathic Medicine in Kansas City, Missouri. Dr. Donnini completed a one-year rotating internship at Orlando General Hospital in Orlando, Florida. Thereafter, he participated in one year of a surgical residency program at Grandview Hospital in Dayton, Ohio. Dr. Donnini then entered the practice of emergency medicine at Grandview Hospital, and ran the emergency department at that institution. Dr. Donnini testified that he had developed an interest in pain management while working in the field of emergency medicine, and started his own pain management practice in 1990. (Respondent's Exhibit [Resp. Ex.] 1; Tr. 122, 226-228)

Dr. Donnini stated that his typical patient is experiencing pain, is frustrated (and possibly depressed or anxious) about the pain, and has often been to several physicians in an effort to find relief. Dr. Donnini testified that his patients usually have a low level of functional capability as a result of their pain. Dr. Donnini noted that if the pain is a result of an injury, typically the injuries have been healed; Dr. Donnini does not usually treat the trauma itself. (Tr. 228-229)

Dr. Donnini stated that his clinic offers the most advanced modalities available for pain management. Dr. Donnini further stated that a substantial portion of his practice involves interventional pain management, which includes blocks, "catheters, spinal cord stimulators and percutaneous radio frequency neurolysis." (Tr. 235)

10. Dr. Donnini testified as follows concerning the events that gave rise to this matter:
- a. Dr. Donnini testified that his practice is very successful. A few years ago, Dr. Donnini sought the advice of a consultant, Robert Frame, to assist him with organizing his growing practice. The consultant recommended that Dr. Donnini hire a physician assistant. Dr. Donnini followed Mr. Frame's advice and filed a physician assistant utilization plan with the Board in 1994. (Tr. 123-124)

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- b. Dr. Donnini acknowledged that he is responsible for the statements made in his 1994 physician assistant utilization plan. Nevertheless, Dr. Donnini stated that he had accepted the advice of a consulting firm that he had hired, and had not sufficiently familiarized himself with the statutes and rules that govern the practice of physician assistants in Ohio. (St. Ex. 44; Tr. 124-126)

In his 1994 plan, Dr. Donnini indicated that the patient load for the physician assistant would be "10-15 per day average." However, because the plan was submitted before Dr. Donnini had a physician assistant in place, that number represented the number of patients he expected the physician assistant to see. In addition, the plan indicated that he would supervise the physician assistant on-site. Dr. Donnini stated that that he provided on-site supervision initially; Dr. Donnini hired Mr. Booth in September or October 1990, and for several months thereafter he supervised Mr. Booth very closely. Dr. Donnini stated that, as things progressed, Dr. Donnini saw that Mr. Booth was a capable physician assistant and Dr. Donnini allowed him to see patients without on-site supervision. Nevertheless, Dr. Donnini stated that he still reviews 100 percent of Mr. Booth's charts. (St. Ex. 44; Tr. 126-129)

- c. Dr. Donnini decides which patients are appropriate for his physician assistant to see. Dr. Donnini does not generally turn a patient over to Mr. Booth until the patient's treatment is established and the patient is clinically stable. This usually takes approximately three or four months after the patient's first visit, and after having had rechecks performed by Dr. Donnini about every six weeks. Dr. Donnini stated that when a patient is turned over to Mr. Booth, Dr. Donnini alternates rechecks with Mr. Booth so that Dr. Donnini sees each patient every other visit. Dr. Donnini stated that Mr. Booth accompanies Dr. Donnini when Dr. Donnini performs his rechecks of Mr. Booth's patients. (Tr. 230-232)
- d. In March 1996, before Dr. Donnini had left for a vacation, he and Mr. Booth reviewed the charts of patients that Mr. Booth was to see while Dr. Donnini was gone. Dr. Donnini said that the patients that Mr. Booth was to see were established and seen regularly. (Tr. 131)

Dr. Donnini acknowledged that he post-dated a prescription for Patient 6 for Mr. Booth to issue during Patient 6's appointment on March 27, 1996, and had placed it "in a locked box in a locked drawer in a locked office" to give to the patient. The prescription was for Percocet. Dr. Donnini testified that he had not known that it was wrong for him to do that. Dr. Donnini stated that he did it because Patient 6 needed to be kept on his prescription schedule, and Dr. Donnini had thought that it was in Patient 6's best interest. Dr. Donnini said that he keeps very tight control over the amount of controlled substance medication that his

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patients receive, and such patient's need for prescription renewal is very time-sensitive. Dr. Donnini testified that that was the last occasion that he post-dated a prescription. (St. Ex. 47, p. 113; Resp. Ex. 7; Tr. 129-135, 238-240)

- e. Dr. Donnini called his office from the Bahamas on March 27, 1996, shortly after Investigator Hunter's inspection. Dr. Donnini testified that, when he learned that a Board investigator had been to his office and had told his staff that things were not being done properly, it was one of the worst moments of his life. Dr. Donnini told his staff that Mr. Booth was not to see any more patients until Dr. Donnini returned to the office. (Tr. 136-138)

Dr. Donnini stated that he had been available by pager, telephone, and radio while on vacation, and that he had called several times each day. Before the Board investigation, Dr. Donnini had thought "that it was appropriate management if we could be reached within 30 minutes." After Investigator Hunter's visit, Dr. Donnini consulted with an attorney who told him that he was actually required to be within thirty minutes travel time from his office. Dr. Donnini testified that it was later, after he consulted with one of his current attorneys, that he learned that he was required to provide on-site supervision. (Tr. 138-142)

Dr. Donnini acknowledged that there had been several occasions when Mr. Booth had seen patients when Dr. Donnini was not on-site. Dr. Donnini testified that this never affected the level of patient care that was rendered, and that he always kept in close voice contact with his office at those times. (Tr. 145, 243-245)

- f. Dr. Donnini stated that, after Investigator Hunter's visit, his policy concerning the refilling of prescriptions by physician assistants changed. Currently, a physician must approve all prescription refills for patients seen by physician assistants. In addition, each chart must be reviewed and signed by a physician within 24 hours after the physician assistant has seen the patient. (Tr. 241-242)
- g. Dr. Donnini acknowledged that, in the past, he had pre-signed blank prescriptions for his staff to use in the event of an emergency. Dr. Donnini testified during an investigative deposition that he had kept these signed blanks "in a locked box in a locked drawer in a locked office." However, Dr. Donnini testified that they were never used. (Tr. 136)
- h. Dr. Donnini hired Linda Metzler, P.A., in early 1996 to help set up a new office, called All Care, on Salem Road in Dayton. Dr. Donnini stated that he had relied on his office staff to verify Ms. Metzler's physician assistant registration information and to file any necessary paperwork. Nevertheless, Dr. Donnini acknowledged that he had been responsible for ensuring that Ms. Metzler was properly registered and authorized to practice. (Tr. 145-148)

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Mervet Saleh, M.D., worked for Dr. Donnini since January or February 1996, on a part-time, unpaid basis until April 1996. Dr. Saleh started working at All Care in April 1996. Dr. Donnini's original intention had been for Ms. Metzler to work at the All Care office and for Dr. Saleh to be her supervising physician. (Tr. 148-150)

- i. Dr. Donnini acknowledged that February 29, 1996, was Patient 8's first visit to Dr. Donnini's practice. Dr. Donnini noted that an entry in Patient 8's medical records dated February 29, 1996, appeared to have been written by Ms. Metzler. Dr. Donnini's signature appears below that entry. Dr. Donnini further acknowledged that Patient 8 had been prescribed Maxzide, Zylprim, and Ativan during the February 29, 1996, visit. Dr. Donnini testified that he had reviewed that chart at a later date, after Investigator Hunter's visit, and had also signed off on entries dated March 20 and April 16, 1996, at that time. Dr. Donnini further testified that Dr. Saleh had not been on-site on those dates, because she would have signed those entries if she had been. (St. Ex. 47, pp. 44-45; Tr. 151-157)
11. William J. Booth, P.A., testified that he has been a physician assistant for eight years. He obtained his physician assistant degree from Kettering College of Medical Arts in 1989. Mr. Booth testified that he has worked for Dr. Donnini as a physician assistant since May 9, 1994. Mr. Booth testified that his duties as one of Dr. Donnini's physician assistants include seeing patients, reviewing test results, and assisting Dr. Donnini. (Tr. 77-78)

Mr. Booth testified that, when he sees a patient, he first reviews the notes that the nurse has written in the patient's chart. He asks the patient if there has been any change in the patient's pain. Mr. Booth then performs a focused physical examination, checking such items as reflexes and strength. Following that, Mr. Booth reviews the patient's diagnosis and treatment plan, questions the patient concerning exercise, TENS units, if applicable, and blocks. Mr. Booth testified that after he is done performing and recording everything, he goes to Dr. Donnini or Dr. Saleh, waits for the doctor to write the prescription, takes the prescription back to the patient, and lets the patient go. Mr. Booth testified that the exams typically take about 10 minutes. (Tr. 211-212)

If, during a patient examination, Mr. Booth has a question concerning the patient, he contacts one of the physicians and seeks his or her advice, or he asks that one of the physicians come into the room to see the patient. (Tr. 214)

Mr. Booth stated that, when entering an examination room, he always identifies himself to patients as a physician assistant, and informs them that he is not a doctor. Mr. Booth further testified that patients often question him concerning physician assistants but rarely ask to see a doctor instead. When they do, Mr. Booth asks one of the doctors to see the patient. (Tr. 216-217)

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12. Mr. Booth testified that, although he could not recall if he had ever actually read Dr. Donnini's 1994 physician assistant utilization plan, he had been aware that the plan existed and had believed that he was in compliance with it. Mr. Booth said that he had known from his education what he was allowed to do as a physician assistant; however, he had been unaware that there was a limitation on his daily patient load. He testified that he has never read a statute, rule, or Board publication that described such a limit. Moreover, Mr. Booth had believed that on-site supervision was not required, and that it was acceptable if the supervising physician was within 30 miles or 30 minutes of the practice. (Tr. 78-82, 207-208)

13. Mr. Booth testified as follows concerning the events that gave rise to this matter:

- a. Mr. Booth acknowledged that there were times when he saw patients when there was no physician present in the office. This practice stopped after his investigatory deposition with the Board in November 1996. Mr. Booth said that he learned at the investigative deposition that he was required to have a physician on-site when he saw patients. (Tr. 214-215)

When Mr. Booth saw patients without a physician on-site, he contacted one of the doctors by telephone if he had a question. Mr. Booth testified that, whether the physician was on-site or on the telephone, there was no difference in the quality of the responses. Mr. Booth further testified that, when Dr. Donnini was in the Bahamas in March 1996, his conversations via telephone with Dr. Donnini were not substantially different from those he had with Dr. Donnini when Dr. Donnini was behind his desk. (Tr. 215-216)

- b. Prior to Dr. Donnini leaving for vacation in March 1996, Mr. Booth and Dr. Donnini met and discussed the patients that Mr. Booth would be seeing that week: "We reviewed them, went down a list trying to see if there would be any problems with any patients, any that we should possibly cancel that I shouldn't be seeing and reviewed the charts to see if there's anything I needed to know." Mr. Booth testified that a prescription for Percocet was filled out for Patient 6 during that meeting because that medication could not be called in to a pharmacy by a medical assistant. Mr. Booth noted that the prescription was post-dated for the date that Patient 6 had been scheduled to come in. (Tr. 91-93)

Mr. Booth and Dr. Donnini established a protocol for communication while Dr. Donnini was on vacation. This protocol included Mr. Booth and the staff being given telephone numbers to reach Dr. Donnini; moreover, Dr. Donnini would call in to the office several times each day. (Tr. 93)

- c. On March 27, 1996, after Mr. Booth had seen a few patients, including Patient 6, he was told that someone wanted to talk to him. Mr. Booth testified that he went out

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to speak to the person, Investigator Hunter. Investigator Hunter asked him what he was doing. Mr. Booth told Investigator Hunter that he "was doing what [he was] supposed to do, seeing patients." Investigator Hunter told Mr. Booth that he was not to see any patients because there was no doctor in the office. Mr. Booth contacted Dr. Donnini and informed him of Investigator Hunter's visit. Dr. Donnini told Mr. Booth not to see any more patients until he returned. (Tr. 82-85)

- d. Mr. Booth testified that Patient 6 had been a patient of Dr. Donnini's for a long time prior to Investigator Hunter's visit, and Mr. Booth had seen Patient 6 on numerous occasions. On March 27, 1996, Patient 6 had come in for a routine office visit. Mr. Booth said that either he or the office manager had given Patient 6 the prescription for Percocet that had been written by Dr. Donnini before Dr. Donnini left on vacation. (St. Ex. 47, p. 113; Tr. 85-88)

Mr. Booth acknowledged that he had erroneously told Investigator Hunter that he had not given Patient 6 a prescription when, in fact, he had. Mr. Booth explained:

I didn't know what I should tell him. I didn't know what— I just felt like I'm on the spot all of a sudden. I'm doing what I'm supposed to be doing, I'm doing a good job, as far as I know, and all of a sudden he comes in and just confronts you. I didn't know what I was allowed to say and what I should say to him, and I didn't know what my legal rights were.

(Tr. 90)

- e. Mr. Booth stated that Patients 1, 2, 3, 4, and 5, had also had routine office visits on March 27, 1996. Mr. Booth examined each of these patients prior to Investigator Hunter's visit. Moreover, each of these patients had prescriptions called in for them that day: Patient 1 received Vicodin, Prozac, and Norflex; Patient 2 received Xanax, Tylenol No. 3, and Soma; Patient 3 received Mellaril; Patient 4 received Ultram, Doxepin, and Skelaxin; and Patient 5 received Parafon Forte. (St. Ex. 48, p. 25; St. Ex. 49, p. 150; St. Ex. 50; St. Ex. 51, p. 190; St. Ex. 52; p. 110; Tr. 93-101)

[Mr. Booth's testimony was unclear concerning who had authorized these prescriptions. Mr. Booth testified that a physician would usually authorize the prescriptions, but Mr. Booth acknowledged that no physician had been present that day. When Mr. Booth was asked if he had issued those prescriptions, Mr. Booth replied that usually Dr. Donnini would call and Mr. Booth would review the charts with Dr. Donnini and obtain his approval. Mr. Booth added that "[s]ometimes we would hold a whole stack of charts until we talked to him hours later." Mr. Booth testified that Dr. Donnini had not pre-authorized the issuance of

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those prescriptions when Dr. Donnini and Mr. Booth met prior to Dr. Donnini leaving for the Bahamas. (Tr. 102-104)]

Mr. Booth acknowledged that there was no on-site supervision on March 27, 1996, when he saw these patients. After Investigator Hunter's visit, the remaining patients who had appointments scheduled that day were called and told not to come in. In addition, patients who were scheduled for appointments later in the week were called as well. (Tr. 101)

- f. Mr. Booth wears a white lab coat with his name and "P.A.C." embroidered above the left breast pocket and a name tag that identifies him as a physician assistant. Mr. Booth testified that, the day Investigator Hunter visited the office, he had changed coats prior to starting work and picked a freshly-laundered coat that did not have his name embroidered on it. Mr. Booth acknowledged that he had not been wearing his name tag either. Mr. Booth stated that he had been aware at that time that he was required to wear such identification, and that he has since worn his identification tag every day. (Tr. 217-220)
- g. Mr. Booth sees patients on Wednesday mornings and Fridays; occasionally he sees patients all day on Wednesday. On Mondays, Tuesdays, and Thursdays, Mr. Booth does paperwork and assists Dr. Donnini when Dr. Donnini sees patients. (Tr. 105-106, 195-199)
- Mr. Booth testified that, because he sees patients only one and one-half to two days per week, his average total patient load per week (which was 47.8 for the 32-week period from April to November 1996), divided by the number of days per week that he works (five), yields the "10 to 15 per day average" that Dr. Donnini's physician assistant utilization plan had been approved for. (St. Ex. 44; Resp. Ex. 6; Tr. 200-207)
- h. Mr. Booth began keeping a log of his physician assistant activities on April 3, 1996, at the direction of Dr. Donnini. (St. Ex. 53; Tr. 104)

A note in Mr. Booth's log dated April 17, 1996, states, in part, "Dr. D stopped in two times during the afternoon to see how things were going & to review charts." Mr. Booth agreed that this statement indicated that Dr. Donnini had not been in the office at some point during that afternoon. Moreover, Mr. Booth acknowledged that he had had patients scheduled that afternoon about every ten minutes. Mr. Booth stated that, although Dr. Donnini was not there, Dr. Saleh may have been. Nevertheless, Mr. Booth acknowledged that he had not referenced Dr. Saleh in his log, and that Dr. Saleh did not work at the Centerville office very frequently. (St. Ex. 53; St. Ex. 54, pp. A1 and A2; Tr. 109-111)

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Mr. Booth further acknowledged that his log entry dated April 24, 1996, indicated that there was a time during that afternoon when Dr. Donnini was not there. Mr. Booth stated that he had been scheduled to see patients approximately every ten minutes during that afternoon. He testified that it was likely that he had seen patients that afternoon without Dr. Donnini being on-site. (St. Ex. 53; St. Ex. 54, p. B4; Tr. 111-113)

Finally, Mr. Booth acknowledged that he had also seen patients on May 3, 1996, June 14, 1996, and August 9, 1996, without Dr. Donnini being on-site. Mr. Booth testified that Dr. Saleh may have been there on May 3, but acknowledged that his log did not reference Dr. Saleh, and that one could assume from that omission that Dr. Saleh had not been there. Mr. Booth testified that, on June 14 and August 9, he had been in contact with Dr. Saleh by telephone, and that Dr. Donnini was not on-site. (St. Ex. 53; St. Ex. 54, pp. C3-C4, E3-E4, and H2-H3; St. Ex. 55; Tr. 113-117)

14. A summary of Mr. Booth's patient load for the 32 week period from April 1996 through November 1996 indicated that Mr. Booth's average patient load on Fridays was 27.25. The lowest figure during that period was 12 (aside from 4 Fridays when he saw no patients), and the highest was 46. On seven of these Fridays, Mr. Booth treated between 20 and 30 patients; on 18 of these Fridays, Mr. Booth treated between 30 and 40 patients; and on one Friday Mr. Booth treated 46 patients. (Resp. Ex. 6)

FINDINGS OF FACT

1. Richard M. Donnini, D.O., submitted a physician assistant utilization plan to the Board in October 1994, which was approved by the Board on December 2, 1994. Dr. Donnini's plan required on-site physician supervision of physician assistants. Further, Dr. Donnini's plan indicated that physician assistants would see 10 to 15 patients per day, average.

In spite of the requirement of on-site physician supervision, Dr. Donnini allowed William J. Booth, P.A., to practice without on-site physician supervision on March 27, 1996, while Dr. Donnini was on vacation in the Bahamas. On this date, a Board investigator visited Dr. Donnini's office and found that Mr. Booth had seen patients and had been scheduled to see a total of 40 patients that day.

Moreover, Dr. Donnini permitted Mr. Booth to practice without on-site physician supervision on April 17, April 24, May 3, June 14, and August 9, 1996.

In addition, from April through November 1996, Dr. Donnini frequently permitted Mr. Booth to see twenty to forty patients per day.

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2. Dr. Donnini post-dated a prescription for Percocet to be given to Patient 6 by his staff while Dr. Donnini was away from his office on vacation. Moreover, Dr. Donnini admitted under oath during an investigatory deposition with the Board that he had signed prescription blanks and left them in a locked area for his staff to use in the event of an emergency.
3. Dr. Donnini permitted Linda D. Metzler, P.A., to practice as a physician assistant while she was not registered with the Board as a physician assistant. Moreover, Ms. Metzler treated Patient 8, a patient new to Dr. Donnini's practice, without the patient being first examined by Dr. Donnini or another physician. Further, controlled substances were prescribed for Patient 8 without Dr. Donnini or another physician having first seen or examined the patient. Finally, Dr. Donnini allowed Ms. Metzler to see patients without on-site supervision although Dr. Donnini's physician assistant utilization plan required such supervision.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Richard M. Donnini, D.O., individually and/or collectively, as set forth in Findings of Fact 2, 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 2925.23, Ohio Revised Code, Illegal processing of drug documents (as in effect for offenses committed prior to July 1, 1996).
2. The acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 2, 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, to wit: Section 3719.06, Ohio Revised Code, Prescribing, dispensing and administering by dentist, physician, veterinarian or advance practice nurse.
3. Section 4730.02(E), Ohio Revised Code, provides that "[n]o 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." Accordingly, the acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 2, occurring on or after March 5, 1996, constitute "[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with the 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 4730.02(E), Ohio Revised Code.

4. Section 4730.02(C), Ohio Revised Code, provides that “[n]o physician shall act as the supervising physician of a physician assistant without having received the state medical board’s approval of a physician assistant utilization plan and approval of a supervision agreement entered into with the physician assistant.” Accordingly, the acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 3, constitute “[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with the 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 4730.02(C), Ohio Revised Code.
5. Rule 4731-04-01(A), Ohio Administrative Code, provides, in part, that “[a] patient new to the physician’s practice must be seen and personally evaluated by the employing physician prior to the initiation of any treatment plan.” Accordingly, the acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 3, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule adopted by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-04-01(A), Ohio Administrative Code.
6. Rule 4731-04-02(A), Ohio Administrative Code, states that “[t]he 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.” Accordingly, the acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 1 and 3, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule adopted by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-04-02(A), Ohio Administrative Code.
7. Section 4730.99(A), Ohio Revised Code, provides that a violation of Section 4730.02 constitutes a misdemeanor of the first degree. Accordingly, and as discussed previously in Conclusions of Law 3 and 4, the acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 1 and 3, 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, to wit: 4730.99, Ohio Revised Code, to wit: Sections 4730.02(C) and (E), Ohio Revised Code.
8. Section 4730.02(A), Ohio Revised Code, provides that “[n]o person shall hold himself or herself out as being able to function as a physician assistant, or use any words or letters indicating or implying that the person is a physician assistant, without a current, valid

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certificate of registration or temporary certificate of registration as a physician assistant issued pursuant to this chapter.” Further, Section 4730.02(D), Ohio Revised Code, provides that “[n]o person shall practice as a physician assistant without having entered into a supervision agreement that has been approved by the state medical board.” Moreover, Section 4730.02(F), Ohio Revised Code, provides that “[n]o person shall practice as a physician assistant in a manner that is inconsistent with the standard or supplemental physician assistant utilization plan approved for the physician who is responsible for supervising the physician assistant.” In addition, Section 2923.03(A)(2), Ohio Revised Code, provides that “[n]o person, acting with the kind of culpability required for the commission of an offense, shall do any of the following: * * * (2) Aid or abet another in committing an offense.”

Accordingly, and as discussed previously in Conclusions of Law 7, the acts, conduct, and/or omissions of Dr. Donnini, individually and/or collectively, as set forth in Findings of Fact 1 and 3, 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, to wit: Section 2923.03(A)(2), Ohio Revised Code, Complicity, to wit: Section 4730.99, Ohio Revised Code, to wit: Sections 4730.02(A), (D), and (F), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Richard M. Donnini, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year.
2. The State Medical Board shall not consider reinstatement of Dr. Donnini’s certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Donnini shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Donnini shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio statutes and Board rules relating to the practice of physician assisting. If Dr. Donnini fails this examination, he must wait at least three (3) months between re-examinations. Dr. Donnini must pass this examination before submitting his application for reinstatement.

- c. In the event that Dr. Donnini has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Donnini's fitness to resume practice.
3. Upon reinstatement, Dr. Donnini's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Donnini shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. Dr. Donnini shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.
 - c. Dr. Donnini shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Donnini's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Donnini shall immediately submit to the Board a written request to be notified of his next scheduled appearance.
 - d. Dr. Donnini shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - e. If Dr. Donnini violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Donnini's certificate will be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Donnini shall not undertake the care of any patient not already under his care.



R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 9, 1998

REPORTS AND RECOMMENDATIONS

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

Dr. Buchan asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Advanced Heart & Lung Surgeons, Inc.; William J. Booth, P.A.; Ira N. Chaiffetz, M.D.; Fernando G. Chaves, M.D.; Richard M. Donnini, D.O.; Altaf Hussain, M.D.; Jeffrey C. Lapeyrolerie, M.D.; Anthony D. Martin, M.D.; Hil Rizvi, M.D.; and Julia K. Saluke, M.D. A roll call was taken:

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

Dr. Buchan asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

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

Dr. Buchan stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....

RICHARD M. DONNINI, D.O.

.....

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

.....

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- nay
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.



State Medical Board of Ohio

150 North High Street • Columbus, OH 43260-3315 • (614) 467-9331 • Website: www.state.oh.us/mb

February 11, 1998

Richard M. Donnini, D.O.
1550 Yankee Park Place
Suite A
Centerville, OH 45458

Dear Doctor Donnini:

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

- (1)(a) You submitted a Physician's Assistant Utilization Plan ("P.A. Plan") to the State Medical Board of Ohio in October, 1994, and that P.A. Plan was approved effective December 2, 1994. That P.A. Plan required on-site supervision of physician assistants, and indicated that the patient load per day for physician's assistants would be ten to fifteen patients per day.
- (b) You permitted William Booth, P.A., to practice without on-site supervision by a physician while you were vacationing in the Bahamas. Thereafter, you further permitted Mr. Booth to practice without on-site supervision on other occasions during 1996.

In fact, a Board Investigator inspected your office on March 27, 1996. During that inspection, the Board Investigator found that no physician was in the office, that Mr. Booth had already seen Patients 1 through 4 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure), that Mr. Booth's schedule indicated that he was scheduled to see an additional thirty-six (36) patients, further, Patient 4 had been given a prescription for Percocet, a Schedule II controlled substance.

- (c) During 1996 you often permitted Mr. Booth to see twenty to forty patients per day.
- (2) You admitted under oath during an investigatory deposition that you had post-dated prescriptions for Schedule II controlled substances to be distributed by your office staff to patients when you were on vacation. Further, you admitted

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that you signed blank prescription forms and left them in the custody of your office manager.

- (3) You admitted under oath during an investigatory deposition that you had permitted Linda Metzler to practice as a physician assistant while she was not registered as a physician assistant by the State Medical Board of Ohio. Further, you admitted that Ms. Metzler treated Patient 5, a patient new to the practice without you or another physician examining that patient. Further, you admitted that controlled substances were prescribed for Patient 5 without a physician having seen or examined that patient. You also allowed Ms. Metzler to see patients without on-site supervision when your P.A. Plan required on-site supervision.

Your acts, conduct, and/or omissions as alleged in paragraph (2) 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 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents (as in effect for offenses committed prior to July 1, 1996).

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) 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, to wit: Section 3719.06, Ohio Revised Code, Prescribing, dispensing and administering by dentist, physician, veterinarian or advance practice nurse.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above as occurring on or after March 5, 1996, individually and/or collectively, constitute "[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with the 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 4730.02(E), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above as occurring on or after March 5, 1996, individually and/or collectively, constitute "[f]ailure of a physician supervising a physician assistant to maintain supervision in accordance with the 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 4730.02(C), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731-4-01(A), Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board." as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731-04-02(A), Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (3) above as occurring on or after March 5, 1996, 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, to wit: Section 4730.99, Ohio Revised Code to wit: Sections 4730.02 (C) and (E), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (3) above as occurring on or after March 5, 1996, 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, to wit: Section 2923.03, Ohio Revised Code, Complicity to wit: Section 4730.99, Ohio Revised Code to wit: Sections 4730.02(A), (D), and (F), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and

upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Anand G. Garg, M.D.
Secretary

AGG/dpk

Enclosures

CERTIFIED MAIL #P 152 984 651
RETURN RECEIPT REQUESTED

cc: William S. Fein, Esq.
CERTIFIED MAIL #P 152 984 652
RETURN RECEIPT REQUESTED