

State Medical Board of Ohio

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Executive Director

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October 14, 2009

Randall Jay Smith, D.O.
2814 Emmick Drive
Toledo, OH 43606

RE: Case No. 09-CRF-019

Dear Doctor Smith:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 14, 2009, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink that reads "Lance A. Talmage MD".

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3487 6833
RETURN RECEIPT REQUESTED

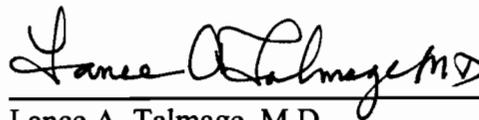
Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3487 6840
RETURN RECEIPT REQUESTED

Mailed 10-16-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 14, 2009, 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 Randall Jay Smith, D.O., Case No. 09-CRF-019, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

October 14, 2009
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 09-CRF-019

RANDALL JAY SMITH, D.O.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 14, 2009.

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

It is hereby **ORDERED** that:

The application of Randall Jay Smith, D.O., to restore to active status his certificate to practice osteopathic medicine and surgery in the State of Ohio is **PERMANENTLY DENIED**.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

October 14, 2009
Date

STATE MEDICAL BOARD
OF OHIO

2009 SEP 17 PM 5: 28

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 09-CRF-019

Randall Jay Smith, D.O.,

*

Hearing Examiner Davidson

Respondent.

*

REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated February 11, 2009 [Notice], the State Medical Board of Ohio notified Randall Jay Smith, D.O., that it intended to determine whether or not to grant his August 2008 application to restore his inactive certificate to practice osteopathic medicine and surgery in Ohio, and whether or not to impose discipline. The Board set forth allegations including that the Oregon Board of Medical Examiners [Oregon Board] had revoked Dr. Smith's Oregon license in April 2005 based on multiple findings, including that Dr. Smith had engaged in a sexual relationship with an adult female patient with a level of mental/emotional function equivalent to approximately a 14-year old, and that Dr. Smith had been convicted in 2004 of the offense of False Claim for Health Care Payment under Oregon law. The Board also alleged that Dr. Smith failed to meet the statutory requirement under Ohio law that he must furnish evidence satisfactory to the Board of his good moral character. (St. Ex. 1A)

The Board alleged that the order of the Oregon Board constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of * * * osteopathic medicine and surgery * * * in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(22). (St. Ex. 1A)

In addition, the Board alleged that Dr. Smith's criminal conviction involved a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that language is used in R.C. 4731.22(B)(11).

Further, the Board alleged that Dr. Smith's acts, conduct, and/or omissions constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that language is used in R.C. 4731.22(B)(18), with respect to the Code of Ethics of the American Osteopathic Association, Section 15. (St. Ex. 1A)

The Board received Dr. Smith's request for hearing on February 20, 2009. (St. Ex. 1C)

Appearances

Richard Cordray, Attorney General, and Barbara J. Pfeiffer, Assistant Attorney General, for the State. Kevin P. Byers, Esq., for the Respondent.

Hearing Date: July 10, 2009

PRELIMINARY MATTER

The Notice, which was issued February 11, 2009, includes an allegation that Dr. Smith's application was incomplete because he failed to submit one of the two required recommendation forms. However, at the outset of the hearing, the State's counsel informed the Hearing Examiner that the Board had received the second recommendation form on February 10, 2009, the day before the Notice was issued. (See St. Ex. 2 at 40. The date stamp on the form is unclear, indicating that it was received on February 10 or February 18, 2009.) The State's counsel explained that the form did not arrive in time to process it and remove the allegation from the Notice, and that the State would be presenting no evidence in support of that allegation in the Notice. (Tr. at 6-7)

SUMMARY OF THE EVIDENCE

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

Background Information & 2008 Application for Licensure

1. Randall Jay Smith, D.O., was born in 1954 in Canton, Ohio, and obtained his premedical degree at Oral Roberts University. Dr. Smith graduated from the Oklahoma University College of Osteopathic Medicine in 1985. (Tr. at 3, 43-44; Resp. Ex. 5 at 3; St. Ex. 2 at 1)
2. Dr. Smith was licensed to practice in Ohio from July 1986 to December 1988. (Ohio eLicense Center, Medical Board, at <<https://license.ohio.gov/Lookup/>>, Sept. 16, 2009; Tr. at 13-14) Dr. Smith testified that he did a year of "general internship" at Parkview Hospital in Toledo, Ohio. He stated that he did not proceed to a residency but took a job with a physician in family practice in Whitehouse, Ohio, a rural area where he stayed for about a year. He next took a job in Upper Sandusky, Ohio, as the director of an emergency room for three years. After that, he moved to Oregon, where his wife had grown up, and he worked in an emergency-medicine practice for one year. He then took a position at Adventist Medical Group in Portland, Oregon, a hospital-owned clinic where he practiced family medicine for 14 years. Dr. Smith stated that, in the course of 14 years, the practice grew to ninety physicians, and that he was one of the senior physicians when his employment was terminated in February 2004. (Resp. Ex. E at 4; Tr. at 43-47, 106; see, also, St. Ex. 2)
3. In August 2008, Dr. Smith filed an application for restoration of his Ohio certificate. He disclosed that the Oregon Board had revoked his license on April 15, 2005, and that on June 14, 2004, he had pleaded guilty to the offense of False Claim for Health Care Payment, a felony under Oregon law. Further, Dr. Smith provided documentation that the felony had

subsequently been reduced to a misdemeanor by an Oregon court. In addition, Dr. Smith stated that he has held medical licenses only in Ohio and Oregon. (St. Ex. 2)

Action by the Oregon Board

4. In February 2004, the Oregon Board received information from an Oregon police department that Randall Jay Smith, a physician practicing in Oregon, was being investigated for alleged sexual abuse of one of his patients. On February 26, 2004, an investigator for the Oregon Board approached Dr. Smith at his medical office, and Dr. Smith initially denied any sexual contact with the patient. (Tr. at 16-17, 20-24, 84; St. Ex. 3 at 6)
5. On February 26, 2004, Dr. Smith signed an Interim Stipulated Order in which he agreed to withdraw voluntarily from the practice of medicine pending completion of the Oregon Board's investigation. (St. Ex. 3 at 6-8; Tr. at 16-17)
6. In November 2004, the Oregon Board issued a Complaint and Notice of Proposed Disciplinary Action [complaint] against Dr. Smith. In its complaint, the Oregon Board set forth numerous, detailed allegations, including all the items later addressed by the Oregon Board in its final order. Further, the Oregon Board notified Dr. Smith that he was entitled to a hearing if requested. (St. Ex. 3 at 6-9)
7. Dr. Smith testified that he recalls having received the complaint in the mail. He was represented by counsel, and he requested a hearing. However, Dr. Smith later withdrew his hearing request. The matter proceeded to decision by the Oregon Board without an evidentiary hearing. (St. Ex. 3 at 10, 18; Tr. at 18-20)
8. On April 15, 2005, the Oregon Board issued a final order revoking Dr. Smith's license, stating in part:

NOW THEREFORE, * * * the [Oregon] Board enters the following Order.

FINDINGS OF FACT

The evidence of record establishes that Licensee violated the Medical Practices Act, in that:

4.1 Patient A, an adult female patient with a level of mental/emotional function equivalent to approximately a 14-year-old, became a patient of Licensee in May 2002. Licensee treated her for lower back pain, a shoulder injury, anxiety and depression. Licensee treated her pain with Vicodin (hydrocodone/APAP, Schedule III), her depression with Prozac (fluoxetine), and her anxiety with Valium (diazepam, Schedule IV) and Xanax (alprazolam, Schedule IV). Licensee also treated her two teenaged children. Patient A is a financially disadvantaged single mother. In the summer of 2003, Licensee informed Patient A that her back pain could be treated via vaginal massage and arranged to provide this vaginal massage. At the time this was offered, Licensee knew that his treatment was not of medical benefit to Patient A. After a few visits, in which

Licensee digitally massaged Patient A, Licensee convinced her that the massage could be accomplished through sexual intercourse. Subsequently, Licensee began having sexual intercourse with Patient A as well as other sexually related contact. The sexual contact and intercourse occurred in the office setting during scheduled appointments and were billed as 45 minute patient appointments. These appointments had more to do with sex than medicine. Patient A's bills for these visits were created by Licensee and were subsequently paid through Medicaid. This sexual relationship continued for approximately eight months.

4.2 Based upon Licensee's conduct related to billing of Medicaid for office visits by Patient A, Licensee pled guilty in criminal court on July 7, 2004, to one count of making a false claim for health care payment, in violation of ORS 165.692(1).¹ He was sentenced to 30 days of confinement, as well as 30 days on work release, 200 hours of community service and a \$1,000 fine.

4.3 In a September 2004 interview with the Board's Investigation Committee, Licensee admitted to other inappropriate patient boundary violations with three other adult female patients. Licensee stated that he engaged in sexual related conversations with Patient B, an adult female patient, for his own sexual gratification and without a medical purpose. Licensee also admitted to crossing the sexual boundary with Patient C, an adult female patient, by engaging in inappropriate physical contact with Patient C (hugs and kisses) as well as visits to her home. Finally, Licensee admitted to having hugged Patient D too long, and had thought about moving their physician patient relationship to a personal and physical relationship.

5. CONCLUSIONS OF LAW

5.1 Licensee breached well recognized standards of ethics of the medical profession and engaged in conduct that did or might constitute a danger to the health of his patient by engaging in sexual misconduct with an adult female patient.

5.2 Licensee's conduct exploited the vulnerability of a mentally and financially disadvantaged patient. Licensee used his position as a physician to incrementally exploit the trust, knowledge, emotions or influence of this patient derived from his position as a physician for his own selfish ends. In addition, Licensee billed Medicaid for the office visits that he scheduled with Patient A for the purpose of having sex. The above described conduct is the nadir of unprofessional and dishonorable conduct.

¹ The court's judgment entry was filed July 7, 2004. It reflects that Dr. Smith and his counsel had appeared before the court to enter the guilty plea on June 14, 2004, and that the court had proceeded immediately to the pronouncement of sentence at that time. (St. Ex. 4)

5.3 **Licensee's sexually predatory behavior was not limited to one female patient.** Licensee engaged in further acts of unprofessional and dishonorable conduct in regard to sexual boundary violations involving three other adult female patients (Patients B, C, and D).

5.4 Licensee's conviction pursuant to his plea of guilty violates ORS 677.190(6).

5.5 The Board finds upon examination of the record in this case, that each alleged violation of the Medical Practice Act is supported by reliable, probative and substantial evidence.

6. ORDER

IT IS HEREBY ORDERED THAT the license of Randall Jay Smith, DO, to practice medicine in the state of Oregon is revoked. It is further ordered that he pay a fine of \$5,000, to be paid in full within 60 days of the signing of this Order by the Board Chair.

(St. Ex. 3 at 10-13, emphasis added)

9. Dr. Smith admitted that his conduct with Patient A as described in the Oregon Board's order constituted a violation of Section 15 of the Code of Ethics of the American Osteopathic Association. (Tr. at 35-36)
10. Dr. Smith further admitted that the conduct that comprised the criminal conviction was conduct that occurred "in the course of" his practice as a physician. (Tr. at 36)
11. At the hearing, Dr. Smith admitted that that he began treating Patient A in May 2002, and he was treating her for depression and anxiety and also prescribed Vicodin for pain. Dr. Smith stated that his sexual activity with Patient A began in June 2003. He stated that Patient A was still his patient at the time the Oregon Board's investigator approached him on February 26, 2004. Dr. Smith further acknowledged that, when he was initially confronted by the Oregon Board's investigator on that date, he had initially denied any sexual relationship with Patient A. However, that same day, he signed the interim agreement, withdrawing from the practice of medicine pending the investigation's completion. Dr. Smith asserted that, within a very short time, he had admitted the sexual relationship to the investigator on February 26, 2004. (Tr. at 20-24, 84)
12. Dr. Smith admitted that he had prescribed Vicodin for Patient A on her first visit, for sciatica, because her prior physician had been prescribing it. He noted that Patient A had come to him because she was dissatisfied with her prior physician, and that he had not obtained any patient records from the prior physician. (Tr. at 22-23)

Criminal Proceedings in Oregon

13. On June 14, 2004, Dr. Smith and his attorney appeared before the Multnomah County Circuit Court in Oregon in *State v. Randall J. Smith*, Case No. 04-0532597. Dr. Smith entered a plea of guilty to “Count number 1, False Claim Health Care Payment, ORS 165692, a Class C Felony.” The sentencing hearing was held immediately following the acceptance of the plea. (St. Ex. 4)

In a judgment entry filed July 7, 2004, the court stated that it had sentenced Dr. Smith to 30 days in jail and ordered him to pay approximately \$1,000 in fines and costs. The court further imposed a 36-month probation that included 30 days at a work release center, 200 hours of community service, and compliance “with psychological evaluation.” The court noted that Dr. Smith may request “misdemeanor treatment” under Oregon law after 18 months of probation if he has fully complied with the probation terms and conditions. (St. Ex. 4)

14. When asked about the psychological evaluation mentioned in the judgment entry, Dr. Smith testified that he did not do that, and had never seen that requirement on the short form of the judgment that he was given. (Tr. at 33)
15. Dr. Smith testified that his felony conviction was reduced to a misdemeanor about two and a half years after the guilty plea and sentencing. (Tr. at 34-35) Indeed, the Notice issued by the Board alleges only a misdemeanor conviction. (St. Ex. 1A) In addition, Dr. Smith testified that the conviction was subsequently expunged. He presented a copy of a February 2009 entry from the Oregon court, Order Setting Aside Conviction Record, in which the court ordered that the 2004 conviction was set aside and that Dr. Smith was “deemed not to have been previously convicted of said offense.” (Resp. Ex. F; Tr. at 68)

Dr. Smith’s Testimony Regarding the Events in Oregon

16. Dr. Smith testified that the revocation by the Oregon Board was not a permanent revocation. He stated that he can apply for relicensure in Oregon but has not attempted to do so. (Tr. at 13)
17. Dr. Smith admitted that the vaginal massage he performed on Patient A² was wrongful because it was not done with a purpose of medical treatment. However, he indicated that the concept of massaging a woman’s lower back from inside her vagina is not as unacceptable as it may sound. He testified that certain areas of the lower back can be massaged more effectively from the interior of the body than from the exterior, and that there is a recognized and accepted “intrapelvic approach,” which he said would be appropriate for some patients who suffer from pyriformis syndrome. (Tr. at 49-53)
18. Dr. Smith stated, however, that the procedure is performed by physical-medicine specialists with special training, and is not done by family physicians such as himself. (Tr. at 50-52)

²During the hearing, Patient A’s name was provided in a sealed exhibit, in which she is referred to as Patient 1. (St. Ex. 1B) In this matter, the terms “Patient A” and Patient 1” refer to the same person and are used interchangeably.

19. Dr. Smith further stated that he did not dictate a note about the procedure because he thought his staff would question it. (Resp. Ex. E at 6)
20. He further testified that he did not use a chaperone when he performed the vaginal massage of Patient A because, “if I treated her with a chaperone in there,” the chaperone would “think I was crazy.” Dr. Smith asserted that, at the time he decided to administer vaginal massage to this patient, he rationalized to himself that the patient really needed this particular treatment but that her insurance was too minimal to pay for a physical-medicine specialist. However, he acknowledged that the truth was that he “was really wanting to have sexual contact.” He admitted that he had used his position as a physician to gain the sexual contact he desired. (Tr. at 50-53)
21. Dr. Smith stated that, when he performed the first vaginal massage, Patient A indicated verbally that it was pleasurable and her face showed sexual excitement. He stated that, during the third unchaperoned visit involving vaginal massage, he massaged the patient’s clitoris to orgasm and subsequently had three office visits with her that culminated in sexual intercourse. Dr. Smith stated that he knew it was inappropriate and unethical to cross a sexual boundary with a patient, and he recognized that he could not stop. He testified that Patient A told someone about what was happening at Dr. Smith’s office, and the matter was reported to the Oregon Board. Dr. Smith asserted at the hearing that, during part of these office visits, he did provide some genuine medical care; he asserted that the sexual activity took only seven or eight minutes because he had a busy schedule and was afraid of being caught. (Resp. Ex. E at 6; Tr. at 83-88, 104)
22. Dr. Smith testified that Patient A did not have the mental/emotional functioning level of a 14-year-old. His explanation for the finding by the Oregon Board was that, when an investigator had first approached him about sexual misconduct with Patient A, he (Dr. Smith) had initially claimed that he had done nothing wrong and that the patient had the developmental capacity of a 14-year-old. Dr. Smith testified that he was “not thinking straight” but was trying to discredit the patient’s allegations, and that his description of the patient was not true. (Tr. at 107-108; see, also, Resp. Ex. E at 6)
23. Dr. Smith testified regarding stressors he experienced that, he believes, affected his conduct as a physician in 2001 and thereafter. Among other things, Dr. Smith explained that his son had sustained significant and disfiguring injuries in 1991 from a bicycle accident, for which Dr. Smith felt responsible, because the son had ridden Dr. Smith’s new bicycle, which had thin racing tires and a removable wheel, which had come off. Dr. Smith stated that the child began displaying behavioral problems and was diagnosed with frontal lobe syndrome. Dr. Smith asserted that there had been an initial failure to diagnose properly, and the whole event caused him to experience a “mild depression” for which he took no treatment other than exercise. Dr. Smith noted that his son recovered sufficiently to complete successful service as a Marine and is now in college. However, Dr. Smith stated that, by 2001, the treatment for the injury had caused huge debt that Dr. Smith paid with credit cards at high interest. He stated that, at the time he engaged in the misconduct with Patient A, he was in a “terrible state of mind.” (Tr. at 53-54; Resp. Ex. E at 5)

24. In addition, Dr. Smith stated that there were significant problems in his relationship with his wife, and that their relationship had deteriorated badly by 2001. He testified that she had had a spending addiction for many years, which caused financial problems and frequent discord. According to Dr. Smith, when their mortgage payment ballooned from 4% to 11% APR, their indebtedness caused them to sell their home in 2001 and move into an apartment. He stated that, in March 2001, he moved out, living in the family's recreational vehicle and later in his own apartment. His daughters lived with their mother and his son lived with him. (Resp. Ex. E at 5; Tr. at 59-60) Dr. Smith stated that his depression became more severe, but he did not seek psychiatric care. (St. Ex. E at 5).
25. Dr. Smith testified that, in April 2002, he and his wife reunited, not because they wanted to, but due to the children's distress at the separation. He stated that there was no real change in the relationship; marital life was cold, without significant communication, and for the first time sexually dysfunctional. Dr. Smith stated that he obtained treatment for this sexual dysfunction from his primary-care physician "and talked him into testosterone therapy, which he took for one year." Dr. Smith stated that the therapy did not improve his sexual dysfunction but made him "horny." (Tr. at 59-60; Resp. Ex. E at 5).
26. Dr. Smith stated that his indebtedness and refusal to enter into bankruptcy led to a shift in how he practiced medicine. He began doing things to increase the gross billings, of which he received a percentage. He looked at his patients "as a way to make money" rather than "solely looking at the interests of the patient." When he separated from his wife, he began to think of some female patients as potentially fulfilling his personal and social needs, and he began thinking of some patients as potential future wives. He hugged patients, had conversations about their mutual interests, and told one patient of his marital problems. He befriended the daughter of an elderly patient who had brought her mother for treatment and made two or three unnecessary personal deliveries solely for the opportunity to see the daughter. Dr. Smith stated that he had once kissed this woman in his office when she was there for her mother, and saw her subsequently for a sore throat on one occasion. (Resp. Ex. E at 5-6; Tr. at 55-56)
27. Dr. Smith stated that he began treating Patient A in May 2002. He stated that she was dressed in a sexually provocative manner, and that a nurse had warned him about this. He reported that he stayed within appropriate physical boundaries for thirteen months. (Resp. Ex. E)
28. Dr. Smith testified that he had been attracted to Patient A from the beginning. (Tr. at 47-48) He recalled in 2009 that she had been dressed in a pink miniskirt during the first visit in 2002, and he had thought she was "sexually provocative." (Resp. Ex. E at 8) He testified that, from May 2002 to May 2003, he became emotionally enmeshed with Patient A and that she "was bonding to" him. He stated that he was counseling her in 45-minute sessions. "I was an excellent listener. I gave her my full attention. She was sharing emotionally intimate things with me." (Tr. at 48-49) Dr. Smith admitted that, although he usually called counselors when patients were on psychotropic medications, he did not do so in this patient's case. (Resp. Ex. E)
29. Although Dr. Smith admitted many of the incidents described by the Oregon Board in its order, he denied some of them. For example, he admitted that, in his interview with the

Oregon investigative committee, he had disclosed the events with Patient C as described in the order, but he asserted that he had not disclosed incidents with Patients B and D as described. (Tr. at 57-58)

30. Dr. Smith admitted at the hearing that paragraphs 2(b), 2(c) and 2(d) in the Board's Notice were based on information he provided to the Board under oath in his answers to the Board's interrogatories. (Tr. at 114)
31. Dr. Smith stated that, since he lost his Oregon license, he has been employed in a variety of jobs and had to file for bankruptcy. He testified that he and his family have moved back to Ohio and that he has not practiced medicine since February 26, 2004. (Tr. at 23; Resp. Ex. E at 7)

Application Materials – Recommendation Forms

32. Included in Dr. Smith's application materials is a recommendation form completed by Jeffrey Wirebaugh, M.D., of Perrysburg, Ohio, who rated Dr. Smith's medical knowledge and technique as "more than adequate" and his ability to work well with peers and medical staff as "excellent." (St. Ex. 2 at 21; Tr. at 24-25) At the hearing, however, Dr. Smith acknowledged that he had never worked with Dr. Wirebaugh. He testified that he had gone to Dr. Wirebaugh's clinic and had two or three "long sessions" during which Dr. Wirebaugh had asked him "many medical questions." Dr. Smith had also accompanied Dr. Wirebaugh to "two sessions" with patients, but Dr. Smith did not see or treat any patients himself during that time. (Tr. at 25-26)
33. The second recommendation was submitted by Jonathan Rohrs, M.D., of Holland, Ohio, with a signature date of February 6, 2009. Dr. Rohrs rated Dr. Smith as "excellent" or "very good" in all categories and further commented as follows: "I recommend him without any reservations." At the hearing, Dr. Smith testified that he had gotten to know Dr. Rohrs during the hospitalizations of Dr. Smith's wife and father-in-law, when Dr. Rohrs had been their treating physician. According to Dr. Smith, the basis of Dr. Rohrs' recommendation was "spending time" with Dr. Smith during these hospitalizations of Dr. Smith's family members and discussing "various medical issues." Dr. Smith stated that he did not shadow Dr. Rohrs. Moreover, Dr. Smith acknowledged that Dr. Rohrs did not have knowledge that Dr. Smith had been convicted in Oregon for claiming payment for an office visit during which he had sex with the patient. (St. Ex. 2 at 40; Tr. at 26, 29-31)
34. With regard to this second recommendation, Dr. Smith acknowledged that, although he submitted his licensure application in August 2008, Dr. Rohrs' recommendation form was not submitted to the Board until February 2009. (Tr. at 27)

Dr. Smith's Evidence Regarding Rehabilitation

35. Dr. Stephen B. Levine, M.D., and Candace B. Risen, L.I.S.W., are associated with the Center for Marital and Sexual Health, Program for Professionals, in Beachwood, Ohio, and they provided a written report dated June 19, 2009. Their evaluation was undertaken with regard to Dr. Smith's "quest for relicensure," and it focuses on his psychiatric/psychological status and their opinion

regarding whether he can safely return to work as a physician. Neither Dr. Levine nor Ms. Risen appeared at the hearing to testify. (Resp. Ex. E; Tr. at 2-3)

36. A portion of the Levine/Risen report was authored by Marvin Wasman, Ph.D., who described the psychological testing he administered to Dr. Smith. (Resp. Ex. E at 8-9) Dr. Wasman also did not testify at the hearing.
37. The Levine/Risen report sets forth a variety of observations, including:
 - The filing of bankruptcy has lessened the financial stress on Dr. Smith. He is now getting along better with his wife. (Resp. Ex. E at 7)
 - Dr. Smith's statements during an interview demonstrated that he lacked insight with regard to the fact that his thoughts and behavior toward Patient A had been exploitive long before the office visit when she responded sexually to the vaginal massage he performed. Ms. Risen stated: "My general impression was that Dr. Smith lacks insight into his own motivations and internal struggles. Since the offense, he has studied boundary crossing and related issues but he needs help applying the concepts to his internal world." (Resp. Ex. E at 8)
 - The test results reported by Dr. Wasman show that Dr. Smith tended to present himself in a favorable light, depicting an image of having good impulse control, high moral values, and few if any psychological problems. The clinical scales on the Minnesota Multiphasic Personality Inventory-2 were within normal limits, but the profile suggested "the picture of a narcissistic self-centered individual who is somewhat tense and anxious." Dr. Wasman commented that Dr. Smith "generally denies feelings, particularly anger, which may be directed toward family members," and that, when Dr. Smith "does become aware of anger, he tends to rationalize or blame others." The Millon Clinical Multiaxial Inventory-III showed "Avoidant personality features" and a tendency to be guarded, non-competitive, and passive in order to avoid rejection, criticism, and subsequent feelings of resentment and anxiety. (Resp. Ex. E at 9)
38. Among other things, Dr. Levine and Ms. Risen noted that Dr. Smith had attended 24 hours of continuing medical education in February 2009 in a program sponsored by the University of Alabama at Birmingham. (Resp. Ex. E at 2)
39. The authors opined that Dr. Smith could "safely be allowed to return to practice" under a five-year plan of supervision, which would "at least include" regular psychotherapy for at least two years, a chaperone for women patients, "yearly involvement as a learner with medical ethics/boundaries courses, books, etc.," and supervision of his medical work by a physician colleague. They noted that their Program for Professionals is an evaluation and rehabilitation program in which they "try to preserve society's medical resources such as Dr. Smith." (Resp. Ex. E at 9-10)
40. Dr. Levine and Ms. Risen did not set forth a diagnosis of any disorder. However, they stated that they would recommend a return to practice "only if we feel the major psychopathology is

understood and manageable with psychiatric attention.” They stated that, in their opinion, Dr. Smith “is quite manageable.” (Resp. Ex. E at 10) They concluded:

In our opinion, Dr. Smith is likely to live a modest devoted grateful life as a physician if the Board gives him a chance. He is now eager to have psychotherapy. We are astounded that he had not seriously considered this in the past, but he had little psychiatric education, knowledge, and sophistication and in his quiet way, was quite narcissistic. He has a lot of learn about himself and the patients’ feelings about their doctors. We think a five-year plan will be successful.

(Resp. Ex. E at 10)

41. Dr. Smith testified that he had not commenced psychotherapy. However, he stated that he plans to do so and believes that there will be a source of funds to pay for it. (Tr. at 100, 112)
42. Dr. Smith provided a certificate of attendance at a CME program in February 2009, “The Atlanta Professional Boundaries & ethics Program – Professional Boundary Problems: Addressing Underlying Causes, Treatment, and Prevention,” for which he received 24 Category 1 credits. He also provided the brochure describing the program’s content. (Resp. Exs. A, B; Tr. at 62-63) Dr. Smith also provided a letter from Professional Boundaries, Inc., in Destin, Florida, stating that he had completed a June 2009 course in professional boundaries and ethics, and was awarded 12 CME credits. Steven Schenthal, M.D., M.S.W., the executive director of Professional Boundaries, Inc., stated that Dr. Smith had “demonstrated insight into the issues that contributed to his original violation” and has constructed a Stratified Boundary Protection Plan, a component of the course that is designed to help assure the safe practice of medicine by Dr. Smith if the Board grants him the privilege. The director further stated that, “from an educational perspective” regarding professional boundaries and ethics, Dr. Smith is “appropriate to return to practice.” (Resp. Ex. C; Tr. at 63-66)
43. Dr. Smith provided a copy of his Stratified Boundary Protection Plan. He testified that the Boundary Protection Plan, especially the personal plan, involves behavioral changes, “real significant changes” on which he has been working for five years, since the 2004 events in Oregon. (Resp. Ex. D; Tr. at 66-67)
44. Dr. Smith testified that he realizes that it is his responsibility to maintain boundaries, and that he believes that he “would maintain those boundaries” because, for example, he has “learned what practical professional risk factors” he had “that would be eliminated,” such as “never be alone with a female patient.” Dr. Smith believes that, with a peer monitor, a good relationship with other physicians in the office, and ongoing counseling, he would do well. (Tr. at 70-71)
45. Dr. Smith stated that he and his wife are still married and are living together. He testified that their relationship is now “great.” He attributes this change to the following: “I’ve changed. I’m not the same person.” (Tr. at 60)

46. Dr. Smith presented a letter from Terry Priestap, pastor of the Christian Fellowship Church in Holland, Ohio. Pastor Priestap did not appear as a witness at the hearing. He stated in the letter that he has spent significant time with Dr. Smith in the past five years and that Dr. Smith has exhibited a “very high moral character and integrity in every aspect of his life that I have been able to observe” and has been honest and remorseful about his past mistakes. The pastor stated that he has “every confidence” that Dr. Smith “would not repeat those kinds of mistakes.” (Resp. Ex. G)
47. Dr. Smith also presented a letter from Jeffrey Kirkbride, the President of the Science Faith and the Kingdom, a Christian ministry, who stated that he has interacted with Dr. Smith for the past two years. Mr. Kirkbride did not testify at the hearing. In his letter, he stated that Dr. Smith had been candid “regarding the boundary issues that contributed to his loss” of his Oregon license. Mr. Kirkbride’s opinions include the following: that Dr. Smith has indeed realized his errors in the past” and the need to set very clear boundaries in the future regarding his relationships; that Dr. Smith has shown “zeal to help others (counselors, psychologists and pastors) set boundaries in their client relationships”; and that Dr. Smith has truly changed his attitudes and behavior from the past. (Resp. Ex. H, emphasis in original)
48. Dr. Smith further stated:

I have some close friends now. I have a more balanced life. I understand healthy boundaries better now, and it's been through informal counseling with friends and pastor and self-reflection that I've been able to learn -- bring about -- see those behavioral changes take place.

* * *

I've been able to come to an understanding of why I did what I did, and I'm fully confident that I will never, ever do it again. And, fortunately now, my risk factor's much lower. I do not have the debt. My marriage problems are mostly resolved. I have good friends now.

But more important than any of that, I know in my heart -- it's a conviction now -- to respect other people's boundaries. And I have done a lot of thinking about patient boundaries. And it's a conviction. It's not just a mental idea. But it's a boundary between you and the patient you need not ever go over, and it's a set of rules and regulations that define acceptable professional behavior. There are legal and ethical rules and regulations, and they're absolutely non-negotiable. They go hand in hand with having a medical license. If you don't abide by them, I don't think you should have a medical license.

(Tr. at 67, 70-71)

CREDIBILITY DETERMINATIONS

The Hearing Examiner found that the final order of the Oregon Board was reliable. In contrast, Dr. Smith's testimony that Patient A was not really at the mental/emotional level of a 14-year-old was not credible. The Oregon Board gave Dr. Smith due notice of the allegations against him, but he withdrew his request for a hearing at which he could have presented his views and evidence regarding the facts and events. If Dr. Smith wanted to challenge the allegations made against him by the Oregon Board, the time to do so was in 2004 in a hearing before that board, not five years later before the Ohio Board.

In addition, the Hearing Examiner did not believe Dr. Smith's testimony that, during the 45-minute visits with Patient A, the sexual activity comprised only seven or eight minutes of the time. Based on observations of the witness at hearing, the Hearing Examiner was persuaded that Dr. Smith minimized the amount of time spent engaging in sexual activity in an attempt to minimize the extent of his false billing for medical services. Likewise, when Dr. Smith testified that his marital relationship is now "great" because he has "changed" so much and is "not the same person," his voice and enthusiasm sounded forced and insincere. The Hearing Examiner was convinced, based on the demeanor and tone of the witness, that Dr. Smith wished it were true, but that it is not true.

During the hearing, Dr. Smith readily admitted his wrongdoing again and again, but he seemed bewildered as to how it could be true that he had committed these acts. At times, he clearly appeared to be groping for explanations because he sees himself as a person of good moral character, which was difficult to reconcile with his conduct. His explanations were generally not convincing, which is consistent with the June 2009 observations in the Levine/Risen report that Dr. Smith still lacks insight into his own motivations and internal struggles.

FINDINGS OF FACT

1. In August 2008, Randall Jay Smith, D.O., submitted to the Board an application to restore his inactive certificate to practice osteopathic medicine and surgery in Ohio. His certificate has been inactive since December 1988.

In his application for restoration, Dr. Smith disclosed that the Oregon Board of Medical Examiners [Oregon Board] revoked his license on April 15, 2005, and that he had pleaded guilty on June 14, 2004, to one count of False Claim Health Care Payment, and was convicted of a Class C felony, which was later reduced to a misdemeanor by an Oregon court. At the hearing, Dr. Smith presented evidence that this conviction was subsequently set aside under Oregon law.

2. On April 15, 2005, the Oregon Board issued a final order whereby it revoked Dr. Smith's license to practice medicine in Oregon. This final order was based, in part, on findings of fact that Dr. Smith had a sexual relationship with an adult female patient with a level of mental/emotional function equivalent to approximately a 14-year old, that the sexual contact and intercourse occurred in the office setting during scheduled appointments and were billed

as 45-minute patient appointments, and that he had pleaded guilty to one count of making a false claim for health care payment.

3. (a) Dr. Smith has admitted under oath that, beginning in June 2003 and continuing into November 2003, he engaged in sexual contact with Patient 1, whom he was treating for depression and anxiety. (Patient 1, who is identified in the Board's confidential patient key, is the same person as Patient A in the Oregon Board's final order.)

(b) Dr. Smith has admitted under oath that his conduct with Patient 1 was a violation of Section 15 of the Code of Ethics of the American Osteopathic Association.

(c) Dr. Smith has admitted under oath that, in the summer of 2003, he had also crossed the sexual boundary by engaging in inappropriate physical contact with another adult female patient as described by the Oregon Board in its final order, including hugging and kissing her.

(d) Dr. Smith admitted under oath that he had improperly billed for one office visit with Patient 1, and that it was improper because he had billed for an office visit during which he engaged in sexual contact with the patient. Dr. Smith also admitted that he had pleaded guilty in an Oregon court in June 2004 to one count of False Claim for Health Care Payment, a class C felony, and that, on July 7, 2004, the Oregon court filed a judgment entry regarding the conviction, which was later reduced to a misdemeanor conviction by the Oregon court.
4. Dr. Smith has not practiced medicine and surgery since February 26, 2004.

CONCLUSIONS OF LAW

1. The final order of the Oregon Board in April 2005 with regard to Randall Jay Smith, D.O., as described above in Findings of Fact 1 and 2, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that language is used in R.C. 4731.22(B)(22).
2. Dr. Smith's acts, conduct, and/or omissions as described above in Findings of Fact 2 and 3 above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that language is used in R.C. 4731.22(B)(18), with respect to Section 15 of the Code of Ethics of the American Osteopathic Association.
3. In addition, Dr. Smith's guilty plea and/or the judicial finding of guilt as set forth above in Findings of Fact 1 and 3 and referenced in Finding of Fact 2, constitute a "plea of guilty to, a

judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,” as that language is used in R.C. 4731.22(B)(11), Ohio Revised Code.

4. Under R.C. 4731.222 and 4731.08, Dr. Smith must furnish evidence satisfactory to the Board of his good moral character. He has not met that requirement.
5. There is insufficient evidence to establish that Dr. Smith failed to complete the restoration application by failing to provide one of the Certificate of Recommendation forms required. The State formally notified the Hearing Examiner that the State would not seek to prove that allegation.
6. Because Dr. Smith’s certificate to practice osteopathic medicine and surgery in Ohio expired in 1988 and has remained inactive since then, and because he has not practiced medicine for a period in excess of two years before the submission of his application for restoration, the Board, if it chooses to grant restoration of Dr. Smith’s certificate, may exercise its discretion under R.C. 4731.222 to require additional evidence of Dr. Smith’s fitness to resume practice.

Analysis

All patients are vulnerable to their physicians simply by virtue of their status as patients. Some patients, however, are more vulnerable than others. The Oregon Board found that Dr. Smith exploited the vulnerability of a mentally and financially disadvantaged patient. The Oregon Board found that Dr. Smith, through his position as a physician, gained the patient’s trust and knowledge of the patient and her emotions, and that he then acted “to incrementally exploit” this trust and knowledge in order to satisfy “his own selfish ends.” In revoking Dr. Smith’s medical license, the Oregon Board observed that Dr. Smith’s conduct was at “the nadir of unprofessional and dishonorable conduct.” The Hearing Examiner agrees; Dr. Smith’s sexual misconduct was unprofessional, unethical, and dishonorable. In addition, Dr. Smith pleaded guilty to a criminal offense committed in the course of his medical practice.

Under Ohio statutes, an applicant for licensure must furnish evidence satisfactory to the Board of good moral character. Dr. Smith has not done that. The recommendations he provided with his application lack reliability. Although Dr. Smith provided at hearing two recent character references from church leaders, the writers may or may not have known the entirety of the events in Oregon; neither of them testified. Moreover, it is indisputable that Dr. Smith has a history of deceptive, dishonorable, and exploitive behavior in the course of his medical practice, as set forth by the Oregon Board in its final order. Dr. Smith testified at hearing that he knew his conduct regarding Patient 1 was wrong when he did it.

Although the Hearing Examiner accepts that an individual may undergo a conversion experience and sustain a profound change in character, the Hearing Examiner is not convinced that this has happened with Dr. Smith. Although Dr. Smith expressed more than one *mea culpa* during the hearing, it appeared frequently that he was trying to say all the “right things” about being a new person, rather than actually being a new person. The Hearing Examiner is not convinced that a thorough

rehabilitation has taken place. As recently as June 2009, Dr. Smith's *own* consultants reported that he showed a lack of insight into his exploitive conduct and into his own motivations and internal struggles. In addition, although the CME programs were probably very beneficial to Dr. Smith, they do not establish a profound change in his character.

In sum, Dr. Smith has not furnished satisfactory evidence that he has a good moral character, and he has therefore not met a mandatory requirement for licensure.

Although Dr. Smith gained the Hearing Examiner's sympathy at times with his eloquent testimony of his family sorrows and his repeated admissions of guilt, the Hearing Examiner remains mindful that the Board's primary mission is to protect the public. Balancing all the factors, the Hearing Examiner believes that a denial of the restoration application is appropriate. Further, the Hearing Examiner believes that Dr. Smith's conduct with regard to Patient 1, alone, warrants a permanent denial.

PROPOSED ORDER

It is hereby **ORDERED** that:

The application of Randall Jay Smith, D.O., to restore to active status his certificate to practice osteopathic medicine and surgery in the State of Ohio is **PERMANENTLY DENIED**.

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



Patricia A. Davidson
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 14, 2009

REPORTS AND RECOMMENDATIONS, MOTIONS FOR RECONSIDERATION & PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Madia announced that the Board would now consider the Reports and Recommendations, the Motion for Reconsideration and the Proposed Findings And Proposed Orders appearing on its agenda.

Dr. Madia asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of: Rafael A. Badri, M.D.; Ericka L. Davis, P.A.; Candy Hope, L.M.T.; Ravi Dutt Madan, M.D.; Randall Jay Smith, D.O.; and Rick D. St. Onge, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Varyani	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Ogg	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia 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. Varyani	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Ogg	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further

adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.;

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

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

.....

Dr. Talmage left the room during the previous discussion.

.....

RANDALL JAY SMITH, D.O.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF RANDALL JAY SMITH, D.O. DR. VARYANI SECONDED THE MOTION.

.....

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

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

The motion carried.

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

February 11, 2009

Case number: 09-CRF- 019

Randall Jay Smith, D.O.
2814 Emmick Dr.
Toledo, OH 43606

Dear Doctor Smith:

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

- (1) In or around August 2008, you caused to be submitted to the Board an Application for Licensure Restoration Medicine or Osteopathic Medicine [Application for Restoration], which is currently pending. Your Ohio certificate to practice osteopathic medicine and surgery has been inactive since on or about December 31, 1988. In your Application for Restoration, you disclosed that the Oregon Board of Medical Examiners [Oregon Board] revoked your license on or about April 15, 2005, and that on or about June 14, 2004, you were convicted of one count of False Claim Health Care Payment, which was a felony, but was later reduced by an Oregon court to a misdemeanor.
- (2) In the materials that you provided to the Board and that the Board obtained during its investigation, the additional information revealed the following:
 - (a) On or about April 15, 2005, the Oregon Board issued a Final Order of Default whereby it revoked your license to practice medicine. The Oregon Board's Final Order of Default was based, in part, on findings of fact that you had a sexual relationship with an adult female patient with the level of mental/emotional function equivalent to approximately a 14-year old; that the sexual contact and intercourse occurred in the office setting during scheduled appointments and were billed as 45 minute patient appointments; and that you had pled guilty to one count of making a false claim for health care payment.

Mailed 2-12-09

A copy of the Oregon Board 2005 Final Order of Default is attached hereto and incorporated herein.

- (b) You admitted under oath that from in or around June 2003 to November 2003, you had engaged in sexual contact with Patient 1 who you were also treating for depression and anxiety. (Patient 1 is identified in the attached Patient Key, which is confidential and shall be withheld from public disclosure.) You further admitted that it would be unethical and unprofessional for a physician to have sexual contact and/or sexual conduct with a patient.
- (c) You admitted under oath that you improperly billed for one office visit with Patient 1, and that the billing was improper because sexual contact occurred during the time billed.
- (d) You admitted under oath that in or around the summer of 2003, you engaged in sexual contact and/or sexual conduct, which you described as kissing on one occasion, with another patient in your office.
- (e) On or about July 6, 2004, you were convicted of one count of False Claim Health Care Payment, a class C felony under Oregon law. You admitted under oath that with respect to the aforesaid conviction, you believed that the specific conduct that led to the conviction involved billing for an office visit during the time you were engaged in sexual contact with Patient 1. You further informed the Board that the Oregon court subsequently ordered that your felony conviction be declared a misdemeanor.
- (f) You last practiced medicine and surgery on or about February 26, 2004.

As alleged in Paragraphs (1) and (2) above, you have requested restoration of your certificate to practice osteopathic medicine and surgery in Ohio. However, for a period in excess of two years prior to submission of your Restoration Application, the certificate to practice osteopathic medicine and surgery previously issued to you by this Board has been inactive and you have not been engaged in the active practice of osteopathic medicine and surgery, which constitutes cause for the Board to exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of your fitness to resume practice. Additionally, you failed to furnish evidence satisfactory to the Board of your good moral character in accordance with Sections 4731.222 and 4731.08, Ohio Revised Code. Further, you failed to complete the aforementioned Restoration Application in that you did not provide one of the Certificate of Recommendation forms required.

The Oregon Board 2005 Final Order of Default, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic

medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: American Osteopathic Association, Code of Ethics, Section 15, copies of selected portions of which are attached hereto and incorporated herein.

Further, your plea of guilty or the judicial finding of guilt as alleged in paragraph (2) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

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

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever

thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Handwritten signature of Lance A. Talmage, M.D. in black ink, with a small 'M.D.' and a flourish to the right.

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3066 6931
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.
Kevin P. Byers Co., L.P.A.
107 South High Street, Suite 400
Columbus, Ohio 43215

CERTIFIED MAIL #91 7108 2133 3936 3066 6924
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
RANDALL JAY SMITH, D.O.**

09-CRF-019

**FEBRUARY 11, 2009 NOTICE OF
OPPORTUNITY FOR HEARING
PATIENT KEY**

**SEALED TO
PROTECT PATIENT
CONFIDENTIALITY AND
MAINTAINED IN CASE
RECORD FILE.**

BEFORE THE
BOARD OF MEDICAL EXAMINERS
STATE OF OREGON

In the Matter of)
)
RANDALL JAY SMITH) FINAL ORDER BY DEFAULT
LICENSE NO. DO15715)

1.
7

8 The Board of Medical Examiners (Board) is the state agency responsible for licensing,
9 regulating and disciplining certain health care providers, including physicians, in the state of
10 Oregon. Randall Jay Smith, DO (Licensee) holds an active license to practice medicine in the
11 state of Oregon.

12 2.

13 On November 2, 2004, the Board issued a Complaint and Notice of Proposed Disciplinary
14 Action, informing Licensee that failure to request a hearing or to appear at any hearing would
15 constitute waiver of the right to a contested case hearing and result in a default order. This Notice
16 designated the Board's file on this matter as the record for purposes of default and granted Licensee
17 an opportunity for a hearing, if requested within 60 days of service of the Notice. In a letter dated
18 February 22, 2005, legal counsel representing Licensee informed the Board that Licensee "withdraws
19 his request for a hearing." As a result, the requisite 60 days have lapsed and Licensee stands in
20 default. The Board elects in this case to designate the record of proceeding to date, which consists of
21 Licensee's file with the Board, as the record for purposes of proving a prima facie case.

22 3.

23 In the Complaint and Notice, the Board proposed to take disciplinary action pursuant to
24 ORS 677.205 for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a)
25 unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); ORS 677.190(4)
26 obtaining a fee by fraud or misrepresentation; and ORS 677.190(6) conviction of an offense
27 punishable by incarceration in a state or federal correctional facility.

OHIO STATE MEDICAL BOARD

RECEIVED

1 4.

2 NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters
3 the following Order.

4 FINDINGS OF FACT

5 The evidence of record establishes that Licensee violated the Medical Practices Act, in
6 that:

7 4.1 Patient A, an adult female patient with a level of mental/emotional function
8 equivalent to approximately a 14 year old, became a patient of Licensee in May 2002. Licensee
9 treated her for lower back pain, a shoulder injury, anxiety and depression. Licensee treated her
10 pain with Vicodin (hydrocodone/APAP, Schedule III), her depression with Prozac (fluoxetine),
11 and her anxiety with Valium (diazepam, Schedule IV) and Xanax (alprazolam, Schedule IV).
12 Licensee also treated her two teenaged children. Patient A is a financially disadvantaged single
13 mother. In the summer of 2003, Licensee informed Patient A that her back pain could be treated
14 via vaginal massage and arranged to provide this vaginal massage. At the time this was offered,
15 Licensee knew that his treatment was not of medical benefit to Patient A. After a few visits, in
16 which Licensee digitally massaged Patient A, Licensee convinced her that the massage could be
17 accomplished through sexual intercourse. Subsequently, Licensee began having sexual
18 intercourse with Patient A as well as other sexually related contact. The sexual contact and
19 intercourse occurred in the office setting during scheduled appointments and were billed as 45
20 minute patient appointments. These appointments had more to do with sex than medicine.
21 Patient A's bills for these patient visits were created by Licensee and were subsequently paid
22 through Medicaid. This sexual relationship continued for approximately eight months.

23 4.2 Based upon Licensee's conduct related to billing of Medicaid for office visits by
24 Patient A, Licensee pled guilty in criminal court on July 7, 2004, to one count of making a false
25 claim for health care payment, in violation of ORS 165.692(1). He was sentenced to 30 days of
26 confinement, as well as 30 days on work release, 200 hours of community service and a \$1,000
27 fine.

OHIO STATE MEDICAL BOARD

SEP 15 2008

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6.

ORDER

IT IS HEREBY ORDERED THAT the license of Randall Jay Smith, DO, to practice medicine in the state of Oregon is revoked. It is further ordered that he pay a fine of \$5,000, to be paid in full within 60 days of the signing of this Order by the Board Chair.

DATED this 15 day of April, 2005.

BOARD OF MEDICAL EXAMINERS
State of Oregon



JOSEPH J. THALER, MD
BOARD CHAIR

Right to Judicial Review

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of service is the day it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60 days time period, you will lose your right to appeal.

OHIO STATE MEDICAL BOARD

SEP 15 2008

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Oregon Medical Board

Verification of Licensure



SUBJECT TO TERMS AND CONDITIONS

Information current as of: 09/07/2008
Query Time: 2008-09-08 10:48:13.606545
Session Info: 172.21.5.5/9A4AE9ED2D128A263023935FC59A3137

This site is a primary source for verification of license credentials consistent with JCAHO and NCQA standards.

Licensee: **Smith, Randall Jay DO**
Gender: Male
Year of Birth: 1954

LOCATION

City: _____ Business Phone: _____
County: _____
State: _____

LICENSE

Number: **DO15715**
Type: Osteopathic Physician and/or Surgeon
Basis: National Board
Issued: 07/15/1988 Current Status: Revoked
Expires: 04/15/2005

OTHER LICENSES

Number	Effective Date	Expiration Date	License Type
LL03829	07/01/1988	07/14/1988	LLS

EDUCATION

School: OK Col/Osteo Med & Surg
Graduation: 05/18/1985 **Reported Specialty:** Family Practice
Location: Tulsa, OK

BOARD ORDERS

Standing: Public order(s) on file. See below.

Effective Date: 04/15/2005
Order Type: **Final Order** [More info](#)

The Board issued a Final Order against Licensee on April 15, 2005. In this Order, the Board revoked Licensee's Oregon medical license and imposed a \$5,000 fine. See attached.

11/02/2004 **Complaint & Notice**

A Complaint & Notice of Proposed Disciplinary Action was issued by the Board on November 2, 2004. This document alleges violations of the Medical Practice Act (state law) related to unprofessional conduct, obtaining a fee by fraud or misrepresentation, and conviction of an offense punishable by incarceration in a state or federal correctional facility. This is a preliminary action by the Board. A final Board action in

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this matter has not been taken. This order ended on 04/15/2005. See attached.

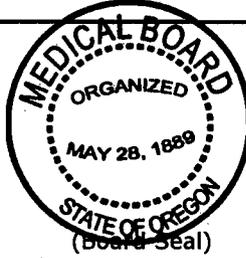
03/04/2004

Interim Stipulated Order

Licensee entered into a Interim Stipulated Order with the Board on March 4, 2004. In this Order licensee agreed to withdraw from practice pending the conclusion of the Board's investigation regarding his competency to practice medicine. This order ended on 04/15/2005. See attached.

Oregon Medical Board
1500 SW 1st Ave, Suite 620
Portland, OR 97201

(971) 673-2700



(Board Seal)

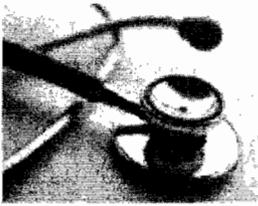
Verification prepared by:

A handwritten signature in black ink, appearing to read "R. Washington", is written over a horizontal line.

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AMERICAN OSTEOPATHIC ASSOCIATION

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Code of Ethics

The American Osteopathic Association has formulated this Code to guide its member physicians in their professional lives. The standards presented are designed to address the osteopathic physician's ethical and professional responsibilities to patients, to society, to the AOA, to others involved in healthcare and to self.

Further, the American Osteopathic Association has adopted the position that physicians should play a major role in the development and instruction of medical ethics.

Section 1. The physician shall keep in confidence whatever she/he may learn about a patient in the discharge of professional duties. The physician shall divulge information only when required by law or when authorized by the patient.

Section 2. The physician shall give a candid account of the patient's condition to the patient or to those responsible for the patient's care.

Section 3. A physician-patient relationship must be founded on mutual trust, cooperation, and respect. The patient, therefore, must have complete freedom to choose her/his physician. The physician must have complete freedom to choose patients whom she/he will serve. However, the physician should not refuse to accept patients because of the patient's race, creed, color, sex, national origin or handicap. In emergencies, a physician should make her/his services available.

Section 4. A physician is never justified in abandoning a patient. The physician shall give due notice to a patient or to those responsible for the patient's care when she/he withdraws from the case so that another physician may be engaged.

Section 5. A physician shall practice in accordance with the body of systematized and scientific knowledge related to the healing arts. A physician shall maintain competence in such systematized and scientific knowledge through study and clinical applications.

Section 6. The osteopathic medical profession has an obligation to society to maintain its high standards and, therefore, to continuously regulate itself. A substantial part of such regulation is due to the efforts and influence of the recognized local, state and national associations representing the osteopathic medical profession. A physician should maintain membership in and actively support such associations and abide by their rules and regulations.

Section 7. Under the law a physician may advertise, but no physician shall advertise or solicit patients directly or indirectly through the use of matters or activities, which are false or misleading.>

Section 8. A physician shall not hold forth or indicate

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possession of any degree recognized as the basis for licensure to practice the healing arts unless he is actually licensed on the basis of that degree in the state in which she/he practices. A physician shall designate her/his osteopathic school of practice in all professional uses of her/his name. Indications of specialty practice, membership in professional societies, and related matters shall be governed by rules promulgated by the American Osteopathic Association.

Section 9. A physician should not hesitate to seek consultation whenever she/he believes it advisable for the care of the patient.

Section 10. In any dispute between or among physicians involving ethical or organizational matters, the matter in controversy should first be referred to the appropriate arbitrating bodies of the profession.

Section 11. In any dispute between or among physicians regarding the diagnosis and treatment of a patient, the attending physician has the responsibility for final decisions, consistent with any applicable osteopathic hospital rules or regulations.

Section 12. Any fee charged by a physician shall compensate the physician for services actually rendered. There shall be no division of professional fees for referrals of patients.

Section 13. A physician shall respect the law. When necessary a physician shall attempt to help to formulate the law by all proper means in order to improve patient care and public health.

Section 14. In addition to adhering to the foregoing ethical standards, a physician shall recognize a responsibility to participate in community activities and services.

Section 15. It is considered sexual misconduct for a physician to have sexual contact with any current patient whom the physician has interviewed and/or upon whom a medical or surgical procedure has been performed.

Section 16. Sexual harassment by a physician is considered unethical. Sexual harassment is defined as physical or verbal intimation of a sexual nature involving a colleague or subordinate in the workplace or academic setting, when such conduct creates an unreasonable, intimidating, hostile or offensive workplace or academic setting.

Section 17. From time to time, industry may provide some AOA members with gifts as an inducement to use their products or services. Members who use these products and services as a result of these gifts, rather than simply for the betterment of their patients and the improvement of the care rendered in their practices, shall be considered to have acted in an unethical manner. (Approved July 2003)

Section 18. A physician shall not intentionally misrepresent himself/herself or his/her research work in any way.

Section 19. When participating in research, a physician shall follow the current laws, regulations and standards of the United States or, if the research is conducted outside the United States, the laws, regulations and standards applicable to research in the nation where the research is conducted. This standard shall apply for physician involvement in research at any level and degree of responsibility, including, but not limited to, research, design, funding, participation

either as examining and/or treating provider, supervision of other staff in their research, analysis of data and publication of results in any form for any purpose.

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