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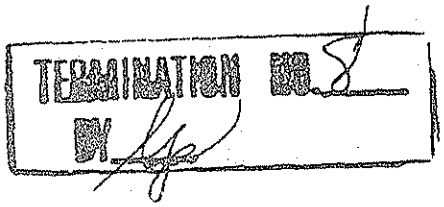
IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO




Randall D LeuVoy, D O

Appellant,

vs

Ohio State Medical Board

Appellee

Case No 06-CVF-09-12471

Judge Frye

FINAL JUDGMENT
~~ORDER~~

Appellant's Notice to Withdraw Appeal is granted This case is dismissed at Appellant's costs.

Richard A Frye
Judge Frye

Cc Elizabeth Y Collis
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive, Suite 225
Columbus, Ohio 43204
Counsel for Appellant

Kyle Wilcox
Assistant Attorney General
Health and Human Services Section
30 E Broad Street, 26th Floor
Columbus, Ohio 43215

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2007 JAN -8 PM 3 34
CLERK OF COURTS

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

| | | |
|---|---|---|
| RANDALL LEUVOY, | : | |
| | : | |
| Plaintiffs, | : | CASE NO. 06CVF-09-12471 |
| vs. | : | |
| | : | JUDGE FRYE |
| STATE MEDICAL BOARD, | : | |
| | : | |
| Defendant. | : | |

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2006 OCT 23 AM 11: 35
CLERK OF COURTS

**JOURNAL ENTRY DENYING MOTION FOR RECONSIDERATION**

The Motion for Reconsideration of the Order denying a stay pending appeal filed October 19, 2006 is **DENIED.**

The eight physicians who have submitted statements on behalf of Dr. Leuvoy demonstrate varying levels of familiarity with him and his actual patient care. In the face of the Board's findings referenced in this Court's previous order these statements are not enough to meet the stringent standard set out in R.C. 119.12, that "the health, safety and welfare of the public will not be threatened by suspension of the order."

Similarly, calls and letters of support from patients do not persuade the Court that its previous decision was mistaken.

**IT IS SO ORDERED.**

RICHARD A. FRYE, JUDGE

HEALTH & HUMAN
OCT 6 2006
SERVICES SECTION

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

| | | |
|---|---|---|
| RANDALL LEUVOY, | : | |
| Plaintiffs, | : | CASE NO. 06CVF-09-12471 |
| vs. | : | JUDGE FRYE |
| STATE MEDICAL BOARD, | : | |
| Defendant. | : | |

FILED
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FRANKLIN CO. OHIO
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CLERK OF COURTS

**JOURNAL ENTRY DENYING STAY PENDING APPEAL**

Appellant Randall D. LeuVoy, D.O., has appealed an order of the Medical Board revoking his right to practice in the state of Ohio. While that appeal is pending he seeks a stay, so that he can remain in active practice. Dr. LeuVoy has also submitted a letter "to whom it may concern" dated October 3, 2006 from Deborah Rockwood, M.S.W., L.I.S.W.[1] Ms. Rockwood is employed by the Lancaster City Schools and, based on her experience, states "this will be a real heath care crisis" if low income families served by Dr. LeuVoy do not have his services. That problem is compounded, she continues, because "our local heath department physician has just retired." The Medical Board opposes the Doctor's request to remain in practice pending appeal.

State law explicitly sets out two criteria for this court to apply in deciding whether a licensed medical professional may remain in practice pending an appeal from the Medical Board. Dr. LeuVoy is only entitled to a stay of the license revocation if he demonstrates: "that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal," and that "the health, safety and welfare of the public will not be threatened by suspension of the order." R.C. §119.12.

The material before this court does not demonstrate any "unusual hardship" to the appellant, as that phrase has been construed in a number of

[1] Appellant first submitted Ms. Rockwood's letter to the court with no indication it had been shared with counsel for the Medical Board. The court's staff has confirmed that it has now been served on Board counsel. The court is filing the letter for the record, and considers it in ruling on the stay request.

prior court decisions reviewed by counsel for the Medical Board in their legal brief. More importantly, a preponderance of the evidence before this court does not demonstrate that the health and safety of the public would not be threatened if this court suspends the Medical Board order.

No court takes suspension of a doctor's license lightly. Furthermore, grave concerns have been expressed by Ms. Rockwood concerning possible harm that may be caused to the low-income community in Fairfield County. However, this case has already been thoroughly examined. In every case the decision of the Medical Board is entitled to weight because the Board includes practicing members of the profession whose education and experience contribute to their work. Beyond that, deference is due the Board simply because that is how Ohio law is written: the Board, not the court system, has primary jurisdiction over professional licensure within this state.

As is customary, here a Medical Board hearing examiner first received evidence. Following that, he wrote a report to the full Board in which he recommended sanctions against the Doctor. Thereafter, a second hearing was held before the full Board at which Dr. LeuVoy's case was reexamined. Prior to the full Board's consideration of his case, Dr. LeuVoy filed written objections to the hearing examiner's Report and Recommendation. Dr. LeuVoy was also permitted to address the full Board.

Beyond the deference ordinarily given to a Board decision in evaluating a stay request, in this particular case the court believes additional deference is due the Board because they gave unusual, heightened review to the case. At least in part, this heightened review occurred because some Board members had difficulty understanding "the story" using only their hearing officer's Report and Recommendation. (pp. 6 and 9, "Draft Minutes" of the Board's Sept. 16, 2006 hearing.) As a result Dr. Egner and Dr. Steinbergh, in particular, reexamined for themselves the underlying evidence in individual instances of patient care. They focused upon practical things like the time of day when a pediatric patient's medicine was prescribed by Dr. LeuVoy (since late in the day the drug Ritalin causes sleeping problems), and how the Doctor's charts memorialized his basis for diagnosing patients with "ADHD, or diabetes, or hyperlipidemia." As to the

latter, they concluded "the results of [Appellant's patient] testing aren't in the record." (p.10 of the "Draft Minutes" of Sept. 16, 2006.)

Thoroughness is plainly evident in the way individual members of the Medical Board examined and discussed this case. The Board was in no sense merely "rubber-stamping" the work of a hearing examiner. (Sometimes, in this court's experience, administrative agencies are unable to offer such a thorough review over and above the work of their hearing examiner.)

Individual comments by Board members are not necessarily dispositive, but viewed collectively they reflect what appear to be fair, well-documented criticisms of Dr. LeuVoy's patient care. For instance, Dr. Steinbergh expressed the view that "the number of patients that Dr. LeuVoy saw per day *** confirmed for her that he sees entirely too many people a day and doesn't have the time to provide what this Board considers to be appropriate care for the patients in Ohio." (p. 9.) Ms. Sloan made the same observation about how Dr. LeuVoy was seeing 50 patients a day. (p.11.) Adjectives used by Board members to describe their professional reaction to Dr. LeuVoy's standard of practice are also instructive: "it's heinous" (p. 12); "He's not kept up, whether he was ever 'up'." (p. 13); "his practice knowledge base is just deplorable" (p. 13); "what he has given is not appropriate care." (p. 13) Based upon the Draft Minutes, Dr. LeuVoy is fortunate that the Board did not permanently revoke his right to practice.

So far as the court can tell from the record presently before it, those like Ms. Rockwood who perceive Dr. LeuVoy should be permitted to continue to serve the underserved, low-income population of Fairfield County ought to have no illusion that the Medical Board was hasty, or somehow predisposed against Dr. LeuVoy. To be sure, Ms. Rockwood has identified serious needs of an apparently underserved population. However, the risk of harm to those patients will not be lessened – and indeed may be enhanced – if someone whom the state Medical Board finds lacks basic knowledge, experience, and judgment is allowed to continue providing substandard medical care to that population. It is no answer to a medically under-served group to say "we'll let you keep a bad doctor." Other medical providers in Fairfield County who could step up and fill a public health need must understand that Dr. LeuVoy is no longer the answer.

Appellant has not justified a stay pending appeal. The motion for a stay pending full review of Dr. LeuVoy's appeal is, therefore, **DENIED.**

**IT IS SO ORDERED.**

RICHARD A. FRYE, JUDGE

**Copies to:**

J. Tullis Rodgers, Esq.
1606 Lancaster Avenue
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Counsel for Appellant Dr. LeuVoy

Kyle C. Wilcox
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Columbus, OH 43215-3428
Counsel for the Medical Board

# State Medical Board of Ohio

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


September 13, 2006

Randall Don LeuVoy, D.O.
1981 Granville Pike
Lancaster, OH 43130

Dear Doctor Leuvoy:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Christopher B. McNeil, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 13, 2006, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage MD (RAW)
Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8715
RETURN RECEIPT REQUESTED

Cc: 1693 Baltimore Road
Lancaster, OH 43130
CERTIFIED MAIL NO. 7003 0500 0002 4329 8685
RETURN RECEIPT REQUESTED

Mailed 9-15-06

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Christopher B. McNeil, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 13, 2006, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Randall Don LeuVoy, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage MD

Lance A. Talmage, M.D. (RAW)
Secretary

(SEAL)

September 13, 2006
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

RANDALL DON LEUVOY, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 13, 2006.

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

It is hereby ORDERED that:

The certificate of Randall Don LeuVoy, M.D., to practice medicine and surgery in the State of Ohio is REVOKED.

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

Lance A. Talmage MD (RAW)

Lance A. Talmage, M.D.
Secretary

(SEAL)

September 13, 2006
Date

STATE MEDICAL BOARD
OF OHIO
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**REPORT AND RECOMMENDATION**
**IN THE MATTER OF RANDALL DON LEUVOY, D.O.**

The Matter of Randall D. LeuVoy, D.O., was heard on March 13-15, 2006 by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, who has since left the Board's employ. On July 10, 2006, this matter was reassigned to Hearing Examiner Christopher B. McNeil, Esq.

## INTRODUCTION

I. Basis for Hearing

A. By letter dated June 8, 2005, the State Medical Board of Ohio [Board] notified Randall Don LeuVoy, D.O., that it intends to determine whether to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board's proposed action was based on a report it received that Dr. LeuVoy engaged in the practice of osteopathic medicine in a manner that was a "departure from or [failed] to conform to minimal standards of care," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code. (State's Exhibit [St. Ex.] 1A)

Accordingly, the Board advised Dr. LeuVoy of his right to request a hearing in this matter. (St. Ex. 1A)

B. On June 15, 2005 Dr. LeuVoy submitted a written request for a hearing on these charges. (St. Ex. 1B)

II. Appearances

A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.

B. On behalf of Dr. LeuVoy: Kevin Byers, Esq., Kevin P. Byers Co., L.P.A., 21 East State Street, Suite 220, Columbus, Ohio 43215. [Note: on July 28, 2006, Attorney Byers filed a Notice of Withdrawal with the Board, indicating that in accordance with O.A.C. 4731-13-02(F), he was withdrawing ac counsel of record on behalf of Dr. LeuVoy.]

## EVIDENCE EXAMINED

I. Testimony Heard

The State presented the testimony of Dr. LeuVoy (on cross-examination), and Rose S. Ebel, D.O., and Jerry Thrush. Dr. LeuVoy also testified on his own behalf.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1P: Procedural exhibits, including the Board's charging document (St. Ex. 1A) from which the confidential patient key has been removed in order to preserve patient privacy.
2. State's Exhibit 2 through 22: A copy of patient records for Patients #1 through 21 (sealed).
3. State's Exhibit 23: Confidential Patient Key (sealed).
4. State's Exhibit 24: Curriculum Vitae of Dr. Ebel
5. State's Exhibit 25: Transcript of interview with Angela LeuVoy.
6. State's Exhibit 26: Transcript of deposition of Dr. LeuVoy.
7. State's Exhibit 27: Transcript of interview with Jerry Thrush.
8. State's Exhibit 28: Transcript of deposition of Jerry Thrush.
9. State's Exhibit 29: Stipulations of the parties.
10. State's Exhibit 30: Expert report by Dr. Ebel.
11. State's Closing Argument

B. Presented by the Respondent:

1. Respondent's Exhibit A: Letter from Shirley Sharp.
2. Respondent's Exhibit B: Letter from Karmella Smith.
3. Respondent's Exhibit C: Letter from Pastor Lois A. Hoshor.
4. Respondent's Exhibit D: Letter from Ron Mason.
5. Respondent's Written Summation

C. Admitted on the Hearing Examiner's Own Motion:

1. Board Exhibit A: July 10, 2006 entry reassigning this matter to Christopher B. McNeil, Esq.

2. Board Exhibit B: July 28, 2006 notice of the withdrawal of counsel filed by Kevin P. Byers.

## 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.

### Prescriptions Issued While Dr. LeuVoy was Incarcerated

1. Dr. LeuVoy is licensed to practice osteopathic medicine and surgery in Ohio, and maintains a private practice in Lancaster, Ohio. (Hearing Transcript [Tr.], p. 11) He completed most of his undergraduate education at Lake Superior State University and his osteopathic medical degree from Michigan State University, which he earned in 1978. After graduation, he did a one year rotating internship at Lansing General Hospital in Lansing, Michigan, and was licensed in Michigan until he allowed that license to lapse after moving to Ohio in 1987. (Tr., p. 13-14) He worked with Dr. Bernard Master in a general medicine practice located in Columbus, Ohio, from 1988 until 1995, and opened a new practice in Lancaster, Ohio in July 1995 as a solo practitioner. (Tr., p. 15-16)

2. Throughout the years, Dr. LeuVoy has maintained his education both by attending continuing medical education seminars and by serving as a speaker for a pharmaceutical company, and speaks to other doctors on behalf of Astra Zeneca on the subject of bipolar disorder. (Tr., p. 18) He is also very familiar with impoverished patients, and with the foster care system, having served as a foster parent himself. (Tr., p. 691)

3. In his office practice, Dr. LeuVoy employs his wife, Angela LeuVoy, as the office manager, and two receptionists, Judy Thrush (Angela's mother) and Joyce Sheets, who also are responsible for retrieving medical records, making appointments, and scheduling referrals. (Tr., p. 623) He also employs two certified medical assistants, Jerry Thrush (Angela's brother) and Jerry's wife, Amy Thrush, who are responsible for obtaining medical histories from patients. (Tr., p. 623) His wife, Angela, also is a certified medical assistant. (Tr., p. 22-23) Dr. LeuVoy is the only member of the staff who is a licensed medical doctor, and is the only staff member licensed by the DEA to prescribe medication. (Tr., p. 24)

4. Dr. LeuVoy was a party to domestic litigation formerly pending in Franklin County, Ohio, and, in 2001, was in arrears in court-ordered child support. He was called to answer a complaint alleging that he was in contempt of court for failing

to make child support payments, and appeared before the court on November 7, 2001. At the conclusion of the hearing, upon a finding that he was in contempt of court for failing to make support payments as they became due, Dr. LeuVoy was ordered to be held in custody for ten days, with a release date of November 17, 2001. (Tr., p. 27) Dr. LeuVoy was not expecting to be incarcerated: he believed he would be given the opportunity to answer the contempt charge and be permitted to return to his practice. (Tr., p. 27)

5. Shortly after being incarcerated on the contempt charge, an acquaintance (attorney Randy Berens) visited Dr. LeuVoy at the jail, and brought with him one of Dr. LeuVoy's prescription pads. (Tr., p. 26) On November 7, 2001, Dr. LeuVoy signed at least thirty-eight blank prescription forms to be used by his staff while he was incarcerated. (State's Exhibit [St. Ex.] 29, Stipulation No. 1)

6. As will be more thoroughly discussed below, during this period of incarceration, and under Dr. LeuVoy's instructions, Dr. LeuVoy's staff filled in the pre-signed prescription forms and gave them to the twenty-one patients identified in the Patient Key (St. Ex. 1A). In each case these were patients whom Dr. LeuVoy had previously examined, diagnosed and treated. (St. Ex. 29, Stipulations 3 and 4). In each of the twenty-one cases, the staff gave these patients controlled substance prescriptions on the dates shown in the Board's charging document (St. Ex. 1A). In nine of these twenty-one cases the prescriptions were for Schedule II controlled substances. (St. Ex. 29, Stipulation No. 3)

7. After signing the blank prescription forms, Dr. LeuVoy instructed his staff to use these signed forms to refill patients' medicines during the time he was away. (Tr., p. 27) He said he did this as a way to prevent any interruption in their care – i.e., he did so for continuity of care, during the ten days he was to remain in custody. (Tr., p. 28) Dr. LeuVoy explained he limited this to only those patients who already were scheduled to make an office visit during the time he would be in custody, and that:

> we were just trying to take care of our patients during that period of time. . . . It came down to if patients needed medications refilled until the next time they could be seen, I felt as a treating physician, I was in the best position to be able to take care of those needs at the time, since I knew the patients and they were established patients and knew their history.

(Tr., p. 628)

To this same end, Dr. LeuVoy also contacted a colleague, Dr. Abidin, who in the past provided coverage for Dr. LeuVoy during past absences. (Tr., p. 28) Dr. Abidin is an internal medicine specialist, and agreed to help this time, but because he was an internist he did not see children, and told Dr. LeuVoy's staff that he only wanted to see new cases, not those patients who just wanted to have their

medications refilled. (Tr., p. 596) As a result, people who just wanted refills were being referred to the emergency room, but after about a day and a half of seeing these patients, Dr. Darnell from the emergency room at Fairfield Medical Center called Dr. LeuVoy's staff and told them to stop sending Dr. LeuVoy's patients to the ER. (Tr., p. 596) According to Dr. LeuVoy, Dr. Darnell gave a reason why the patients need not go to the emergency room: Dr. LeuVoy testified that Dr. Darnell "called me and said that he had checked and that as long as it was a medication that the patient was already on that was considered a maintenance medication, whether it was their Valium or their Xanax or Vicodin, that it could be called in with their regular medications, if they were already on it, because they didn't want to see those people in the E.R. just for medication refills." (Tr., p. 596). Dr. Darnell was not subpoenaed to testify and did not testify at the hearing, however, and Dr. LeuVoy took no steps to confirm the accuracy of what's been attributed to Dr. Darnell. (*Id.*)

8. Dr. LeuVoy directed Jerry Thrush, Amy Thrush, and Angela LeuVoy, i.e., each of the office's medical assistants, to act as his agents and refill medications as needed. He explained that "[a]ll of the patients' established medications are listed in the progress notes. So all they would have needed to do was to look at the chart and refill all the medications that were listed in the previous visit." (Tr., p. 31) Over the course of this ten-day period, these medical assistants complied with Dr. LeuVoy's direction, by taking the signed blank prescription slips and filling in prescriptions for Schedule II, III, and IV controlled substances, including Ritalin, Adderall, Metadate, MS Contin, Vicodin, Valium, Vicodin ES, Ativan, and Tylenol 4. (Tr., p. 32, 36) Dr. LeuVoy directed his staff to do this, so even though he did not personally examine any of these patients in connection with the issuance of these prescriptions. (Tr., p. 33) He said he knew that these drugs may be prescribed only through written prescriptions, and knew that the Schedule II controlled substance prescriptions can't be telephoned in. (Tr., p. 33) He added that in this context, "we were just extending their return visit and making sure they had enough medicines for the interim." (Tr., p. 37) He said he understood he could not allow the medical assistants to prescribe in his name while he was incarcerated, but added that "no one else prescribed the medicine except me" even though he did not see any of these patients before his staff filled in the pre-signed prescription slips. (Tr., p. 39)

9. Dr. LeuVoy denied the practice of pre-signing these slips was dangerous, saying of his staff that "they were just doing what they were instructed to do – simply refilling the established medications." (Tr., p. 41-42) According to Dr. LeuVoy, this was appropriate because "[i]t wasn't like they had any real need for any thought process on their own from a, you know, medical judgment standpoint. They were just carrying out – they were acting as my agent and carrying out the instructions to refill their medications, the same medications that they got before."

(Tr., p. 42) The patients for whom these pre-signed slips were used all were patients who were scheduled to see Dr. LeuVoy during the period of his incarceration. (Tr., p. 44) According to Dr. LeuVoy, the purpose for these appointments included giving him the opportunity to "reevaluate their condition and see how they are responding to the medication, to establish if there's been any changes." (Tr., p. 45-46) He said he believed that, because he was unexpectedly detained in the contempt hearing, using the pre-signed slips was an appropriate way to prescribe medications for his patients, "to continue their care while I was gone, and I would be the appropriate one to do it since I knew these patients and their history." (Tr., p. 43-44)

According to Jerry Thrush, one of Dr. LeuVoy's medical assistants, the procedures used while Dr. LeuVoy was in jail were different than the normal procedures: normally, if Dr. LeuVoy was out of the office (at a seminar or something like that) if a prescription needed to be issued to a patient, Mr. Thrush would call Dr. LeuVoy and relay the message. (Tr., p. 581) He also confirmed Dr. LeuVoy's testimony that the absence that arose after the contempt of court hearing "definitely wasn't a planned absence." (Tr., p. 588)

**Qualifications of the State's Expert Witness**

10. The State presented Rose E. Ebel, D.O., as an expert who reviewed patient files in those cases where Dr. LeuVoy's pre-signed prescriptions were used. Dr. Ebel testified both with respect to the relevant standard of care when a doctor pre-signs prescriptions, and with respect to the care generally provided by Dr. LeuVoy to these twenty-one patients. (Tr., p. 219-563, and St. Ex. 30)

11. Dr. Ebel established her credentials as an expert by presenting her curriculum vitae (St. Ex. 24) and through testimony at the hearing. (Tr. p. 222-229) Dr. Ebel is licensed to practice osteopathic medicine and surgery by the State Medical Board of Ohio, and is board certified by the American Osteopathic Board of Family Physicians. She graduated with a Bachelor of Science degree in pre-medicine in 1990 from the University of Dayton, graduated in 1994 from the College of Osteopathic Medicine from the University of Health Sciences, Kansas City, Missouri as a Doctor of Osteopathic Medicine, completed a one year internship at Allentown Osteopathic Medical Center in Allentown, Pennsylvania, and completed a two-year residency at the Grandview Hospital and Medical Center in Dayton, Ohio, including one year as Chief Resident. She has been a Lieutenant Commander in the U.S. Navy Reserve and from 1997 to 2001, and was on active duty providing direct patient care at the Naval Medical Clinic in Annapolis, Maryland. She is a member of several professional medical associations, including the American Osteopathic Association and the American Association of Family Physicians. (St. Ex. 24) Dr. Ebel maintains an active medical practice out of an

office located in Lebanon, Ohio, that includes general medicine, management of diabetes, hypertension, chronic diseases and acute illnesses. (Tr. p. 223) In addition to her office practice, Dr. Ebel has courtesy hospital staff privileges at Tri-Health System in Cincinnati and affiliate staff privileges at Grandview Southview Hospital in Dayton. (Tr. p. 228) Based upon these credentials, Dr. Ebel was qualified to give expert testimony, without objection from Dr. LeuVoy. (Tr. p. 228-29) Dr. Ebel noted on cross-examination, however, that she has never worked as a solo practitioner, and while she does treat children with AD and ADHD, it's a "pretty minimal" part of her practice – five or fewer active patients. (Tr., p. 431, 434)

12. Dr. Ebel prepared for this hearing by reviewing the transcript of a deposition of Dr. LeuVoy conducted by the Board's Enforcement Coordinator (David P. Katko), and by an examination of records for the patients identified in the Patient Key (St. Ex. 1A). From this review, Dr. Ebel was able to prepare a written report, admitted as St. Ex. 30.

**Evidence Regarding the Use of Pre-Signed Prescription Blanks**

13. Dr. Ebel testified that Dr. LeuVoy's practice fell below accepted minimal standards for the profession when he signed blank prescription forms and left to his office staff the task of filling in the prescription medications on those forms. (Tr. p. 232-33) She explained that the practice of signing blank forms leaves open the possibility that the staff might make mistakes with respect to the name of the medication, the dosage, the number of medications to be dispensed, and directions on the dosage. (Tr., p. 233) With respect to those prescriptions that were for Schedule II controlled substances, these involve mind-altering drugs with high street value, drugs that are easily abused and trafficked; and as such these Schedule II prescriptions cannot be written for more than one month's dosage. (Tr., p. 233-34) She explained that while there is no one source – no one "big book of standards of care" – there are tools available to assist when identifying practices that fall within and below the standard of care. (Tr., p. 549-50) She said there may be variations in standards based on practice location (e.g., urban versus rural settings), but there are some tools that do establish certain criteria setting forth standards of care, including the Diagnostic and Statistical Manual IV as a tool for setting forth diagnostic criteria. (Tr., p. 550)

14. The parties stipulated that none of the prescriptions written by Dr. LeuVoy's staff using the pre-signed slips were initial prescriptions: rather, Dr. LeuVoy had previously examined, diagnosed, and treated each of the patients identified in the charging document. (St. Ex. 29, Stipulation Nos. 3 and 4) When determining whether to refill a prescription, Dr. Ebel said the standard of care requires a physician evaluate the patient and the patient's needs: if the initial prescription

was for a pain medication, for example, the physician "need[s] to monitor their pain levels and make sure that the medication is being effective. If it's not being effective, what needs to be done to help alleviate the patient's pain." If the initial prescription was for an ADHD medication or is for a psychotropic medication, the physician needs "to make sure that the patient isn't having adverse complications from the medication." (Tr. p. 235) She said this need changes "once the patient is stable on the medication," and at that point while "it's not necessarily common practice to see that patient once a month . . . you do want to have routine follow-up with the patient to make sure that the medications are still doing their job and that the patient's not having any bad effects from them." (Tr. p. 235)

15. Dr. LeuVoy testified that the only patients who received medications using pre-signed prescriptions were those who were scheduled to see him during the time he was incarcerated. (Tr., p. 629) His staff "would look at the schedule and see what patients were scheduled for. My staff could call the patients, explain that they couldn't see the doctor today, we'll have to reschedule an appointment, and try to take care of the refill of medicines until that time." (Tr., p. 629)

16. According to Dr. Ebel, it is never an acceptable practice for a physician to hand pre-signed blank prescription forms over to a staff member, and when he did so Dr. LeuVoy's practice failed to conform to minimal standards of care. (Tr., p. 236-37) She said this is true whether the medication is a Schedule II controlled substance or any other prescribed medication. (Tr. p. 238) Dr. Ebel found evidence in the records of each of the twenty-one patients identified in the charging document, that Dr. LeuVoy failed to conform to minimal standards of care by pre-signing prescription forms for use by his staff during the time he was incarcerated. (St. Ex. 30, p. 1) Dr. LeuVoy rejected the idea that he should simply have closed his office during his incarceration: "It came down to if patients needed medications refilled until the next time they could be seen, I felt it was – as a treating physician, I was in the best position to be able to take care of those needs at the time since I knew the patients and they were established patients and knew their history." (Tr., p. 628)

17. After completing her review of the twenty-one patient records provided to her by the Board, Dr. Ebel stated she found eight in which the only failure to conform to minimum standards was Dr. LeuVoy's use of the pre-signed prescriptions. For example, Patient #1 was being seen for multiple documented orthopedic injuries as a result of work injuries, and Dr. LeuVoy was maintaining two progress charts that permitted Dr. Ebel to evaluate the course of treatment. (St. Ex. 30, p. 2) While she observed that there were elements missing from the chart (e.g., there was no clear input as to how well the patient's pain is controlled with the medications prescribed), Dr. Ebel stated "I would not consider this case to be a deviation from the standard of care in treating a chronic pain patient other than the prescribing of

medications while Dr. LeuVoy was incarcerated." (*Id.*) Dr. Ebel reached similar conclusions upon her review of the records for Patient Nos. 4, 6, 10, 11, 14, 16, and 18. (St. Ex. 30, p. 2-15)

18. In the case of one patient, (No. 19 on the Patient Key), some of the conduct attributed to Dr. LeuVoy was less than what is required yet still was held to be within the standard of care – here it was treating a 39 year-old female patient for headaches and depression. Dr. Ebel was concerned about the disarray of the patient medical records; she was concerned that the records offer evidence of drug diversion but no follow-up by Dr. LeuVoy; and she noted the absence of preventative care measures Dr. LeuVoy should have taken but did not (such as mammograms) – but after offering the conclusion that this would be considered less than the standard of care, Dr. Ebel nevertheless declined to charge this as a failure to meet minimum standards, after noting, in mitigation, that "this was a difficult patient who was rather non-compliant and had significant anxiety issues." Given these difficult conditions, Dr. Ebel limited her finding with respect to Patient No. 19 to say that the only established failure to meet minimum standards was Dr. LeuVoy's use of pre-signed prescriptions. (St. Ex. 30, p. 13-14)

**Evidence Regarding Dr. LeuVoy's Treatment of Patients with ADHD Diagnoses**

19. Describing the group of twenty-one patients as a whole, Dr. Ebel noted that these were difficult patients – including a non-compliant diabetic, a child in foster care, one with multiple workers' compensation complaints, and the like. (St. Ex. 30, p. 1) Praising his work in part, Dr. Ebel said she found Dr. LeuVoy's reporting of objective and physical examinations to be clearly listed, and found his assessments to be "unfailingly complete" with plans for medication refills, referrals, studies and labs that were easy to follow. (*Id.*) What troubled her, however, and what causes concern in a number of cases described in her report, was the lack of evidence in these patient records explaining why courses of therapy were changed, especially in the cases of children with ADHD. (*Id.*)

20. It was Dr. Ebel's expert opinion that throughout the relevant time period (from 2000 to the present) it falls below the standard of professional care for a physician to render a diagnosis of ADHD and prescribe appropriate medication without first conducting a Connor's scale evaluation. (St. Ex. 30 p. 2-5, Patient #2, #3, #5, #7, #9, #13, #17, and #21) Dr. Ebel explained that, at least since the mid-1990s, diagnosing ADHD generally requires the information contained in a Connor's scale: a Connor's scale is a series of fairly lengthy surveys, each with multiple questions, that are given to a parent, a school teacher, or someone close to the child. These surveys are sent back to the physician for grading, and "a score is generated and it helps the mental health person or family practice physician or pediatrician to figure out whether this child likely has a diagnosis of ADD or

ADHD." (Tr., p. 243) She said she learned about the scale in 1994 during medical school, used them during her family practice residency in 1995 through 1997, and before making a diagnosis of ADD she refers the pediatric patient out for psychological evaluation using the scale. She added that she elects not to administer the scales herself because they are time-consuming. (Tr., p. 244, 436) Dr. LeuVoy, however, skipped this step, frequently accepting a diagnosis of ADHD without requiring the administration of the Connor's scale. That's what the record reflects in Dr. LeuVoy's treatment of Patient #2, an eight year old male with a history diagnosis of ADHD and bladder spasms. (Tr., p. 240 and St. Ex. 3, p. 7) That's also what she found in the case of Dr. LeuVoy's treatment of a 10 year old male patient (Patient #3) who has tried marijuana and was on Ritalin in the past but whose file contains no records from any previous physician, no ADHD testing, no referral, and a history of seizure disorder. (St. Ex. 30, p. 2-3) In Dr. Ebel's opinion, Dr. LeuVoy's failure to confirm the ADHD diagnosis prior to starting Patient #3 on any medication for ADHD constitutes a failure to conform to standards of professional care. (St. Ex. 30, p. 3, Patient #3) This was similarly a problem with Dr. LeuVoy's treatment of Patient #5, #7, #9, #13, #17, and #21. (St. Ex. 30, p. 2-5)

21. Dr. LeuVoy disagreed with the premise that Connor's scale readings were required in 2001: he agreed the scale is used to try to identify a patient with ADHD, but said that wasn't true in 2001 – he started using the scale "sometime after 2002." (Tr., p. 49, 633) His testimony on this point is somewhat contradicted by the evidence: He testified that he only started using the Connor's scale in 2002 and had never heard of the scale before then (Tr., p. 705), but the records concerning Patient #5 (St. Ex. 6) show that the physician who treated Patient #5 in 1998 used and explained the Connor's scale; and that Dr. LeuVoy had a copy of this record in July of 2000. (Tr., p. 706) Dr. LeuVoy added that even if he had seen the reference to the use of a Connor's scale, "it wouldn't have necessarily meant a lot to me." (Tr., p. 707) Now, however, if "a new patient comes in with a suspicion of ADHD, I will give them Connor's scales to have completed and bring back to me." (Tr., p. 718-19)

**Evidence Regarding Patient Assessments and Record-Keeping**

22. Dr. Ebel also expressed concerns about the adequacy of Dr. LeuVoy's medical documentation. She explained that there are four components to such documentation, recalling the acronym SOAP for notes that include "subjective, objective, assessment and plan," with some adding a second P: prevention discussion. (Tr., p. 241) Examining Dr. LeuVoy's medical note documentation for Patient #2, Dr. Ebel explained that the patient is an 8 year old male having a

documented history of attention deficit hyperactivity disorder (ADHD). (Tr., p. 240) The patient had been on Ritalin at the initial visit, and Dr. LeuVoy changed that to Metadate, but documented no explanation for the change: "The subjective area on this note leaves no indication as to why the medication is being changed from Ritalin to Metadate. There are a lot of ways to read into that, but it's not clear from the documentation why that change is made." (Tr., p. 241) Making plain the reasons for such a change is important, according to Dr. Ebel, because "when you're making a change from one medication to the next, you want to indicate why the first medication wasn't effective." (Tr., p. 241) This is important for continuity of care among those who pick up the file: "Whether it's you picking up the medical record again or your partner picking up the medical record again, you want to know what the thought process is behind each medication change." (Tr., p. 242) Moreover, Dr. Ebel stated that Dr. LeuVoy's notes on Patient #2 offered an insufficient explanation for using Detrol or Ditropan, which she said generally are considered adult medications, not used widely in children, such that it's considered off-label to use it in this manner. (Tr., p. 245)

Dr. Ebel explained that in this context, "off-label" means that neither the Physician's Desk Reference nor the Food and Drug Administration recognize the use as a primary or recommended use. (Tr., p. 250) Absent a properly documented work-up, prescribing these medications for this patient was, in Dr. Ebel's view, a practice that fell below the minimum standard of care for the profession. (Tr., p. 246) According to Dr. Ebel, more documentation was needed for this medication: "Generally, those are considered adult medications. They've not been used widely in children, other than, you know, I'm sure the pediatric urologists are using them, but again, I'd want to see more documentation as to what the history was behind those medications." (Tr., p. 245)

23. Dr. LeuVoy rejected Dr. Ebel's assessment concerning the use of Ditropan: he said Ditropan is indicated for use in children, but offered no evidence in support of this assertion. (Tr., p. 53) Dr. LeuVoy said he arrived at his Patient #2 diagnosis "primarily on the patient's history and observations[.]" (Tr., p. 49) He testified: "I know there's not a lot of documentation here, but also observation on how the child is acting and asking questions about, you know, the patient's behavior, are they disruptive in class, are they able to focus, are they completing their tasks." (Tr., p. 50) He agreed that he changed the patient's medication from Ritalin to Metadate, but acknowledged that he cannot explain the reasons for the change, nor can he tell whether the medications were effective. (Tr., p. 52)

24. Regarding Patient #3 (who apparently is Patient #2's brother), Dr. Ebel said the patient is a ten-year old with a history of seizure disorders, who has been on Ritalin in the past. (Tr., p. 254) Dr. Ebel cited the lack of documentation regarding the past prescription for Ritalin: she wanted to know who prescribed it,

why it was prescribed, who discontinued its use, and why it was discontinued. (Tr., p. 255) In the absence of such information – no Connor's scales, no clear indication on how the ADHD diagnosis was made, no previous records, it was Dr. Ebel's opinion that when he diagnosed and treated Patient #3 for ADHD, Dr. LeuVoy's practice fell below minimum standards for the profession. (Tr., p. 257) She was also concerned that this is a ten year old boy who's been smoking marijuana, with no record of Dr. LeuVoy counseling either the mother or the child to make sure the child has proper supervision when the child is not in school – compelling her conclusion that it was "below the standard of care not to somehow intervene with a 10-year-old who's already starting to experiment with drugs. (Tr., p. 260-62)

Dr. LeuVoy agreed that "there's no documentation in the record, but I may not have felt it necessary to write anything down. This patient may have been in counseling already. And if so, I wouldn't necessarily have thought it was important to document that. It wasn't really something that would change my treatment." (Tr., p. 63) Later in the hearing, Dr. LeuVoy said because smoking marijuana would be inappropriate, he would have counseled the patient about this, "[a]lthough the patient probably already understood that. . . . I think I took this as an isolated incident where, you know, he wasn't actually actively seeking to smoke marijuana. Somebody approached him and he was basically victimized by a 15 year old boy. And I think the mother had concerns that it happened and addressed it and it wasn't something that was expected to be a recurrent thing but should be addressed." (Tr., p. 655)

25. Dr. Ebel found Dr. LeuVoy's treatment of Patient #5, a six year old female who is "hyperactive and can't sit still," fell below minimal standards in five ways: (a) in prescribing Ritalin 10 mg. BID #60, where the usual starting dose is 5 mg. BID; (b) in treating for ADHD without either requesting a Connor's scale or getting records from the child's previous pediatrician; (c) in continuing to prescribe Ritalin after receiving the previous pediatrician's records, where those records indicate the child did not need Ritalin; (d) in failing to communicate with the child's psychiatrist (Dr. Abromowitz), who changed the child's prescription from Ritalin to Concerta 36 mg., once Dr. LeuVoy decided to change the child's medication back to Ritalin; and (e), in continuing to prescribe Ritalin in the face of indicators of drug diversion. (St. Ex. 30, p. 4)

26. Dr. Ebel testified that concerning Patient #5, Dr. LeuVoy's prescription for 10 mg. BID (twice a day) Ritalin #60 constitutes a failure to conform to professional standards, where the usual starting dose is 5 mg, where Dr. LeuVoy had none of the prior pediatrician's notes, and where he failed to request either a Connor's scale or a mental health evaluation. (Tr., p. 264-265) Further, with this same 6 year

old girl, once Dr. LeuVoy received the medical records from the prior pediatrician, he learned that the Connor's scale conducted by that physician indicated *no* ADHD was present and *no* need for medication for this patient. (Tr., p. 270-271 and St. Ex. 30, p. 4) In Dr. Ebel's opinion, Dr. LeuVoy failed to conform to professional standards when he continued this patient on Ritalin after receiving the pediatrician's records, without first either retesting the child or making a mental health referral. (Tr. p. 271-272)

27. Where the same 6 year old (Patient #5) is then seen by a referral physician who confirms Dr. LeuVoy's diagnosis of ADHD, and who changes the child's medication from Ritalin to Concerta 36 mg., it was (according to Dr. Ebel) a failure to conform to professional standards for Dr. LeuVoy to not communicate with the referral physician regarding this change in medication and then follow up with that physician with regard to the treatment plan for this patient. (Tr., p. 273-274) In addition, Dr. LeuVoy changed the patient's prescription from Concerta back to Ritalin, even though the patient was expected to return to the referral physician – making the medication change without communicating with the referral physician. (*Id.* and Tr., p. 275-76) Dr. LeuVoy testified that he did not recall talking with the referral physician (Dr. Abromowitz), but confirmed he nevertheless changed the prescription back to Ritalin because the Concerta was not working. (Tr., p. 647) Dr. LeuVoy testified that the patient was not responding well to one class of medication, so he switched her to another class of medication. (Tr., p. 648)

28. Dr. Ebel said Dr. LeuVoy's continued practice of prescribing Ritalin for Patient #5, without accounting for possible drug diversion, constitutes a failure, in her opinion, to conform to minimum standards for the profession. (St. Ex. 30, p. 4 and Tr., p. 273-74) As evidence of possible drug diversion, Dr. Ebel noted that on page 26 of the record (St. Ex. 6) the patient received prescriptions for a thirty-day supply of Ritalin on November 14, 2001, with a note stating afterwards that the patient did not get the prescription filled, so the medication is then refilled on November 28, 2001 and December 17, 2001; and again a thirty day prescription for Ritalin is written on February 26, 2002 has "gone through the washer" and is rewritten for an unspecified amount, and then a thirty-day prescription is written on March 20, 2002. As Dr. Ebel described this pattern, "there's some drug diversion going on. That's a lot of numbers of Ritalin to be continually out there." (Tr., p. 277)

29. It was Dr. Ebel's expert opinion that Dr. LeuVoy's practice fell below minimum standards of professional care when he prescribed Zoloft 25 mg. for depression for a 12 year old female (Patient #7) who on her first visit secures what is described as a refill on Adderall 15 mg. TID (three times a day), where there is but a limited history in the file, and where there was no referral for the patient or her family for

counseling or an evaluation due to the issues of depression. (St. Ex. 30, p. 5, Patient #7) Dr. Ebel said there was no subjective information, no Connor's scales for assessment, no previous records. (Tr., p. 284) Dr. LeuVoy did not dispute this characterization of the lack of documentation, and his records support Dr. Ebel's testimony. He stated, however, that because this child was in the foster care system, "it's not likely that we would be able to get records from the previous physician, but the subjective complaints indicate that the patient has been prescribed this medication for the established diagnosis of ADHD." (Tr., p. 653) Dr. Ebel acknowledged this: she was aware that this child was in the foster care system, and agreed that "this is probably a case here it's going to be hard to get previous medical records since she is a foster child" but added that in such a case it "is even more imperative on the current primary care person to make sure that the diagnosis is correct on this patient." (Tr., p. 284)

30. Patient #8 is a 37 year old male who has a long-standing history of orthopedic problems and has had chronic pain syndrome – along with a history of substance abuse. (Tr., p. 292) When the patient sought pain medication, Dr. LeuVoy's practice again fell below minimum standards, in Dr. Ebel's opinion, when he prescribed Demerol without first conducting a proper workup to evaluate what was causing the problem. (St. Ex. 30, p. 5) In addition, Patient #8 had a history of substance abuse and depression, and in Dr. Ebel's opinion, Dr. LeuVoy's failure to include a mental health consult when treating this patient for chronic pain syndrome relating to long-standing orthopedic problems constituted a failure to conform to minimum professional standards. (St. Ex. 30, p. 5, Patient #8) Further, when this patient submitted a urine sample that tested positive for benzodiazepines-cocaine-methadone-opiates, it was, in Dr. Ebel's opinion, below the standard of care for Dr. LeuVoy to refill the pain medication without first referring this patient to a drug treatment facility. (*Id.* and Tr. p. 300-01)

    Dr. LeuVoy did not disagree with Dr. Ebel regarding the failure to refer this patient for drug treatment. He stated that "[h]ad I seen that [Patient #8] had the positive drug screen for those drugs, I probably wouldn't have prescribed controlled drugs" (Tr., p. 101); and he explained that had he not been incarcerated on the contempt charge, "were I able to go over that situation face to face with the patient, I would have addressed the positive urine drug screen. The patient did have legitimate pain complaints. It would have been certainly prudent to intervene in some way with the patient's care because of the drug screen. I'm not sure that it would be appropriate to abruptly withdraw his medication at that time which could have caused him further withdrawal." (Tr., p. 671)

    Dr. LeuVoy also defined what should take place during a cursory neurological exam, but stated that while it would be "important to document any positive findings [,] it's not always recorded if there are negative findings." (Tr., p. 657)

And, while Dr. LeuVoy noted the patient had cut his wrist, he acknowledged that he does not know if he asked questions to find out whether the cut was part of a suicide attempt or an accidental slip against a window. (Tr., p. 657) He added, however, that if there was a reason to suspect that a person cut his wrist deliberately as a suicidal attempt or something like that, he would have documented more than simply stating the patient cut his wrist. (Tr., p. 658)

31. Patient #9 is an 8 year old male patient with a diagnosis of ADD and an existing prescription for Adderall. Dr. LeuVoy said he first met with Patient #8 and the patient's mother in December 2000, and said the patient complains of daytime sleepiness and insomnia, had dark circles under his eyes, and was suspended for ten days for trouble in school. (Tr., p. 110 and St. Ex. 10, p. 15) Dr. LeuVoy testified that on December 9, 2000, he prescribed Adderall 10 mg. and Benedryl 25 mg. at night to help the child sleep. (Tr., p. 112), but he did so without documenting that he ordered any kind of evaluation to confirm the ADD diagnosis – there were no previous medical records, no Connor's ratings scales, nor any school reports. Two months later, on February 13, 2001, Dr. LeuVoy increased the Adderall dosage despite the patient's continued insomnia. (St. Ex. 10, p. 14) According to Dr. Ebel, this practice failed to conform to minimal standards for the profession: she said it was incumbent upon Dr. LeuVoy confirm the ADD diagnosis, and he needed to inquire into the child's sleep hygiene – e.g., is the child engaging in calming activities before bedtime – and that inquiry is not present in these notes. (Tr., p. 303-04) She also found a minimal standards violation regarding Dr. LeuVoy's Benedryl prescription, because between December, 2000, and February, 2001, there was no follow-up documentation describing how often it was being used and to what effect. (Tr., p. 306-07)

32. Patient #12, a 56 year old male whose first visit in was in February, 2001, at which time Dr. LeuVoy noted that a year ago, the patient was on a bike and was hit by a car; and now Dr. LeuVoy noted neuropathy in the patient's right leg, along with hypertension, alcohol abuse, depression, anxiety, tobacco abuse, and sexual risk. (Tr. 117 and St. Ex. 13, p. 15) Dr. LeuVoy also treated Patient #12 for high cholesterol, and treated this with a lipid-lowering agent, and both Dr. LeuVoy and Dr. Ebel agree that when prescribing lipid-lowering medication the standard of care is to have lab tests done not long afterwards to check for liver functions, because, as Dr. LeuVoy explained, "cholesterol-lowering agents have been shown sometimes to cause elevated liver enzymes." (Tr., p. 119) Dr. Ebel explained that "once you find that there is high cholesterol that you're going to have to follow up on, generally you order liver function tests within that first month, and then you repeat them at three and six months." (Tr., p. 313) Dr. LeuVoy, however, failed to schedule labs checking the efficacy of this treatment and checking liver functions, and in Dr. Ebel's opinion, this practice falls below the minimal standards of professional care. (Tr., p. 313 and St. Ex. 30, p. 6)

Dr. Ebel also noted the patient's depression and drug-seeking behavior, as did Dr. LeuVoy: Dr. LeuVoy got a call from a member of the staff at Fairfield Medical Center, advising that Patient #12 was being very persistent in seeking narcotics. (Tr., p. 121) Dr. LeuVoy said in response to this call, he referred Patient #12 to a pain clinic. (Tr., p. 121-122) When the patient later indicates a history of four suicide attempts, Dr. LeuVoy should have referred the patient to a mental health practitioner, according to Dr. Ebel. (Tr., p. 316) She explained that with someone as depressed as Patient #12, "it's pretty risky to take on a patient that has suicidal tendencies in a primary care setting without trying to refer that patient into the care of a psychiatrist." (Tr., p. 316)

Dr. Ebel also addressed the lack of documentation supporting Dr. LeuVoy's prescription of Zyprexa for Patient #12: She explained that "with the addition of Zyprexa, there's no indication in the note other than that the patient's feeling like he's getting back into that suicidal state of mind. There's no indication, subjectively, exactly why the Zyprexa is started[.]" (Tr., p. 317 She added that Dr. LeuVoy again failed to maintain professional standards by failing to coordinate this with a psychiatric consultation – and Dr. LeuVoy's prescription for Zyprexa likewise is such a failure, where there was no indication that the patient was psychotic or bipolar. (Tr., p. 314-15 and St. Ex. 30, p. 7, Patient #12)

Without knowing for sure, Dr. LeuVoy said he changed the Zyprexa prescription for Patient #12 "either because he stopped taking them on his own or they weren't helping or he didn't like them." (Tr., p. 133) As she explained it, Dr. Ebel said there was no subjective indication given that would explain why Zyprexa was ordered: "if it's a psychosis issue, is he hearing voices? Is he having some type of auditory or visual hallucinations? Is he agitated? You know, what's going on with this patient that indicates the change to Zyprexa? Just, you know, a documentation issue. And without that documentation, to go to an atypical, I consider it below [the] standard of care to go that far off the beaten path with a suicidal patient without referring on to mental health." (Tr., p. 317)

Later on, when it appears a referred physician is writing psychiatric drugs between April and June of 2002, Dr. Ebel said that Dr. LeuVoy's practice fell below minimum standards when he took over prescribing psychiatric medication without coordinating this with the referred physician. (*Id.*) Dr. Ebel explained that taking over the prescription-writing process itself isn't unusual: "It does help with patient convenience. A lot of psychiatrists are very busy." The concern, instead, is with the lack of coordination among prescribing physicians – Dr. Ebel said there should be "some indication of coordination of care [to] make sure the patient's not double-dipping on the psychotropic drugs." (Tr., p. 322) The practice again fell below minimum standards when (on October 16, 2002) the patient reports that he

is not taking his Vicodin, Elavil, Mellaril, and Ativan as prescribed just five days earlier, yet there was no mention of this at the next visit and the medications are prescribed as before, despite the prior noncompliance with this therapy. (Tr., p. 323)

33. According to Dr. Ebel, Dr. LeuVoy's practice fell below minimum standards for the profession in his treatment of Patient #13 – a 7 year old male who is stated to have a history of ADHD but for whom no subjective information exists supporting this diagnosis. (Tr., p. 326-27) After a three-month period when the patient was non-compliant with a prescription for Metadate (through parental non-compliance), Dr. LeuVoy's practice fell below minimum standards when he failed to seek a pediatric mental health evaluation yet changed the prescription to Concerta and Remeron – the latter of which is an antidepressant that is not recommended for use by children. (Tr., p. 330) Later on, after returning to Metadate and after that medication appears to be not effective, Dr. LeuVoy's practice fell below minimum standards when he changed the prescription to Adderall XR and Zyprexa and later on, Seroquel, where both Zyprexa and Seroquel are used in treating bipolar disorder – but with this patient there is no diagnosis of bipolar, and neither Zyprexa nor Seqoquel are recommended for use by children. (Tr. p. 334, 341, and St. Ex. 30, p. 8, Patient #13) Treating a child with these antipsychotic medications without first properly establishing the diagnosis with a mental health evaluation is, according to Dr. Ebel, a practice that falls below minimum standards. (Tr., p. 334-35)

34. Patient # 15 is a "fairly noncompliant" 60 year old female with NIDDM (non-insulin dependent diabetes mellitus), hypothyroidism, GERD (Gastroesophageal Reflux Disease), obesity and chronic anxiety. (Tr., p. 348) Dr. Ebel identified a series of practices by which Dr. LeuVoy fell below minimum standards in his care and treatment of this patient:

- where the patient has blood sugar levels exceeding 200, Dr. LeuVoy failed to order a hemoglobin A-1-C, which looks at long-term blood sugar control and is called for in diagnosing and treating diabetes mellitus (Tr., p. 350);
- when the patient presents in 2000 with diarrhea, Dr. LeuVoy starts her on Lotronex without first doing any stool studies or gastroenterological studies and without first referring her to a gastroenterologist, and later, when he does refer her to a gastroenterologist there is no indication that the gastroenterologist knows the patient is on Lotronex (Tr., p. 356);
- when the patient presents in December 2000 for chest pain, Dr. LeuVoy did not refer her to a cardiologist nor did he order a stress test, despite the fact that the patient is a high risk patient (Tr., p. 362);
- once the patient began taking a statin to lower her cholesterol, Dr. LeuVoy should have checked her liver function studies but failed to do so; (*Id.*)

- throughout March 2002 to June 2003, while treating the patient for hypothyroidism, Dr. LeuVoy prescribes Unithroid, but not enough to cover the two-month prescription period, and then fails to recheck her thyroid or thyroid stimulating hormone (TSH) until May 2003 at which time, despite the fact that her TSH was still abnormal, Dr. LeuVoy did not increase the Unithroid dose (Tr., p. 362-63 and St. Ex. 30, p. 10);
- although the records show the patient has not had a pap test nor a mammogram for more than ten years, Dr. LeuVoy, after ordering a mammogram, failed to follow up when the patient was noncompliant, and failed to note in his records if the patient was resistant to these and other tests. (Tr. p. 364 and St. Ex. 30, p. 9-10)

With respect to the thyroid stimulating hormone prescriptions, Dr. LeuVoy explained that the patient was probably dependent upon samples from his office, which might account for the change from Synthroid to Unithroid; and that this switch probably required that Dr. LeuVoy "give her some time to make sure she was stable on that medication before testing her again." (Tr., p. 168)

In one respect Dr. Ebel reflected upon her report and changed her opinion, where she had at first reported that the patient's lipid profile shows elevated total cholesterol and LDL (low density lipoprotein) cholesterol yet Dr. LeuVoy rendered no intervention other than to review the labs: applying guidelines as they were at the time, 1996 lab values would have regarded these numbers (both high and low density lipoproteins) as "okay" and would not have required a different course of action by Dr. LeuVoy. (Tr., p. 352-53)

35. Patient # 17 is one of the eight pediatric patients treated for ADHD where no Connor's scale is present. The patient is a 13 year old male who first presents to Dr. LeuVoy on December 3, 1998, who also was being treated for nocturnal enuresis – bedwetting. (Tr., p. 368) Dr. LeuVoy prescribed Ritalin SR 20 mg first as a BID (twice a day) medication and then as a TID (three times a day) dose at 4 p.m. – but Ritalin SR is an eight-hour medication that should only be used in the daytime, not as a BID medication nor as a TID medication, so that, in Dr. Ebel's opinion, writing these prescriptions was a practice that fell below the minimum standard. (Tr., p. 368-369) Dr. Ebel also noted that between September 29, 2000 and October 12, 2000Dr. LeuVoy reported that the child is in foster care and reports trouble controlling his moods and emotions, that the child reports having "freaked out in class yesterday," yet Dr. LeuVoy failed to refer the patient to a mental health care provider for an evaluation. (Tr., p. 379)

Dr. Ebel also noted that after treatment using Ritalin was discontinued, there is no record showing that the unused tablets were returned for counting; and noted that this patient has been in foster care and has been in trouble at school, and would benefit from intervention, yet there is no record of Dr. LeuVoy recommending

counseling, a practice that Dr. Ebel found falls below minimum standards. (Tr., p. 372-73)

Dr. Ebel also questioned Dr. LeuVoy's failure to monitor this patient's drug use: on November 20, 2000 Dr. LeuVoy ordered a thirty-day supply of Dexedrine, then sixteen days later changed the prescription to Ritalin without requiring that the patient account for the unused Dexedrine. (Tr., p. 379) Dr. LeuVoy acknowledged that he cannot now recall whether he required the patient to turn in the unused medication. (Tr., p. 179) Dr. Ebel explained that "[w]hen you're switching back and forth so quickly on medications, that's when you really start to worry about drug diversion. It's that 'I'm switching out your medication, you bring that bottle back in to me.' I want to count them, make sure they're not out there somewhere." (Tr., p. 381-382)

Dr. Ebel noted that on April 10, 2001, Dr. LeuVoy increased the prescription for Ritalin by adding 10 mg. short-acting TID to the 20 mg. Ritalin SR TID, without explaining why, so that the dose now is more than the recommended maximum daily dose. (Tr., p. 383) This, in Dr. Ebel's view, was a practice that fell below minimal standards of professional care. (*Id.*) Dr. LeuVoy explained, however, that this patient is an "exceptional case. Some patients are what we call fast metabolizers, so they are eliminating the drug much faster than most people will. And I believe this patient was a fast metabolizer." (Tr., p. 177) Although he could point to no documentation in the record supporting this assertion, Dr. LeuVoy said "you have to understand that this is a fast metabolizer who gets rid of his drugs quicker than most people." (Tr., p. 190) Later (in August, 2001), when the patient returns ten days early seeking refills and Dr. LeuVoy notes that the patient is "acting out more – sometimes mean," Dr. LeuVoy nevertheless makes no change in the therapy nor does he refer the patient to a mental health care provider. (Tr., p. 381-82 and Ex. 30, p. 12, Patient #17)

Dr. LeuVoy thereafter prescribed Zoloft for the patient, even though Dr. Ebel testified that Zoloft was not recommended for use in children; and although the patient reported being sexually active with a promiscuous partner, Dr. LeuVoy did not do any STD (sexually-transmitted disease) testing, nor did he make a referral to a clinic for such testing. (Tr., p. 384, 388) Dr. LeuVoy responded by saying that while he agrees that the chart shows no evidence of him ordering STD testing for this patient, he did at some point "have occasion to order STD testing." (Tr., p. 686)

Dr. Ebel noted that in June 2002, when the patient reports that the Ritalin is no longer working, Dr. LeuVoy prescribes Adderall XR, eventually increasing the dose to 50 mg. per day (30 mg. in the morning and 20 mg. twice a day), which is

more than the recommended daily dose of 30 mg. This, according to Dr. Ebel, is a practice that falls below minimal standards. (Tr., p. 390-391).

Dr. Ebel was also concerned about Dr. LeuVoy's discontinuation of a prescription for Amitriptyline without making any notations why: she said there was no notation why this was discontinued. Similarly, Dr. Ebel was concerned about the abrupt discontinuation of the prescription for Zoloft in July 2003: "now you've got an adolescent who's without his Zoloft, and that's a medication that should actually be weaned down, not stopped abruptly, especially at 100 mg. a day. This patient is going to have side effects, is going to have withdrawal symptoms," but Dr. LeuVoy offered no indication as to why the medication was stopped, nor is there any indication the patient was advised on how to properly wean off the medication. (Tr., p. 392-394) This, and Dr. LeuVoy's failure to have a growth chart in the file, led Dr. Ebel to conclude that this practice failed to conform to minimum standards for the profession. (Tr., p. 382-84St. Ex. 30, p. 12, Patient #17)

Even though his records are consistent with Dr. Ebel's conclusion about the termination of Zoloft (see St. Ex. 18, p. 39), Dr. LeuVoy disagreed with Dr. Ebel's conclusion that the Zoloft was abruptly discontinued. (Tr., p. 191) Those records show Dr. LeuVoy ordered both Zoloft and Adderall on June 11, 2004, but ordered only Adderall on July 7, 2003. (St. Ex. 18, p. 39) Dr. LeuVoy's explanation for this discrepancy was that "I think only Adderall was written down because it's a Schedule II drug and I always write those down, even if it says refill all of the medicines." (Tr., p. 191)

36. Patient #20 is a 76 year old female who was first seen by Dr. LeuVoy in 1996 for a sinus and upper respiratory infection. (Tr., p. 409) Dr. Ebel noted that later in 1996 Dr. LeuVoy treated the patient for anxiety but provided no subjective information (e.g., where the patient would report the kinds of stressors she lives with, such as financial problems, a spouse's illness) nor did he provide objective information to support the diagnosis, which is contrary to minimum professional standards. (Tr., p. 410-412, and St. Ex. 21, p. 11-12) In addition, Dr. Ebel found that Dr. LeuVoy failed to practice within minimum standards regarding preventative care and management of hypertension and hyperlipidemia when he noted elevated cholesterol in labs conducted in 1997 but did not repeat those labs at any time in the next six years, nor did he note whether the patient had an annual mammogram or any other preventative exams during this period. (Tr., p. 417)

According to Dr. Ebel, "it would be standard of care to repeat [cholesterol checks], to make sure these are not going up and actually see if you can document that she's gone down with diet and exercise." (Tr., p. 417-18) Finally, Dr. Ebel found that Dr. LeuVoy's practice fell below minimum standards when, despite knowing

that the patient has hypertension, Dr. LeuVoy ordered a decongestant/antihistamine (Nolamine) that he should have known could raise the patient's blood pressure. (Tr., p. 416, St. Ex. 30, p. 14, Patient #20) Dr. LeuVoy agreed that Nolamine could "potentially" increase a patient's blood pressure, and agreed that according to his records, Patient #20's blood pressure on 182/80 when he ordered the Nolamine (on July 17, 1998). (Tr., p. 206-207) He agreed, further, that he prescribed Claritin D, a non-sedating antihistamine and decongestant, which like Nolamine, can "possibly" cause high blood pressure, at a time when Patient #20's blood pressure was 172/90. (Tr., p. 207-208)

37. Concerning Patient #21, who is another patient whose diagnosis of ADHD is not supported by a Connor's scale, Dr. LeuVoy also failed to refer the patient to mental health for an evaluation. Patient #21 is a 13 year old female whose mother reported a history of being treated for ADHD by a pediatrician, Dr. Dye. (Tr., p. 419). Dr. Ebel examined the records and found no verification of this diagnosis in the file, nor was any ADHD symptom noted on the intake history sheet. (Tr., p. 423-24) According to Dr. Ebel, Dr. LeuVoy's practice fell below minimum standards when he had notes from the school indicating that the patient has academic problems but no real behavioral problems, casting doubt on the ADHD diagnoses, and yet failed to refer the patient to determine if she truly had ADHD or had instead a learning disability or some other problem. (Tr., p. 427)

38. Dr. LeuVoy noted that throughout the years, his practice has been subject to chart audits imposed by insurance companies or by the Bureau of Workers Compensation, and at least in the last few years his practice has "always done very well on any chart audits. I'm told that we score very high, like 97 percent out of 100." (Tr., p. 625) He also testified that he is looking into attending a three-day course on prescribing controlled substances, and if the Board required it of him, he would also be wiling to pursue additional training relative to ADD and ADHD diagnosis and treatment. (Tr., p. 697) He added that three of his own children are treated for ADHD. (Tr., p. 699)

39. Dr. LeuVoy admitted that there were numerous deficiencies in his records, but that his documentation has since improved. Dr. LeuVoy stated, "for instance, for an ADHD patient, I often will document more about how a patient is responding to the medication. Even if it's just a note to say the patient is doing well, doing fine, doing well in school. We usually try to document something indicating how the medication's working." (Tr., p. 719) He did, however, say he learned much by Dr. Ebel's review of the twenty-one patients: "It's really opened my eyes a lot to the fact that back then, years ago, documentation was often lacking. And I can understand how a reviewer would want to have more information to understand the thought processes that went on during the treatment in these cases. I also can

see how things have changed over the years and how medical practice is not a static thing but is continually evolving." (Tr., p. 693-94)

40. Concerning the diagnosing of children to determine ADHD, Dr. LeuVoy said his practice, too, has changed: he testified that in 2002 pharmaceutical representatives told him about Connor's scales, and he uses Connor's scales and growth charts "much more consistently [now] than we did then." (Tr., p. 694) He explained that "I think it's taken some time for information to filter down to the real world practice of medicine. In my area, I'm pretty much old school, not having recently gone through a residency school program." (Tr., p. 694)

    Dr. LeuVoy was asked by his attorney: "Prior to receiving or seeing a version of [Connor's scales] from a pharmaceutical rep, had you ever heard of or been exposed to a Connor's scale?" and answered "No." (Tr., p. 634) This testimony is contradicted, however, by evidence taken earlier in the hearing, where the referring physician caring for Patient #5 sent records to Dr. LeuVoy expressly referring to the use of Connor's scales for determining the that the patient did not have a diagnosis of ADHD. The referring physician's notes for December 22, 1998, stated that the physician "received copies of the Connors rating scale" and based on that "we do not have any basis for starting [Patient #5] on any CNS stimulants." (St. Ex. 6, p. 117)

41. Several colleagues offered written statements in support of Dr. LeuVoy's good character and skill, including a letter from Shirley Sharp, the head of the House of New Hope Foster Care & Adoption Agency, who stated Dr. LeuVoy "has always shown a high level of professionalism while, at the same time, dealing with our behaviorally handicapped children in a tender and compassionate way." (See Resp. Ex. A) Ron Mason, a member of the New Hope executive board, also wrote praising Dr. LeuVoy as a man with "impeccable character" who conducts himself "in a very professional manner, but is still personable and caring for his patients." (Resp. Ex. D) Pastor Lois Hoshor, of Soul Seekers Evangelistic Association, describes Dr. LeuVoy as a "man of honesty and integrity in his profession as well as his personal life." (Resp. Ex. C) Karmella Smith, a patient with diabetes who suffers from ADHD, wrote praising Dr. LeuVoy's devotion: "I have never had such a sense of complete trust with doctor and staff as I do Dr. Randall LeuVoy and his office personnel." (See Resp. Ex. B.)

42. Dr. LeuVoy testified there were office practice areas he would likely change based on what he's learned during this administrative review process: he's completed a record-keeping course at Case Western Reserve University in 2002, and "we are going to be doing in-office chart reviews, looking at deficiencies in documentation, in charting, and . . . I'm planning to make another revision to perhaps make controlled substance monitoring more intensive." (Tr., p. 695-96)

## ANALYSIS

A substantial portion of the questions presented in this case require no weighing of competing versions of fact: Dr. LeuVoy stipulated that, without seeing twenty-one patients and while incarcerated, he directed his staff to use prescription forms he signed in advance to prescribe dangerous drugs to patients who had appointments to see him. He did this despite the fact that he knew each of these patients was supposed to meet with him, at his office, as a condition precedent to writing these prescriptions. In this way, each of the facts alleged in the first charge shown in the charging document were proved as true. The question thus before the Board becomes whether pre-signing prescriptions for patients, and directing staff members to fill out those prescriptions while the doctor is in custody, is conduct that fails to conform to minimal standards of professional care in Ohio.

In stating the affirmative case, the State's expert, Dr. Rose Ebel, effectively established both the existence of a bar to this practice and the reasons for such a bar. A doctor prescribing medication – particularly controlled substances with high street values and mind-altering capabilities – runs too great a risk when he or she delegates these duties to staff. The risks here include all risks attendant to allowing someone else to perform highly regulated activity, including the risk that the staff member will fail to detect errors in the medication prescribed or will fail to appreciate changes in the patient's medical condition. Such was the case of Patient # 8, a patient with a history of substance abuse, who unbeknownst to Dr. LeuVoy tested positive in a drug screen in the time between appointments with Dr. LeuVoy. Despite this, during the time Dr. LeuVoy was in jail, Dr. LeuVoy's staff prescribed pain medication for this patient. Acknowledging the gravity of this error, Dr. LeuVoy admitted that had he known of the positive drug screen, he "probably wouldn't have prescribed controlled drugs" for this patient's complaint of pain. (Tr., p. 101) This is precisely the risk of harm to the public engendered by Dr. LeuVoy's decision to delegate prescription responsibilities to his staff. The record thus more than adequately establishes the existence of a practice standard and Dr. LeuVoy's breach of that standard.

It is no excuse to assert, as Dr. LeuVoy does, that "as a treating physician I was in the best position to be able to take care of those needs at the time, since I knew the patients and they were established patients and [I] knew their history." (Tr., p. 628) Clearly this excuse fails in part because it rests on a premise that's been proved false here: Dr. LeuVoy did not know his patients well enough to blindly adhere to a maintenance schedule without first consulting with the patient to see whether the conditions that led to establishing the schedule continue to be present. That's the reason for periodic visits – to see whether the medication schedule continues to be appropriate for each patient. If there was a valid need for an office visit, and if one of the functions of the office visit is to determine the continued validity of an existing medication regimen, then skipping the office visit and prescribing medication without consulting with the patient is a violation of minimal standards of practice.

In mitigation, is can readily be said that Dr. LeuVoy had some basis to believe his conduct was within professional standards. It stands unrebutted by the State that Dr. LeuVoy

consulted with the emergency room staff that received some of his maintenance patients, and was told to stop sending those patients to the ER and take the alternative way of filling prescriptions used by Dr. LeuVoy. Nevertheless, Dr. LeuVoy had an affirmative obligation at that point to determine for himself whether this practice was in accordance with the law. He had the means through legal counsel to seek advice, and elected not to do so. In an area of professional practice – i.e., the prescribing of controlled substances – that is so highly regulated, questions such as these call out for informed decision-making, and Dr. LeuVoy fell short of the practice standard by failing to ensure his plan for delegating prescription authority was legally permissible.

It is also no excuse to report that his incarceration at the contempt hearing caught him unawares. This is not to doubt his sincerity when he testified that he was surprised at the court's decision to immediately jail Dr. LeuVoy. Any attorney familiar with domestic relations litigation would likely give exactly the advice Dr. LeuVoy described, and would have explained that it is highly unlikely that a court would jail a professionally-licensed child support obligor at the end of a contempt of court hearing.

On this point, one collateral but relevant matter needs attention. In its response to Dr. LeuVoy's written summation, the State attacked Dr. LeuVoy's representation that he was surprised the court jailed him at the end of the contempt hearing. Challenging such a representation is well within the bounds of fair advocacy – the State is clearly permitted to call into question Dr. LeuVoy's representation that the jailing surprised him. But within the bounds of fair advocacy, the State itself must nevertheless abide by appropriate professional norms. In its rebuttal closing statement at page 1, the State writes "Dr. LeuVoy also makes a ridiculous claim that he was unable to properly plan for his absence from the practice because he did not know he was going to be incarcerated." (It uses the same approach to castigate Dr. LeuVoy for his failure to be familiar with the use of Connor's scales in the diagnosis of ADHD, where it states at page 2: "To suggest, as Dr. LeuVoy does, that this standardized testing had not trickled down to Lancaster, Ohio by 2002 is ridiculous.") This depiction of Dr. LeuVoy's presentation to the Board ill-serves all parties: It demeans the process, unfairly castigates the Respondent, and diminishes respect the public might have for the author of the State's brief. Among the aspirational ideals all attorneys in Ohio subscribe to is the goal of being "courteous and civil in all communications." (See Ohio Supreme Court Statement on Professionalism, February 3, 1997) There is no basis in the record to suggest Dr. LeuVoy's surprise at being jailed at the end of his contempt hearing was "ridiculous". Anyone familiar with child support contempt hearings would be able to attest that jail is a highly unusual outcome, despite the fact that it is among those options well within the court's prerogative. Of greater concern here, however, is the need to recognize that even in the spirit of zealous advocacy, the Board can and should expect those parties who appear before it to abide by norms of civility and professionalism in briefs submitted to the Board. The arguments presented by the State suggesting Dr. LeuVoy's positions are "ridiculous" do not live up to those norms, and as such are rejected.

While Dr. LeuVoy might be credited with being surprised at his lot at the end of the contempt hearing, such surprise does not validate his decision to circumvent prescribing standards. As Dr. Ebel noted (and Dr. LeuVoy himself acknowledged), much harm can come

from a prescription inappropriately issued. Dr. LeuVoy put his staff in an untenable position by delegating to them the responsibility for filling in the pre-signed forms for the twenty-one patients he was scheduled to see during the ten days he was in custody. That practice fell below minimal standards for the profession and warrants the revocation of his license.

It seems clear from the record that were it not for the discovery of Dr. LeuVoy's misuse of the prescription process the Board would have had no occasion to examine his practice with respect to these twenty-one patients. Once such an investigation commenced, however, it clearly became the Board's duty to examine his practices. The State's expert, Dr. Ebel, gave expert and competent testimony with respect to Dr. Ebel's treatment of each of these twenty-one patients. In her thorough and well-explained analysis, Dr. Ebel found no separate violation of minimal standards in Dr. LeuVoy's treatment of eight of the twenty-one patients (Patient #s 1, 4, 6, 10, 11, 14, 16 and 18), and found sufficient mitigation due to patient noncompliance to reject a claim for breach of standards in a ninth patient (Patient #19). The record supports this, and accordingly no further charge is established with respect to these patients, save for Dr. LeuVoy's prescription practices.

Upon her investigation into Dr. LeuVoy's treatment of the remaining patients, however, Dr. Ebel found persistent and significant practice errors. Among the more profound errors is Dr. LeuVoy's acceptance of the diagnosis of ADHD without there being a sufficient record establishing that diagnosis. The record establishes that, since at least the mid 1990s, such a diagnosis should as a matter of practice be made upon data gathered in the manner called for under the Connor's scale. This diagnosis, according to Dr. Ebel, can be difficult and time-consuming to make, and draws heavily from persons who are familiar with the child through contact with the child in day-to-day settings, including home and school. The record establishes that gathering this information is the minimal standard and has been the minimal standard since before 2000. The record establishes this not only through Dr. Ebel's expert testimony but also through records showing the use of the Connor's scale. It is no excuse – and more than a little bit troubling – for Dr. LeuVoy to say that even if he noticed another doctor's use of the scale – as was the case in the records for Patient #5 – "it wouldn't have necessarily meant a lot to me." (Tr., p. 707) The evidence establishes that by 2000, this entry in Patient #5's records should have meant a lot to Dr. LeuVoy, and his failure to recognize its import constitutes a practice that falls below minimal professional standards.

To a large extent, the practice of medicine and surgery in Ohio is a self-regulated one: each certificate holder is obliged to maintain current familiarity with the modes of practice and the tools used in practice, and is expected to take the initiative to learn when diagnostic tools evolve. That is the case here, and the record establishes Dr. LeuVoy failed to maintain a working knowledge of diagnostic tools intrinsic to his area of practice. While the Board lacks the ability to test each of its certificate holders' knowledge of the current state of practice, it can and must actively respond when it is presented with evidence establishing a failure to maintain that knowledge. Such evidence is present here, and warrants the indefinite suspension or revocation of Dr. LeuVoy's license.

Beyond Dr. LeuVoy's failure to apply appropriate diagnostic techniques when treating patients for ADHD, his records reflect a persistent failure to provide required information under minimal professional standards. Dr. Ebel's explanation of the SOAP rule holds true:

records need to include subjective information, objective information, an assessment based on this information, and a plan, along with preventative discussions where warranted. Much of the testimony taken at the hearing addressed the adequacy of these records. After considering Dr. Ebel's concerns and taking into account Dr. LeuVoy's explanations, it is clear the record supports each of the claims appearing in the Board's charging document. Dr. LeuVoy himself agreed that much of his record-keeping was below minimal standards. To his credit, he expressed an interest in taking continuing education courses designed to improve these skills. That response would suffice, if coupled with a written reprimand and an order requiring monitoring for a substantial period of time, in this case three years. Were this a case presenting only these claims, the public would be well-served by the Board permitting Dr. LeuVoy to continue to practice.

Ultimately, the Board has an obligation to instill in each certificate holder a sense of obligation of the highest order, that each licensee inform himself or herself about relevant innovations in their chosen practice fields. The Board has to accomplish this largely through its reliance on self-discipline by the certificate holders. When cases such as this one come before the Board, its duty is in part to ensure the certificate holder is evaluated in a fair and impartial manner, but its duty is also to the public at large. Here the public and Dr. LeuVoy's patients were put at risk by his decision to delegate prescription authority to his staff. Several of his patients were put further at risk by Dr. LeuVoy's failure to take the steps needed to diagnose or treat for ADHD. The profession as a whole was put at risk when, in the course of his practice, Dr. LeuVoy failed to conscientiously record his treatment in a way that would ensure continuity of care. Given the gravity of the decision to delegate prescription writing to his staff, Dr. LeuVoy's license should be revoked. If at some point in the future the Board is presented with evidence of Dr. LeuVoy's substantial retraining regarding ADHD diagnosing and record-keeping, it may reserve to itself the authority to consider a new application for a certificate from Dr. LeuVoy.

## FINDINGS OF FACT

1. The Respondent, Randall Don LeuVoy, D.O., holds a certificate to practice osteopathic medicine and surgery in Ohio issued by the State Medical Board of Ohio.

2. On November 7, 2001, while incarcerated, Dr. LeuVoy signed not fewer than 38 otherwise blank prescription forms for use by his office staff during his incarceration. During this time, Dr. LeuVoy instructed his staff, none of whom held a license to practice medicine or surgery, to issue prescriptions for patients who were scheduled to meet with Dr. LeuVoy during the period of his incarceration. Acting under his direction and using the prescription forms he signed while he was incarcerated, Dr. LeuVoy's staff issued prescriptions for twenty-one patients, each of whom are identified in the patient key that accompanies the Board's charging document (St. Ex. 1A).

Prescriptions for Schedule II controlled substances were issued by Dr. LeuVoy's staff using the pre-signed prescription blanks, for the following patients:

| PT# | Date | Prescription | Quantity | Refills |
|---|---|---|---|---|
| 2 | 11/13/01 | Metadate CD 20 mg | 30 | 0 |
| 3 | 11/14/01 | Dexedrine Spansule 15 mg | 30 | 0 |
| 5 | 11/14/01 | Ritalin 20 mg | 90 | 0 |
| 7 | 11/12/01 | Adderall 15 mg | 90 | 0 |
| 9 | 11/13/01 | Adderall 10 mg | 60 | 0 |
| 13 | 11/12/01 | Metadate CD 20 mg | 30 | 0 |
| 16 | 11/08/01 | MS Contin 60 mg | 90 | 0 |
| 17 | 11/07/01 | Ritalin SR 20 mg | 90 | 0 |
| 17 | 11/07/01 | Ritalin 10 mg | 90 | 0 |
| 21 | 11/08/01 | Metadate CD 20 mg | 30 | 0 |

Prescriptions for other than Schedule II controlled substances were issued by Dr. LeuVoy's staff using the pre-signed prescription blanks, for the following patients:

| PT# | Date | Prescription | Quantity | Refills |
|---|---|---|---|---|
| 1 | 11/08/01 | Valium 10 mg | 30 | 5 |
| 1 | 11/08/01 | Vicoprofen 7.5 mg | 60 | 5 |
| 4 | 11/14/01 | Vicodin | 60 | 0 |
| 6 | 11/12/01 | Lomotil | 30 | 0 |
| 6 | 11/12/01 | Panlor 22 | 120 | 0 |
| 8 | 11/09/01 | Vicodin | 60 | 0 |
| 10 | 11/13/01 | Vicodin 5 mg | 90 | 0 |
| 10 | 11/13/01 | Ambien 5 mg | 90 | 0 |
| 11 | 11/07/01 | Vicodin ES | 120 | 0 |
| 12 | 11/07/01 | Vicodin 5 mg | 90 | 0 |
| 12 | 11/07/01 | Ativan 1 mg | 60 | 0 |
| 14 | 11/12/01 | Vicodin 5 mg | 90 | 0 |
| 15 | 11/08/01 | Tylenol #4 | 60 | 0 |
| 15 | 11/08/01 | Xanax 0.5 mg | 60 | 0 |
| 16 | 11/08/01 | Vicodin 5 mg | 120 | 0 |
| 16 | 11/08/01 | Klonopin 1 mg | 120 | 0 |
| 18 | 11/08/01 | Vicoprofen 7.5 mg | 100 | 0 |
| 19 | 11/12/01 | Oxazepam 30 mg | 90 | 0 |
| 20 | 11/12/01 | Ativan 1 mg | 60 | 0 |

3. When providing professional care to eight of his patients between 2000 and 2003 (Patients 2, 3, 5, 7, 9, 13, 17 and 21), Dr. LeuVoy treated these patients for ADHD without first either obtaining documents to support this diagnosis or performing appropriate examinations that would establish this diagnosis, and thereafter prescribed Schedule II controlled substances as part of his treatment of these patients. In his care for each of these patients, Dr. LeuVoy inappropriately diagnosed ADHD, ADD, or hyperactivity in these patients, and inappropriately initiated the prescribing of Schedule II controlled substances to Patients 2, 3, 5, 7, 9, 13, 17, and 21.

4. When providing professional care to Patients 2, 5, 7, 8, 9, 12, 13, 15, 17, 20, and 21, Dr. LeuVoy treated, diagnosed and assessed patients, and maintained records, in a manner that failed to include appropriate subjective or objective observations, assessments, or plans of treatment required under prevailing minimal standards for the practice of osteopathic medicine and surgery in Ohio. These include:
    a. Dr. LeuVoy failed to provide in patient records the subjective information needed to support the diagnosis of bladder spasms and overactive bladder for Patient 2, an eight year old male; and inappropriately prescribed Ditropan for this patient, failing to explain the conditions warranting the prescription of Ditropan, which generally is not indicated for use in children;
    b. Dr. LeuVoy inappropriately and excessively prescribed Ritalin to Patient #5, a six year old female, after receiving prior pediatrician records reflecting that Connor's scale evaluations on the child reflect the child does not have ADHD and without explaining in the patient records the reason for taking this action; and failed to consult with the physician treating the child's ADHD after recording patterns of drug use that indicated the possibility of drug diversion;
    c. Dr. LeuVoy failed to refer Patient #7, a twelve year old female with depression, and the child's family, to counseling or evaluation for depression;
    d. Dr. LeuVoy failed to document the performance of a proper work-up for Patient #8's complaint of migraine headaches, and inappropriately prescribed controlled substance pain medication (Demerol) for Patient #8, who has a history of substance abuse and depression, without first conducting an appropriate evaluation into the cause of the problem. Further, Dr. LeuVoy inappropriately refilled the patient's prescription for pain medication even after the patient tested positive for cocaine and other illegal drugs; and thereafter, when the patient presented with a cut wrist, failing to document any inquiry whether the cut was the result of an accident or evidence of a suicide attempt;

e. Dr. LeuVoy inappropriately increased the dosage of Adderall to Patient #9, an eight year old male with a diagnosis of ADD who complained of daytime sleepiness and insomnia, without requesting a psychological evaluation or decreasing the Adderall dosage, and without inquiring into the patient's sleep hygiene;
f. Dr. LeuVoy failed to coordinate with a psychiatric consultation his treatment of Patient #12, a fifty-six year old male with a history of suicide attempts and who exhibits drug-seeking behavior; inappropriately prescribed a lipid-lowering agent for this patient without checking the efficacy of this treatment and without checking liver functions; prescribing a psychotropic, Zyprexa, without showing any record establishing that the patient was either bipolar or psychotic; inappropriately took over the prescription of psychiatric medication from the patient's psychiatrist without coordinating this with the psychiatrist; and when the patient reports that he is not taking prescribed psychotropics (Vicodin, Elavil, Mellaril, and Ativan), failed to record follow-up assessments after the patient's noncompliance;
g. Dr. LeuVoy inappropriately prescribed Remeron for Patient #13, a seven year old male, without seeking a pediatric mental health evaluation for the patient, when Remeron is not recommended for use by children; and then inappropriately prescribed Zyprexa, and later on, Seroquel, where both Zyprexa and Seroquel are bipolar medication and where these medications are not recommended for use by children and where there was no diagnosis of bipolar for this patient;
h. Dr. LeuVoy failed to call for hemoglobin A-1-C tests for Patient #15, a noncompliant sixty year old female with non-insulin dependent diabetes mellitus, hypothyroidism, gastroesophageal reflux disease, obesity and chronic anxiety; inappropriately treated the patient with Lotronex for complaints of diarrhea without first doing any stool or gastroenterological studies or referring her to a gastroenterologist; failed to order a stress test or refer the patient to a cardiologist when the patient presents with chest pains; failed to check the patient's liver functions after the patient began taking a statin to lower her cholesterol; failed to timely check the patient's thyroid stimulating hormone after prescribing Unithroid; failed to order either a pap test or a mammogram for a ten year period; and after ordering a mammogram, failed to follow up when the patient was non-compliant;
i. Dr. LeuVoy inappropriately prescribed a three-times daily dose of Ritalin SR 20 mg., an eight-hour medication that should only be used in the daytime – where the last dose was to be taken at 4 p.m., for Patient #17, a thirteen year old male who was being treated for ADHD and enuresis; and then without explanation added a 10 mg. dose of Ritalin, such that the total daily dose exceeded the maximum recommended daily dose, without explaining why the change was warranted and without referring the patient

to mental health; prescribed Zoloft, which is not recommended for children; inappropriately discontinued one controlled medication (Ritalin) and started another controlled medication (Dexadrine) without performing a pill count to account for the unused Ritalin; prescribed Adderall XR using a dose that exceeded the recommended daily dose; discontinued a prescription for Amitriptyline without making any notations why; failed to maintain a growth chart for this patient, and failed to counsel the patient on sexually-transmitted diseases; and failing to test for STDs when the patient reports being sexually active with a promiscuous partner;

j. Dr. LeuVoy inappropriately treated Patient #20, a 76 year old female, for anxiety without providing any subjective or objective information that would support the diagnosis; treated her hypertension and hyperlipidemia after noting elevated cholesterol in labs conducted in 1997, but then failed to repeat those labs at any time in the next six years; and despite knowing the patient had hypertension, prescribed decongestants/antihistamines (Nolamine and Claritin D) that he should have known could raise the patient's blood pressure;

k. Dr. LeuVoy failed to refer Patient #21, a thirteen year old female, to determine if the patient had learning disabilities or truly had ADHD, where there was no verification of the ADHD diagnosis and where school reported the patient had no real behavioral problems but only had academic programs.

5. Upon finding cause to believe grounds existed to take action with respect to his certificate to practice osteopathic medicine and surgery in Ohio, the Board set forth its charges against the Respondent in a notice dated June 8, 2005. In a written response dated June 13, 2005 and received by the Board on June 14, 2005, the Respondent invoked his right to have an administrative review of the charge, and in a letter dated June 16, 2005 the Board acknowledged its receipt of the Respondent's request for a hearing. The Board then set the matter for a hearing to commence on June 28, 2005, continued the hearing, appointed an administrative hearing examiner, and provided the parties with an opportunity to be heard on the charges in an evidentiary hearing conducted on March 13, 14, and 15, 2006.

## CONCLUSIONS OF LAW

1. Because he holds a certificate to practice osteopathic medicine and surgery in Ohio, the Respondent Randall Don LeuVoy, D.O., is subject to the jurisdiction of the State Medical Board of Ohio in actions taken pursuant to R.C. Chapter 4731.

2. Upon sufficient cause to believe the holder of a certificate issued by the State Medical Board of Ohio has violated a provision of R.C. Chapter 4731 or

regulations promulgated thereunder, the Board is authorized to take action with respect to that certificate. Upon his receipt of the Board's charging document, the Respondent timely requested an evidentiary hearing before the Board took any final action based upon the Board's charge. Upon its receipt of the Respondent's request for a hearing, the Board set the matter for hearing in the manner provided for by R.C. 119.07 and 119.09 (the Administrative Procedure Act), and provided the Respondent with an opportunity to be heard, all in the manner provided for by law and in accordance with all statutory and constitutional protections afforded to persons possessing such a certificate.

3. The Board may take disciplinary action against a certificate-holder upon sufficient proof that the person has engaged in practices that constitute 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," as that clause is used in section 4731.22(B)(6) of the Revised Code.

4. Where by at least a preponderance of the evidence the State establishes, as is the case here, that the Respondent pre-signed otherwise blank prescription forms and then directed the use of these forms by his staff, so that the non-physician staff could write prescriptions for controlled substances for patients scheduled to see the Respondent while the Respondent was incarcerated, all as more fully set forth in Finding of Fact Number 2, the State has met its burden of proving the Respondent has engaged in a practice that is a departure from and fails to conform to minimal standards of care for similar practitioners under similar or similar circumstances, as that clause is used in section 4731.22(B)(6) of the Ohio Revised Code.

5. Where by at least a preponderance of the evidence the State establishes, as is the case here, that the Respondent treated those patients identified in Finding of Fact Number 3 for ADHD without first either obtaining documents to support this diagnosis or performing appropriate examinations that would establish this diagnosis, and thereafter prescribed Schedule II controlled substances as part of his treatment of these patients, the State has met its burden of proving the Respondent has engaged in a practice that is a departure from and fails to conform to minimal standards of care for similar practitioners under similar or similar circumstances, as that clause is used in section 4731.22(B)(6).

6. Where by at least a preponderance of the evidence the State establishes, as is the case here, that the Respondent treated, diagnosed and assessed patients, and maintained records, in a manner that failed to include appropriate subjective or objective observations, assessments, or plans of treatment required under prevailing minimal standards for the practice of osteopathic medicine and

surgery in Ohio, all as set forth in Finding of Fact Number 4, the State has met its burden of proving the Respondent has engaged in a practice that is a departure from and fails to conform to minimal standards of care for similar practitioners under similar or similar circumstances, as that clause is used in section 4731.22(B)(6).

7. Upon sufficient proof that the Respondent has violated any provision of R.C. 4731.22(B), as has been demonstrated in the foregoing findings of fact and conclusions of law, the Board, by an affirmative vote of not fewer than six of its members, shall to the extent permitted by law limit, revoke or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate, all pursuant to section 4731.22(B) of the Revised Code. Further, when the Board revokes an individual's certificate to practice, it may specify that the action is permanent. An individual subject to 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. See R.C. 4731.22(L) (2005).

## PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Randall Don LeuVoy, M.D., to practice medicine and surgery in the State of Ohio is REVOKED.

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

Christopher B. McNeil, Esq.
Hearing Examiner

# State Medical Board of Ohio

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


EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 13, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Gerald Anthony Coniglio, M.D.; Souhail A. El-Asfouri, M.D.; Suzanne A. Haritatos, D.P.M.; Randall Don LeuVoy, D.O.; and Terri Lynne Savage, M.D. A roll call was taken:

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

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

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

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

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

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

.....

RANDALL DON LEUVOY, D.O.

.....

**DR. EGNER MOVED TO APPROVE AND CONFIRM MR. MCNEIL'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF RANDALL DON LEUVOY, D.O. DR. STEINBERGH SECONDED THE MOTION.**

.....

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

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

The motion carried.

State Medical Board of Ohio
77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

June 8, 2005

Randall Don Leuvoy, D.O.
1981 Granville Pike
Lancaster, OH 43130

Dear Doctor Leuvoy:

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) (a) On or about November 7, 2001, while incarcerated, you signed at least 38 otherwise blank prescription forms for use by your office staff during your incarceration.

(b) Despite the fact that you were incarcerated during the time period November 7 through 16, 2001, you instructed your staff through your wife to issue prescriptions for "established medications," and, utilizing some of the forms referenced in paragraph (1)(a) above, purported prescriptions for Schedule II controlled substances were issued for Patients 2, 3 5, 7, 9, 13, 16, 17 and 21 on or about the following dates:

| Patient no. | Date | Prescription | Quantity | Refills |
|---|---|---|---|---|
| 2 | 11/13/01 | Metadate CD 20 mg | 30 | 0 |
| 3 | 11/14/01 | Dexedrine Spansule 15 mg | 30 | 0 |
| 5 | 11/14/01 | Ritalin 20 mg | 90 | 0 |
| 7 | 11/12/01 | Adderall 15 mg | 90 | 0 |
| 9 | 11/13/01 | Adderall 10 mg | 60 | 0 |
| 13 | 11/12/01 | Metadate CD 20 mg | 30 | 0 |
| 16 | 11/08/01 | MS Contin 60 mg | 90 | 0 |
| 17 | 11/07/01 | Ritalin SR 20 mg | 90 | 0 |
| 17 | 11/07/01 | Ritalin 10 mg | 90 | 0 |
| 21 | 11/08/01 | Metadate CD 20 mg | 30 | 0 |

Mailed 6·9·05

(c) Despite the fact that you were incarcerated during the time period November 7 through 16, 2001, you instructed your staff through your wife to issue prescriptions for "established medications," and purported prescriptions for controlled substances were issued for Patients 1, 4, 6, 10, 11, 12, 14, 15, 16, 18, 19 and 20 on or about the following dates:

| Patient no. | Date | Prescription | Quantity | Refills |
|---|---|---|---|---|
| 1 | 11/08/01 | Valium 10 mg | 30 | 5 |
| 1 | 11/08/01 | Vicoprofen 7.5 mg | 60 | 5 |
| 4 | 11/14/01 | Vicodin | 60 | 0 |
| 6 | 11/12/01 | Lomotil | 30 | 0 |
| 6 | 11/12/01 | Panlor 22 | 120 | 0 |
| 8 | 11/09/01 | Vicodin | 60 | 0 |
| 10 | 11/13/01 | Vicodin 5 mg | 90 | 0 |
| 10 | 11/13/01 | Ambien 5 mg | 90 | 0 |
| 11 | 11/07/01 | Vicodin ES | 120 | 0 |
| 12 | 11/07/01 | Vicodin 5 mg | 90 | 0 |
| 12 | 11/07/01 | Ativan 1 mg | 60 | 0 |
| 14 | 11/12/01 | Vicodin 5 mg | 90 | 0 |
| 15 | 11/08/01 | Tylenol #4 | 60 | 0 |
| 15 | 11/08/01 | Xanax 0.5 mg | 60 | 0 |
| 16 | 11/08/01 | Vicodin 5 mg | 120 | 0 |
| 16 | 11/08/01 | Klonopin 1 mg | 120 | 0 |
| 18 | 11/08/01 | Vicoprofen 7.5 mg | 100 | 0 |
| 19 | 11/12/01 | Oxazepam 30 mg | 90 | 0 |
| 20 | 11/12/01 | Ativan 1 mg | 60 | 0 |

(2) As demonstrated in your patient records, in treating Patients 2, 3, 5, 7-9, 12, 13, 15, 17, and 19-21, you failed to perform or document the performance of proper work-ups, and/or prescribed controlled substances and/or other dangerous drugs in an inappropriate manner, and/or otherwise failed to provide treatment in accordance with the minimal standards of care. Examples of such conduct include, but are not limited to, the following:

(a) Despite your failure to perform and/or document appropriate examinations or evaluations, and/or your failure to obtain and/or document obtaining from previous physicians supporting documentation of Attention Deficit Hyperactivity Disorder [ADHD] and/or Attention Deficit Disorder [ADD] and/or hyperactivity diagnoses, you inappropriately diagnosed ADHD and/or ADD and/or hyperactivity and inappropriately initiated the prescribing of Schedule II controlled substances to Patients 2, 3, 5, 7, 9, 13, 17 and 21.

(b) In your care of Patient 2, an eight-year-old male, you failed to reflect any subjective information to support the diagnosis of "bladder spasms/overactive bladder." In addition, despite such failure and despite Ditropan not being indicated for use in children, you inappropriately prescribed Ditropan to Patient 2.

(c) In your care of Patient 5, a six-year-old female, you inappropriately and excessively prescribed Ritalin, failed to communicate with and/or document communication with specialists, continued to prescribe Ritalin despite signs of drug diversion and/or abuse and inappropriately continued to prescribe Ritalin despite evidence including a prior treating pediatrician's records indicating that a Connors scale and other information reflected that Patient 5 did not have ADHD.

(d) You failed to refer and/or document the referral of Patient 7, a 12-year-old female, for mental health evaluation and/or counseling.

(e) You failed to perform and/or document the performance of a proper work-up for migraine headaches, continued to prescribe controlled medications despite signs of drug diversion and/or abuse, and failed to refer and/or document referral of Patient 8 to a drug treatment facility. In addition, despite a history of substance abuse, depression and a history of self-mutilation and/or suicidal ideation/attempt, you failed to refer and/or document the referral of Patient 8 for counseling.

(f) Despite symptoms of insomnia, you inappropriately increased the dosage of Adderall to Patient 9, an eight-year-old male.

(g) In your care of Patient 12, you failed to perform and/or document the performance of appropriate follow-up tests, failed to timely coordinate and/or document the timely coordination of care with specialists, failed to refer and/or document a referral for a mental health evaluation and/or counseling and inappropriately prescribed Zyprexa without any documented indication.

(h) You inappropriately prescribed Zyprexa, Seroquel, Risperdol and Remeron to Patient 13, a seven-year-old male. In addition, you failed to refer and/or document the referral of Patient 13 for mental health evaluation and/or counseling.

(i) You failed to perform and/or document the performance of a proper work-up for diarrhea prior to prescribing Lotronex, failed to perform and/or document the performance of a proper work-up for hypothyroidism and chest pain, failed to perform and/or document the performance of appropriate follow-up tests, failed to properly treat and/or document the proper treatment of diabetes mellitus, failed to properly treat and/or document the treatment of hyperlipidemia, and inappropriately prescribed Unithroid to Patient 15.

(j) You inappropriately and excessively prescribed Zoloft, excessively prescribed Ritalin and Adderall, failed to perform and/or document the performance of a proper work-up for nocturnal enuresis, failed to document an appropriate rationale for prescribing Amitriptyline, failed to refer and/or document referral for STD testing in this sexually active teenage patient, inappropriately discontinued one controlled medication and started another controlled medication without performing a pill count and failed to refer and/or document the referral of Patient 17 for mental health evaluation and/or counseling.

(k) In your care of Patient 19, you failed to perform and/or document the performance of liver function studies while prescribing Sporanox and continued to prescribe Fioricet and Serax to Patient 19 despite signs of drug diversion and/or abuse.

(l) You failed to perform and/or document the performance of a proper work-up for a diagnosis of anxiety, failed to treat and/or document the treatment of hyperlipidemia, failed to properly treat and/or document the proper treatment of hypertension and inappropriately prescribed Nolamine and Claritin-D to Patient 20.

(m) You failed to refer and/or document the referral of Patient 21 for mental health evaluation and/or counseling.

(3) Patients 1-21 are identified on the attached Patient Key (Key confidential--to be withheld from public disclosure).

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[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," as that clause is used in Section 4731.22(B)(6), 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,

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 7285
RETURN RECEIPT REQUESTED

Duplicate mailing to: 1693 Baltimore Road
Lancaster, OH 43130

CERTIFIED MAIL # 7003 0500 0002 4340 7278
RETURN RECEIPT REQUESTED

cc: J. Tullis Rogers
Blacklick Office Park
1606 Lancaster Avenue
Reynoldsburg, OH 43068

CERTIFIED MAIL # 7003 0500 0002 4340 7261
RETURN RECEIPT REQUESTED

The court document for this date cannot be found in the records of the Ohio State Medical Board.

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

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

July 2, 1997

Randall D. Leuvoy, M.D.
1334 Sheridan Drive, Suite 2
Lancaster, OH 43130

Dear Doctor Leuvoy:

This will confirm that your medical license was reinstated effective June 30, 1997 upon receipt by the State Medical Board of Ohio of a Notice to Reinstate/Reissue a Professional License from the Franklin County Child Support Enforcement Agency. A copy of the CSEA's notice is attached.

Very truly yours,

Lauren Lubow
Case Control Officer

cc: Randall D. Leuvoy, M.D.
1550 Sheridan Drive, Suite 101
Lancaster, OH 43130

Randall D. Leuvoy, M.D.
425 Forest Rose Avenue
Lancaster, OH 43130

Members, State Medical Board of Ohio

NOTICE TO REINSTATE/REISSUE A PROFESSIONAL LICENSE

DATE ISSUED: 06/30/97

STATE MEDICAL BOARD OF OHIO
77 S. OHIO ST.

COLUMBUS, OH 43266-0315

FRANKLIN COUNTY CHILD SUPPORT
ENFORCEMENT AGENCY
373 S. HIGH STREET, 13TH FLOOR
COLUMBUS, OHIO 43215-6303

HEATH MACALPINE
FCCSEA SUPPORT OFFICER
PHONE (614) 462-3219
FAX (614) 462-5042

RE:

RANDALL D LEUVOY
NAME OF OBLIGOR

SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER

06/ /56
DATE OF BIRTH

THIS NOTIFIES YOU THAT THE FRANKLIN COUNTY CHILD SUPPORT ENFORCEMENT AGENCY REQUESTS THAT THE LICENSE OF THE ABOVE NAMED INDIVIDUAL BE REINSTATED.

IN ACCORDANCE WITH SECTION 2301.373 OF THE OHIO REVISED CODE, YOU ARE INSTRUCTED TO ISSUE THE INDIVIDUAL A LICENSE IF HE/SHE IS OTHERWISE ELIGIBLE, WITHIN SEVEN (7) DAYS. YOU MAY CHARGE A FEE NOT TO EXCEED $50.00 TO REINSTATE THE LICENSE.

IF THIS INDIVIDUAL NEVER OBTAINED A LICENSE FROM YOUR BOARD, PLEASE REMOVE THE ODHS 4041 "NOTICE TO SUSPEND A PROFESSIONAL LICENSE" FROM YOUR FILES.

CC: BARBARA J LEUVOY
RANDALL D LEUVOY
FCCSEA FILE #A088775/01

STATE MEDICAL BOARD OF OHIO
97 JUL -3 AM 8:03

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

| | | |
|---|---|---|
| RANDALL DON LEUVOY, D.O. | : | |
| Relator, | : | 97CVH06 5921 |
| vs. | : | Case No. |
| THE FRANKLIN COUNTY CHILD SUPPORT ENFORCEMENT AGENCY | : | **JUDGE** |
| THE OHIO STATE MEDICAL BOARD | : | |
| BARBARA LEUVOY | : | |
| Respondents. | : | |

**JUDGEMENT ENTRY**

This matter came on for hearing upon the Motion of Relator, Randall Don Leuvoy, D.O., for an Order staying the suspension of his medical license pursuant to §2301.373 and §4731.76 of the Ohio Revised Code pending determination of the merits of the claim set forth in this Complaint.

The Court, upon due consideration, finds said Motion well taken and hereby **SUSTAINS** the same.

**IT IS, THEREFORE, ORDERED** that the Respondent, State Medical Board, is **ORDERED** to note upon its record, that its Order of Suspension be and hereby is stayed.

**ALL UNTIL FURTHER ORDER OF THE COURT.**
Bond Set at $100.00

**JUDGE**

APPROVED:
**TYACK, BLACKMORE & LISTON CO., L.P.A.**

By: _____
**THOMAS M. TYACK (0006476)**
Attorney for Relator

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
97 JUN -5 AM 11:44
JESSE D. WOOD
CLERK OF COURTS

TYACK, BLACKMORE & LISTON CO., L.P.A.
ATTORNEYS AT LAW
536 SOUTH HIGH STREET
COLUMBUS, OHIO 43215
(614) 221-1341

# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934


May 29, 1997

Randall Don Leuvoy, D.O.
1334 Sheridan Drive, Suite 2
Lancaster, OH 43130

## NOTICE OF SUSPENSION
## PURSUANT TO R.C. 2301.373 & 4731.76

The State Medical Board of Ohio has received notice from the Franklin County Child Support Enforcement Agency that you have been determined in default under a child support order. Pursuant to Ohio Revised Code Sections 2301.373 and 4731.76, this Board is prohibited from issuing a license, permit, certificate or other authorization as a result of this determination. The Board is also required to suspend any license that has been issued. This decision to suspend, or refusal to issue a new license, will remain in effect until the Board receives notice from the Franklin County Child Support Enforcement Agency that you are no longer determined to be in default.

**When will the Board issue or reinstate my license?**
Before a license can be issued or reinstated, the Board must receive notice from the Franklin County Child Support Enforcement Agency that you are no longer in default. The Franklin County Child Support Enforcement Agency will issue such a notice when payment of the determined arrearage has been paid in full, or when a new, or appropriate, order has been issued for the collection of current support and arrearage.

**Once I am determined not to be in default, how long will it take to get my license?**
The Board will issue or reinstate your license within seven days of receiving the notice from the Franklin County Child Support Enforcement Agency that you are no longer in default. A fee of up to $50 may be assessed to issue or reinstate the license.

**Can I appeal this decision to the Board?**
This suspension or refusal to issue a license is not subject to any hearing or review process of the Board. You must be determined not in default by the Franklin County Child Support Enforcement Agency. Once they make this determination, they will notify the Board and your license will be reinstated or issued.

**What do I do now?**
You need to contact the Franklin County Child Support Enforcement Agency. They will be able to tell you what you need to do in order to bring your child support payments up to date.

Pursuant to Section 2301.373, Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the state of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Sincerely,

Thomas E. Gretter, M.D.
Secretary

TEG/ll

CERTIFIED MAIL # 152 985 186
RETURN RECEIPT REQUESTED

NOTICE TO SUSPEND A PROFESSIONAL LICENSE

DATE ISSUED: 05/16/97

FRANKLIN COUNTY CHILD SUPPORT
ENFORCEMENT AGENCY
373 SOUTH HIGH STREET, 13TH FLOOR
COLUMBUS, OHIO 43215-6303

PATRICIA STRONG
FCCSEA SUPPORT OFFICER
PHONE (614) 462-4802
FAX (614) 224-5042

TO:

STATE MEDICAL BOARD OF OHIO
77 S. HIGH ST., 17TH FLOOR

COLUMBUS, OH 43266-0315

RE: RANDALL D LEUVOY
NAME OF OBLIGOR

SOCIAL SECURITY NUMBER

06/ /56
DATE OF BIRTH

STATE MEDICAL BOARD OF OHIO
97 MAY 28 AM 10:50

THIS NOTIFIES THE LICENSING BOARD THAT THE ABOVE-NAMED INDIVIDUAL HAS BEEN FOUND BY A COURT OR CHILD SUPPORT ENFORCEMENT AGENCY TO BE IN DEFAULT OF A SUPPORT ORDER.

IN ACCORDANCE WITH SECTION 2301.373 OF THE OHIO REVISED CODE, YOU ARE INSTRUCTED TO TAKE THE FOLLOWING ACTION:

NOT ISSUE OR RENEW ANY LICENSE HELD BY THE INDIVIDUAL.

SUSPEND ANY LICENSE HELD BY THE INDIVIDUAL.

NOT ISSUE OR REINSTATE ANY LICENSE UNTIL YOU ARE NOTIFIED BY THE FRANKLIN COUNTY CHILD SUPPORT ENFORCEMENT AGENCY.

THE SUPREME COURT WILL FOLLOW THE PROVISIONS OF ORC 4705.021.

ACTION TAKEN BY LICENSING BOARD:

___ LICENSE SUSPENDED

___ LICENSE NOT RENEWED

___ NO LICENSE ON FILE

___ OTHER _____

PLEASE FORWARD A COPY OF THIS FORM TO THE FRANKLIN COUNTY CHILD SUPPORT ENFORCEMENT AGENCY ONCE AN ACTION HAS BEEN TAKEN.

EN0237

ODHS 4041 (6/96)