

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 10, 2010

Mark Edward Davis, D.O.
2165 Brittany Oaks Trail
Warren, OH 44484

RE: Case No. 09-CRF-055

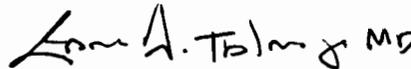
Dear Doctor Davis:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 10, 2010, 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, M.D. *rw*
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3068 2948
RETURN RECEIPT REQUESTED

Cc: Richard A. Cline, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3068 2955
RETURN RECEIPT REQUESTED

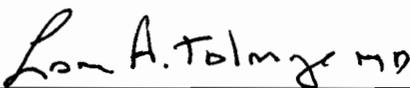
Mailed 3-11-10

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 10, 2010, 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 Mark Edward Davis, D.O., Case No. 09-CRF-055, as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)



Lance A. Talmage, M.D. RW
Secretary

March 10, 2010

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 09-CRF-055

MARK EDWARD DAVIS, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 10, 2010.

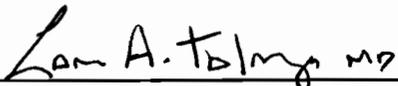
Upon the Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby **ORDERED** that:

The certificate of Mark Edward Davis, D.O., to practice osteopathic medicine and surgery in Ohio, is PERMANENTLY REVOKED.

This Order supersedes and replaces the May 2009 order of immediate suspension. This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D. RW
Secretary

March 10, 2010

Date

2009 DEC 30 AM 11:13

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 09-CRF-055

Mark Edward Davis, D.O.,

*

Hearing Examiner Davidson

Respondent.

*

REPORT AND RECOMMENDATION

Basis for Hearing

In a letter and entry dated May 13, 2009, the State Medical Board of Ohio notified Mark Edward Davis, D.O., that his certificate to practice osteopathic medicine and surgery in Ohio was suspended immediately pursuant to Ohio Revised Code Section [R.C.] 3719.121(C), based on a prosecuting attorney's report that Dr. Davis had pleaded guilty to and been found guilty of two felony counts of trafficking in drugs in violation of R.C. 2925.03. The Board also alleged that the conduct underlying Dr. Davis' guilty plea involved his selling or offering to sell Vicodin, a Schedule III controlled substance. In addition, the Board notified Dr. Davis that it intended to determine whether to limit, revoke, permanently revoke, suspend, refuse to issue or reinstate his certificate, or to reprimand him or place him on probation, based on the following charges:

- Dr. Davis' plea of guilty and/or the judicial finding of guilt, individually and/or collectively, constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that language is used in R.C. 4731.22(B)(9); and/or
- Dr. Davis' acts, conduct, and/or omissions constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that language is used in R.C. 4731.22(B)(3).

On June 5, 2009, the Board received Dr. Davis' request for a hearing. (St. Ex. 1)

Appearances

Richard Cordray, Attorney General, and Melinda Osgood, Assistant Attorney General, for the State.
Richard A. Cline, Esq., for the Respondent.

Hearing Date: December 14, 2009

SUMMARY OF THE EVIDENCE

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

Background Information

1. Mark Edward Davis, D.O., was born in 1961 in Warren, Ohio. He received his medical degree in 1987 from the Philadelphia College of Osteopathic Medicine, and he was first licensed to practice in Ohio in 1988 (certificate number 34.004595). After his clinical training, he joined his father's practice, and maintained a family practice for many years in the Warren area. (Ohio eLicense Center at <https://license.ohio.gov/lookup/default.asp?division=78>, Dec. 22, 2009; Tr. at 92)

Criminal Convictions

2. On January 27, 2009, a bill of information was presented in the Trumbull County Common Pleas Court, charging Dr. Davis with two counts of trafficking in drugs in violation of R.C. 2925.03(A)(1) and (C)(2)(a), in that he "did knowingly sell or offer to sell, Vicodin, a schedule III controlled substance" on August 1, 2006, and on January 5, 2007. (St. Ex. 3)
3. On January 27, 2009, Dr. Davis entered a guilty plea to the felonies charged. The court accepted the plea and found Dr. Davis guilty of two counts of drug trafficking, felonies of the fifth degree. The bill of information and the court's finding on the guilty plea were filed on January 28, 2009. (St. Exs. 4, 6)
4. On April 7, 2009, a sentencing hearing was held. As set forth in a Journal Entry filed April 14, 2009, the court imposed a sentence including the following: 90 days in the Warren Alternative Sentencing Program (residing at the county jail with permission to leave during work hours), five years of community control under the supervision of the probation department, DNA testing, abstinence from alcohol and drugs with random testing, restitution to the Pharmacy Board in the amount of \$13,485.88, suspension of his driver's license for six months, and payment of the costs of the investigation (\$700). (St. Exs. 5, 6)

Conduct Underlying the Convictions

5. The conduct underlying the felony convictions involved Dr. Davis' receiving sexual favors from patients in exchange for Vicodin. At the hearing, an investigator for the Ohio State Board of Pharmacy testified that that board had commenced an investigation regarding allegations of exchanges of "sex for drugs" by Dr. Davis, and the investigator had asked two former patients of Dr. Davis to assist as confidential informants. Both women made appointments to return to Dr. Davis' office as patients. They were instructed to bring up the topic of sexual activity and to indicate that they were willing to provide sexual favors in exchange for drugs. Both were instructed to proceed, if possible, to make plans for, or to give promises about, providing sexual activity in exchange for drugs. (St. Ex. 6. Tr. at 9, 46-49, 67-68)

6. Both women visited Dr. Davis at his office, setting forth a medical complaint as the basis for the visit. Their charts for these visits, as well as their charts for past years, are part of the hearing record.¹ (St. Ex. 8 at 67-68, St. Ex. 9 at 142-143)
7. Patient 1's office visit took place on August 1, 2006. Her handbag was wired for video and audio recording. Dr. Davis first provided medical care to Patient 1's teen-aged son, who then left the examining room. Patient 1 discussed a medical complaint, and Dr. Davis asked diagnostic questions. Patient 1 complained of a pain in her breast, and Dr. Davis asked questions about the pain, did an examination, and recommended a mammogram, although the chart does not reflect that. Patient 1 was dressed in an extremely short skirt and skimpy top. She initiated conversation regarding sex and essentially offered sexual activity to Dr. Davis to take place at that time, in the examining room. He demurred, and Patient 1 made efforts to persuade him. Dr. Davis indicated that he should not engage in sexual activity with Patient 1, and she commented regarding their prior sexual activity together. He asked why she had worn that skirt, and she answered that she had wanted to look pretty. She continued to suggest that they engage in sexual activity, and commented that, because they were friends, it would not be wrong. She pulled off her shirt and bra. Dr. Davis at one point asked her why she was doing this, and she answered that she liked him. When Dr. Davis continued to be reluctant, Patient 1 promised him that she would be quiet. During the conversation, Dr. Davis turned and searched the handbag but did not locate the hidden camera or microphone. Patient 1 and Dr. Davis then engaged in sexual activity in the examining room. (St. Exs. 7A, 7B, 11; Tr. at 27-31, 49-53)
8. The chart for Patient 1 reflects that she was given a prescription for Vicodin ES #30 as well as an antidepressant. The patient's chart indicates that a musculoskeletal examination was done, resulting in a finding of "Positive pain and decreased range of motion to lumbar region." However, Dr. Davis admitted during the hearing that he did not do a range-of-motion assessment. (St. Exs. 7A, 7B, 11; Tr. at 20, St. Ex. 8 at 67-68)
9. Patient 1's medical records include a letter to Dr. Davis regarding her treatment for chemical dependency in May 2006. The letter from the treatment center did not state the type of chemical dependency, but Dr. Davis testified at the hearing that he had assumed that Patient 1 had been dependent on "the opiates." (Tr. at 20-22)
10. On January 5, 2007, Patient 2 visited Dr. Davis. An audiovisual recording was made with surveillance equipment. Patient 2 initiated conversation regarding sexual activity and expressed frustration at her husband's lack of interest. She made sexual advances to Dr. Davis. He demurred, saying that it was "not a good thing." However, Patient 2 continued to suggest sexual activity, and Dr. Davis ultimately engaged in sexual activity in the examining room. After the sexual activity had concluded, the patient made a request for Vicodin. Dr. Davis hesitated, and Patient 2 insisted that her back was killing her, her knee hurt, and she wasn't sleeping, and she needed only five pills. He said that he "shouldn't do it," but Patient 2 stated

¹Medical records for the two patients were combined into one document, numbered as pages 1 to 289, with Patient 2's records starting on page 122. However, the patients' records were offered as two separate exhibits at the hearing, State's Exhibits 8 and 9. Accordingly, State's Exhibit 9 begins with page 122 rather than with page 1 as is usually seen.

that she had done something for him and he should do something for her. She said she wouldn't tell anyone, and it wouldn't be a regular thing. She said, "It's no big deal. It's bartering, isn't it? That's the way the world works." Dr. Davis still hesitated, and Patient 2 said she just wanted a few, and added, "It's me. I'm not here to do anything to get you into trouble." He responded, "Promise?" Patient 2 replied, "Promise. How long have you known me? Have I ever done anything to hurt you? The bill's probably going to hurt me more." Dr. Davis wrote a prescription for Vicodin and gave it to her. (Tr. at 31-36; 53-57, 72, 76-77, St. Ex. 7C; St. Ex.)

11. The investigator for the Pharmacy Board testified that he had been shocked that Patients 1 and 2 had engaged in sexual activity during these office visits. He stated that, prior to the office visits, there had been "no mention" of the informants' engaging in sexual conduct with Dr. Davis as part of the investigation. (Tr. at 49, 67-69)
12. The State presented evidence to establish that Dr. Davis had performed no examination or an inadequate examination to support a prescription for Vicodin for these patients. (Tr. at 23-27, 33-36, 52, 55; St. Exs. 7-9) The evidence is not recited here in detail because Dr. Davis pleaded guilty to and was convicted of drug trafficking based on his providing Vicodin to Patients 1 and 2 during the office visits set forth above, and it was not disputed at the hearing that Dr. Davis had provided Vicodin as part of an exchange rather than as part of legitimate medical care.
13. Dr. Davis testified that, shortly before the charges were filed in January 2009, he had visited a psychiatrist and had begun counseling. (Tr. at 106-107, 115-116)
14. Dr. Davis also testified that, before the sentencing in April 2009, he had sold his practice in a hurry, knowing he would not be able to take care of his patients. He stated that, currently, he is working on a commission-only basis for a company that does electronic processing for merchants. He stated that he has not been very successful at this type of work and is earning about one-tenth of his former earnings. (Tr. at 107-108) Dr. Davis further testified that he has complied with the requirements imposed by the court, and is still making payments and otherwise complying with the sentence. (Tr. at 99-101)
15. At the hearing, Dr. Davis expressed strong remorse and shame. He explained that he knew his conduct was entirely unacceptable and "horrendous." He did not attempt to excuse his behavior but did describe a situation that had existed in his marriage, prior to the misconduct with patients, that had made him extremely needy and vulnerable and had caused severe loss of self-esteem. In addition, Dr. Davis also described the pain and disillusionment he had caused his family and his patients, especially in view of the fact that recordings of Dr. Davis with Patients 1 and 2 were obtained by the media and publicized in news programs and on the internet. Dr. Davis expressed particular regret and grief regarding the devastating effect of media attention on his family, especially his teen-aged son. Dr. Davis also expressed his despondence about losing the ability to take care of his family financially and losing the work he loved, taking care of patients in a family practice. He asked the Board to consider a sanction less than permanent revocation of his certificate and to issue an order that would allow him to return to being a practicing physician some day. (Tr. at 95-121)

FINDINGS OF FACT

On January 27, 2009, in the Court of Common Pleas of Trumbull County, Ohio, Mark Edward Davis, D.O., pleaded guilty to and was found guilty of two counts of trafficking in drugs in violation of R.C. 2925.03(A)(1) and (C)(2)(a), felonies of the fifth degree. The conduct underlying the guilty plea was Dr. Davis' selling or offering to sell Vicodin, a Schedule III controlled substance. As set forth in a journal entry filed April 14, 2009, the court imposed a sentence that included 90 days in the Warren Alternative Sentencing Program, five years of community control, payment of restitution in the amount of \$13,485.88, payment of the costs of the investigation, and random testing for drug and alcohol use.

CONCLUSIONS OF LAW

1. Dr. Davis' plea of guilty and/or the judicial finding of guilt as set forth above in the Findings of Fact, individually and/or collectively, constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that language is used in R.C. 4731.22(B)(9).
2. Further, the acts, conduct, and/or omissions of Mark Edward Davis, D.O., as set forth in the Findings of Fact, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that language is used in R.C. 4731.22(B)(3).

Discussion of Proposed Order

The criminal conviction warrants a permanent revocation of Dr. Davis' certificate to practice. The Hearing Examiner acknowledges, however, that this case did not involve a predatory situation in which a physician pressured, deceived, or molested a patient, essentially forcing the patient to provide sexual gratification to the physician. Here, the patients initiated the offer of sexual activity, and Dr. Davis showed weakness of character. The Hearing Examiner further acknowledges that Dr. Davis and his family have already suffered a great deal from his criminal conduct.

Nonetheless, Dr. Davis was convicted of two felony counts of drug trafficking, and these felonies were committed in the course of his medical practice. The mitigating factors presented by Dr. Davis do not rise to the level that the Board should refrain from ordering a permanent revocation. Further, the State presented evidence of one or more aggravating factors, such as the potential for patient harm, in that Dr. Davis had reason to know that Patient 1 had recently completed treatment for chemical dependency.

PROPOSED ORDER

It is hereby **ORDERED** that:

The certificate of Mark Edward Davis, D.O., to practice osteopathic medicine and surgery in Ohio, is PERMANENTLY REVOKED.

This Order supersedes and replaces the May 2009 order of immediate suspension. This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Patricia A. Davidson
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
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EXCERPT FROM THE DRAFT MINUTES OF MARCH 10, 2010

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Amato announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Amato asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of: William Michael Cox, M.D.; Mark Edward Davis, D.O.; GERALYN M. MENY, M.D.; RICHARD C. STEWART, D.P.M.; DAVID ERIC SYMER, M.D.; and WILLIAM JAMES WASHINGTON, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Madia	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Dr. Varyani	- aye
	Dr. Suppan	- aye
	Mr. Ogg	- aye

Dr. Amato 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:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Madia	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Dr. Varyani	- aye
	Dr. Suppan	- aye
	Mr. Ogg	- aye

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

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

.....
MARK EDWARD DAVIS, D.O.
.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MARK EDWARD DAVIS, D.O. MR. HAIRSTON SECONDED THE MOTION.

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Madia	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Dr. Varyani	- aye
	Dr. Suppan	- aye
	Mr. Ogg	- aye

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

May 13, 2009

Case number: 09-CRF- 055

Mark Edward Davis, D.O.
2165 Brittainy Oaks Drive
Warren, Ohio 44484

Dear Doctor Davis:

In accordance with Sections 2929.42 and/or 3719.12, Ohio Revised Code, the Office of the Prosecuting Attorney of Trumbull County, Ohio, reported that on or about January 29, 2009, in the Court of Common Pleas, Trumbull County, Ohio, you pled guilty to, and were found guilty of two felony counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice osteopathic medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing osteopathy without a certificate in violation of Section 4731.43, Ohio Revised Code.

Furthermore, 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) On or about January 27, 2009, in the Court of Common Pleas, Trumbull County, Ohio, you pled guilty to, and were found guilty of two counts of Trafficking in Drugs, in violation of Section 2925.03(A)(1) and (C)(2)(a), Ohio Revised Code, felonies of the fifth degree. The conduct implicated in your guilty plea involved your endeavor to sell or offer to sell Vicodin, a Schedule III controlled

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substance. On or about April 9, 2009, the Court sentenced you, *inter alia*, to five years of community control, ordered you to serve 90 days in the Warren Alternative Sentencing Program, directed you to make restitution in the amount of \$13,485.88 plus the costs of the investigation, and ordered you to submit to random drug and alcohol testing.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.

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

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

Suspension
Mark Edward Davis, D.O.
Page 3

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,

A handwritten signature in black ink that reads "Lance A. Talmage MD". The signature is written in a cursive style with a large, stylized initial "L".

Lance A. Talmage, M.D.
Secretary

LAT/DSZ/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3125 4175
RETURN RECEIPT REQUESTED