

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
CLERK OF COURTS  
7:01 JUL 26 PM 1:02

Jack Mark Levine, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 10AP-962
State Medical Board of Ohio,	:	(C P C No. 09CVF10-16197)
Appellee-Appellee.	:	(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on July 26, 2011, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

SADLER, KLATT, and CONNOR, JJ.

By  \_\_\_\_\_  
Judge Lisa L. Sadler

T.A. Bessey

✓ 10

IN THE COURT OF APPEALS OF OHIO

FILED  
COURT OF APPEALS  
JUL 26 2011

TENTH APPELLATE DISTRICT FOR JUL 26 PM 12:50

CLERK OF COURTS

Jack Mark Levine, D.O.,	:	
	:	
Appellant-Appellant,	:	
	:	No. 10AP-962
v.	:	(C.P.C No. 09CVF10-16197)
	:	
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 26, 2011

*Spetnagel and McMahon, Thomas M. Spetnagel, and Paige J. McMahon, for appellant.*

*Michael DeWine, Attorney General, and Katherine J. Bockbrader, for appellee.*

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Jack Mark Levine, D.O., appeals the judgment of the Franklin County Court of Common Pleas, in which the trial court affirmed the order of appellee, State Medical Board of Ohio ("board"), permanently revoking his license to practice osteopathic medicine and surgery in the state of Ohio.

{¶2} Appellant graduated from the New York College of Osteopathic Medicine in 1982. In 1989, he was licensed by the board to practice osteopathic medicine and surgery in Ohio. His Ohio license expired in July 2002, at which time he was practicing medicine in Illinois. In October 2006, appellant restored his Ohio license shortly before relocating to Pike County, Ohio. He began practicing medicine at Pike Community Hospital in early 2007.

{¶3} By letter dated June 11, 2008, the board notified appellant that it would consider disciplinary action based on four allegations of misconduct. The charges arose from appellant's treatment of three female patients who the board referred to as Patient 1, Patient 2, and Patient 3. Appellant treated each patient for opioid addiction by prescribing Suboxone, a drug designed to minimize withdrawal symptoms and curb addiction to opioids.

{¶4} The board's first charge alleged that, between November 2007 and December 2007, appellant engaged in sexual misconduct with Patient 1 over the course of several "inappropriate" phone calls. Specifically, the board alleged that appellant (1) asked Patient 1 to write him notes about sex and masturbation; (2) told her that "she needed a master to tell her what to do"; (3) asked her to say "Fuck me master"; (4) told her that he "would like to 'fuck [her]' and that when [he called] she should be 'Ready to fuck' "; (5) told her that she should see his "cock right now"; (6) told her that he wanted her to "get a vibrator"; (7) called her his "sex toy"; and (8) asked her whether she liked what she felt, referencing his penis, when she was previously in his office. According to the board, appellant made these statements after Patient 1 had tested positive for drugs other than Suboxone, yet appellant continued to prescribe her Suboxone anyway.

{¶5} In the second and third charges, the board alleged that appellant engaged in sexual misconduct with Patient 2 and Patient 3 at separate times in 2007. According to the second charge, appellant told Patient 2, after she tested positive for the use of drugs other than Suboxone, that she would have to "prostitute herself" again for him to prescribe her more Suboxone. The third charge alleged that appellant asked Patient 3 to write him notes about masturbation and to bring him those notes on her next visit, and that he inappropriately "touched" and "bounced" her breasts when examining her during an office visit in 2007.

{¶6} The fourth charge accused appellant with misleading the board's investigator about the sexual misconduct with Patient 1. In particular, the board claimed that appellant lied by telling the investigator that he made only one inappropriate call to Patient 1 and that he did not call her his "sex toy."

{¶7} According to the board, the first three charges, if proven, warranted discipline under R.C. 4731.22(B)(6) and (B)(20). Pursuant to R.C. 4731.22(B)(6), appellant's conduct represented "[a] departure from, or the failure to conform to, minimal standards of care of practitioners under the same or similar circumstances," and, under R.C. 4731.22(B)(20), his actions amounted to a violation of "any rule promulgated by the board," to wit: sexual misconduct under Ohio Adm.Code 4731-26-02 and 4731-26-03. The fourth charge constituted false, fraudulent, deceptive or misleading statements under R.C. 4731.22(B)(5).

{¶8} A board-appointed hearing examiner conducted a four-day evidentiary hearing wherein appellant admitted to the first and fourth charges: engaging in sexual misconduct with Patient 1 and misleading the board's investigator. (Tr. 74-75.) Based

on these admissions, the hearing examiner found the first and fourth charges to be supported by sufficient evidence. The hearing examiner did not, however, find sufficient evidence supporting the second and third charges (the allegations involving Patients 2 and 3). Based on these findings of fact and conclusions of law, the hearing examiner recommended the permanent revocation of appellant's license, stayed subject to certain probationary terms and conditions. Both parties objected to the recommendation.

{¶9} On September 9, 2009, the board met to consider the hearing examiner's recommendation. The board disagreed with the hearing examiner's conclusions regarding Patients 2 and 3 and, consequently, amended the second and third conclusions of law to reflect violations of R.C. 4731.22(B)(6) and (B)(20). Although the board amended both conclusions of law, the board did not amend the hearing examiner's second and third factual findings. The board also disagreed with the sanction proposed by the hearing examiner and ordered that appellant's license to practice osteopathic medicine and surgery be permanently revoked.

{¶10} Appellant timely appealed the board's order to the trial court. After finding that the second and third conclusions of law contradicted the corresponding findings of fact, the trial court found the error to be harmless based on appellant's admissions to the first and fourth charges. After reviewing the minutes of the board's September 2009 meeting, the trial court determined that the board revoked appellant's license based on the allegations involving Patient 1, not the allegations involving Patients 2 and 3. Because sufficient, reliable evidence supported the board's decision to permanently revoke appellant's license, the trial court affirmed.

{¶11} Appellant now timely appeals, advancing the following assignment of error for our consideration:

THE LOWER COURT ERRED IN FINDING THAT THE ORDER OF THE STATE MEDICAL BOARD OF OHIO TO PERMANENTLY REVOKE APPELLANT'S CERTIFICATE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY WAS SUPPORTED BY THE REQUISITE AMOUNT OF SUBSTANTIAL, RELIABLE AND PROBATIVE EVIDENCE AND WAS IN ACCORDANCE WITH LAW.

{¶12} "In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with the law." *Schechter v. Ohio State Med. Bd.*, 10th Dist. No. 04AP-1115, 2005-Ohio-4062, ¶55, citing *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87. The Supreme Court of Ohio has defined the concepts of reliable, probative, and substantial evidence as follows:

(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

*Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

{¶13} The standard of review is more limited on appeal to this court. Unlike the trial court, this court does not determine the weight of the evidence. *Rosford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707. In reviewing the court of common pleas' determination that the commission's order was supported by reliable, probative, and substantial evidence, this court's role is confined to determining whether the court of common pleas abused its discretion. *Roy*

*v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680. The term abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. However, on the question of whether the commission's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343.

{¶14} First, appellant argues that the trial court erred by finding the conclusions of law involving Patients 2 and 3 to constitute harmless error. Because those conclusions of law were inconsistent with the findings of fact involving Patients 2 and 3, he contends that the board's order was not supported by sufficient, reliable, and probative evidence, and that, as a result, the trial court was required to vacate the board's decision. We disagree.

{¶15} This court has repeatedly held that a trial court is not required to vacate the board's disciplinary action merely because some of the board's allegations were unsupported by sufficient evidence. See, e.g., *Weiner v. State Med. Bd.* (Nov. 24, 1998), 10th Dist. No. 98AP-605; *Landefeld v. State Med. Bd.* (Jun. 15, 2000), 10th Dist. No. 99AP-612; *Graor v. State Med. Bd.*, 10th Dist. No. 04AP-72, 2004-Ohio-6529. The board may revoke a physician's license for "one or more" of the reasons enumerated in R.C. 4731.22(B), and, therefore, "in a given case, the trial court would only need to find substantial, reliable and probative evidence supporting one ground for revocation in order to uphold the board's order." *Landefeld*; see also *Weiner* (affirming trial court's decision to permanently revoke physician's license even though one of three allegations

was not supported by evidence); *Graor* at ¶¶30-31 (affirming permanent revocation even though some of the board's findings were not in accordance with law).

{¶16} In *Landefeld*, for instance, the trial court upheld the board's decision to permanently revoke the physician's license despite the fact that allegations of fee splitting and fraudulent billing were not supported by sufficient evidence. This court affirmed the trial court's decision because additional violations justified the board's decision. In reviewing the minutes of the board's proceedings, this court determined that "the focal point of concern by board members, in addressing the evidence against appellant, went to the issue of his medical treatment of patients and not the charges relating to fee splitting and billing." *Id.*

{¶17} We reach the same conclusion here. Whether or not sufficient evidence supported the charges involving Patients 2 and 3, it was undisputed that appellant engaged in sexual misconduct with Patient 1 and that he subsequently lied about that misconduct. As a result, the board was authorized to revoke his license for violating a "rule promulgated by the board," R.C. 4731.22(B)(20), for departing from "minimal standards of care of similar practitioners under the same or similar circumstances," R.C. 4731.22(B)(6), or for "[m]aking a false, fraudulent, deceptive, or misleading statement \* \* \* in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board." R.C. 4731.22(B)(5).

{¶18} In fact, the charge involving Patient 1 was the focal point of the board's concern, as evidenced by the minutes from the board's September 2009 meeting. One

of the board members, Dr. Suppan, was "absolutely appalled" by appellant's actions towards Patient 1. (Minutes at 9.) She stated that, by calling Patient 1 his "sex toy," appellant "objectified the patient to the point where he made her less than human." (Minutes at 9.) Dr. Amato and Dr. Madia agreed. Dr. Madia said that appellant went "beyond just sexual boundaries" with Patient 1 and "was using treatment to use the patient as a sex toy." (Minutes at 9.) The only board member who commented on Patients 2 and 3 was Dr. Steinberg, but even she recognized that Patient 1 was the focus of the board's concern. (Minutes at 7-8.) Appellant notes as much in his brief: "The Board made it clear \* \* \* that the main reason for the opprobrium it heaped upon [appellant] was for using such words as 'sex toy' during the telephone calls with Patient 1." (Appellant's brief at 20.) Therefore, because the board arrived at a sanction that was supported by sufficient, reliable, and probative evidence, the trial court did not abuse its discretion by affirming the board's order.

{¶19} We also reject appellant's argument that the board violated his right to due process by considering the morality of his conduct. First, appellant has provided no authority forbidding such considerations. In fact, the Supreme Court of Ohio has recognized the inherent expertise of licensing boards in matters of professional ethics and morals: "[W]hen reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and *ethical* requirements of its profession." *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122. (Emphasis added.) "The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the

necessary knowledge and experience pertaining to a particular field." *Arlen v. State* (1980), 61 Ohio St.2d 168, 173, quoting *Farrand v. State Med. Bd.* (1949), 151 Ohio St. 222, 224.

{¶20} Regardless, the board's deliberations were proper and germane to the issues at hand. The board was tasked with determining, inter alia, whether appellant deviated from the minimum standards of similarly situated practitioners, and the minutes from the board's meeting confirm that such an analysis occurred. Dr. Suppan expressed "a great deal of difficulty with a physician, who should hold human beings above all else, being able to categorize a human being as a toy or a sex toy." (Minutes at 9.) This misconduct, according to Dr. Suppan, violated principles that were "so fundamental to the practice of medicine." Dr. Amato also found appellant's conduct to fall below minimum standards, stating that appellant used "his prescriptive authority, his granted license to heal, in a way that could only hurt." (Minutes at 9.) Furthermore, Dr. Madia supported permanent revocation based on his view that appellant "was using treatment to use [Patient 1] as a sex toy." (Minutes at 9.) Thus, contrary to appellant's claims, nothing about the board's discussions reveals an arbitrary or capricious attitude.

{¶21} Finally, appellant also argues that the board improperly considered the allegations involving Patients 2 and 3 during its deliberations. This argument lacks merit. As explained above, the board's primary focus was Patient 1, not Patients 2 and 3. Because the board's sanction was supported by sufficient, reliable, and probative evidence, the trial court did not abuse its discretion by affirming the board's decision. See, e.g., *Slinghuff v. State Med. Bd.*, 10th Dist. No. 05AP-918, 2006-Ohio-3614, ¶20; see also *Clayman v. State Med. Bd.* (1999), 133 Ohio App.3d 122, 128-29 (finding that,

X

No. 10AP-962

10

although the board discussed uncharged misconduct, there was "sufficient, reliable, probative, and substantial evidence in the record that substantiates both the charges against appellant and the penalty imposed by the board to outweigh appellant's claims of prejudice from discussion of these patient care issues").

{¶22} Based upon the foregoing, appellant's sole assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

KLATT and CONNOR, JJ., concur.

---

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

**JACK MARK LEVINE, D.O.**  
7428 State Route 772  
Piketon, Ohio 45661

**APPELLANT,**

**VS.**

**STATE MEDICAL BOARD OF OHIO**  
30 E. Broad St., 3<sup>rd</sup> Floor  
Columbus, Ohio 43215

**APPELLEE.**

**CASE NO. 09CVF10-16197**

**JUDGE BESSEY**

**FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
OCT -6 PM 2:37  
CLERK OF COURTS**

\*\*\*\*\*

**NOTICE OF APPEAL**

Notice is hereby given that Appellant, Jack Mark Levine, D.O., hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from the Final Judgment Entry entered in this action on September 9, 2010 and attached hereto. Appellant appeals from this judgment on the grounds that it is not supported by substantial, reliable, and probative evidence and is further not in accordance with law.

The attorney signing this notice hereby certifies that the judgment herein appealed is final as defined in R.C. Section 2505.02 and Civ.R. 54(B).

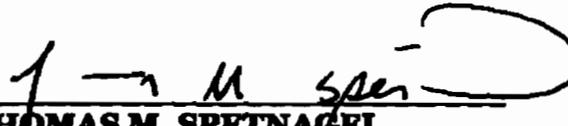
**FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
OCT -6 PM 2:37  
CLERK OF COURTS**

*Thomas M. Spetnagel*  
**THOMAS M. SPETNAGEL (0003820)**  
**PAIGE J. MCMAHON (0040755)**  
**SPETNAGEL AND MCMAHON**  
Attorneys for Appellant  
42 East Fifth Street  
Chillicothe, Ohio 45601  
(740) 774-2142

**10APF10 - -962**

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing Notice of Appeal was served upon Katherine E. Bockbrader, Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215 by regular U.S. Mail on this 5 day of October, 2010.

  
**THOMAS M. SPETNAGEL**  
Attorney for Appellant

FILED  
COMMON PLEAS  
FRANKLIN CO. OHIO  
2010 SEP -9 PM 3:44  
CLERK OF COURTS

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

JACK MARK LEVINE, D.O.,

Plaintiff/Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Defendant/Appellee.

**FINAL APPEALABLE ORDER**

CASE NO. 09CVF10-16197

JUDGE BESSEY

TERMINATION NO	10
BY	<i>[Signature]</i>

**DECISION AND FINAL JUDGMENT ENTRY AFFIRMING THE ORDER OF  
THE STATE MEDICAL BOARD OF OHIO, CASE NUMBER 08-CFR-080**

*Introduction*

Jack Mark Levine, D.O. filed this appeal pursuant to Ohio Revised Code §119.12. Dr. Levine appeals from an Order of the State Medical Board of Ohio ("Board") in Case No. 08-CFR-080. That Order permanently revoked his certificate to practice osteopathic medicine and surgery in the State of Ohio. For the reasons set forth below, this court affirms that Order, finding it to be supported by reliable, probative, and substantial evidence and to be in accordance with law.

*Background*

On October 29, 2009, Dr. Levine filed the instant appeal. On that same day, he also filed a Motion for Stay Pending Appeal. The court granted that motion on November 2, 2009. The Board moved for reconsideration. By Entry filed December 9, 2009, the court vacated the stay granted November 2, 2009 and denied Dr. Levine's Motion for Stay pending the court's decision in this matter.

Dr. Levine graduated from the New York College of Osteopathic Medicine in 1982. Dr. Levine was licensed by the State of Ohio to practice osteopathic medicine and surgery on April 14, 1989. That license expired July 1, 2002. Dr. Levine did not renew his Ohio license at that

time. However on October 27, 2006, Dr. Levine's Ohio license was restored and was in effect at the time of the conduct leading up to the Board's action.

Having practiced out of Ohio for a number of years, Dr. Levine relocated to Ohio in early 2007. At that time, Dr. Levine began a general surgery practice and emergency room services with Pike Community Hospital in Waverly, Ohio.

Prior to returning to practice osteopathy in Ohio, Dr. Levine obtained DEA (Federal Drug Enforcement Agency) certification to prescribe Suboxone to drug addicted individuals. Upon returning to Ohio, Dr. Levine began prescribing Suboxone to patients while employed at Pike County Community Hospital.

Suboxone is a drug that is useful in treating persons addicted to opiates. Suboxone blocks the brain's opiate receptors. The drug's action has two physical effects: it stops the patient's withdrawal symptoms and reduces or, in some individuals, stops the craving for opiates. This chemical therapy is to be used in conjunction with counseling therapy. The patient is required to use no illicit drug during Suboxone treatment.

Suboxone is not prescribed to patients who are not drug addicted. The State Medical Board notified Dr. Levine by letter dated June 11, 2008 that it proposed to determine what action, if any, it should take against his license based on allegations that he engaged in sexual misconduct with three individuals to whom he had prescribed Suboxone. Such conduct, the letter informed him, if proven, would constitute a departure from, or 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 was established in violation of Ohio Administrative Code 4731-26-02(A) and R.C. 4731.22(B)(6).

Additionally, the letter informed Dr. Levine that the Board would consider whether he made a false, fraudulent, deceptive, or misleading statement...in relation to the practice of ...

osteopathic medicine and surgery as used in R.C. 4731.22(B)(5) when Dr. Levine told an investigator for the Board in an interview that did not call a patient (patient no. 1) his sex toy, that he only made one inappropriate call to that patient, and stated that he was only trying to help that patient feel like a woman.

Dr. Levine requested a hearing before the Board. The hearing took place over a period of four days. At the hearing, Dr. Levine stipulated that he engaged in all acts and conduct described in paragraph one of the Board's June 11, 2008 letter in regards to patient 1. Dr. Levine further stipulated he engaged in all of the acts and conduct described in paragraph 4 of that letter. In other words, Dr. Levine admitted he engaged in sexual misconduct with patient 1 and that he was not truthful in his interview the Board's investigator.

Against that backdrop, a duly appointed Hearing Examiner took evidence and issued a report and recommendation. The Hearing Examiner found that Dr. Levine engaged in the conduct he admitted. However, the Hearing Examiner found that there was insufficient evidence to support a finding that Dr. Levine engaged in sexual misconduct with patients 2 and 3.

The Board seemingly disagreed. The Board, after lengthy discussion and having reviewed all of the evidence before the Hearing Examiner and having the benefit of the objections to the Hearing Examiner's report and recommendation filed by both parties and having listened to an oral statement from Dr. Levine and a response to that statement from the Assistant Attorney General who prosecuted this case, engaged in its independent duty to decide this case. In doing so, the Board explicitly rejected the Hearing Examiner's conclusion of law that Dr. Levine's acts with patients 2 and 3 did not violate any provision of R.C. chapter 4731 (in light of R.C. 4731.22(B) and Rule 4731.26-02(A) of the Ohio Administrative Code) and explicitly rejected the Hearing Examiner's conclusion of law that Dr. Levine's acts with patient 2 and 3 did not constitute a departure from the minimal standards of care.

The Board did not explicitly reject the findings of fact that there was insufficient evidence that Dr. Levine's conduct with patients 2 and 3 did not violate a provision of R.C. chapter 4731. Nor did the Board explicitly reject the findings of fact that Dr. Levine's conduct with patients 2 and 3 did not demonstrate a departure from a minimal standard of care.

The Board also rejected the proposed sanction recommended by the Hearing Examiner. The Board permanently revoked Dr. Levine's certificate to practice osteopathic medicine and surgery in the State of Ohio.

#### *Standard of Review*

Decisions of administrative agencies are subject to a "hybrid form of review" in which a common pleas court must give deference to the findings of an agency, but those findings are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265. In *Strausbaugh v. Dept. of Commerce, Div. of Real Estate & Professional Licensing* (10th District), Case No. 07AP-870, 2008-Ohio-2456, ¶ 6, the Court of Appeals set forth more fully the standard of review under Ohio's administrative procedure act as follows: "In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with the law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, [487 N.E.2d 1248]; *Belcher v. Ohio State Racing Comm.*, 10<sup>th</sup> District No. 02AP-998, 2003-Ohio-2187, at ¶10." The meaning of reliable, probative and substantial evidence was defined in *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

#### *Assignment of Error*

Appellant's merit brief states a single assignment: "The Order of the State Medical Board of Ohio to permanently revoke Appellant's certificate to practice osteopathic medicine

and surgery was not supported by the requisite amount of substantial, reliable and probative evidence and was not in accordance with law”.

In support of that position, Appellant offers that Board’s Order contained 13 legal and factual errors. Errors 1 – 9 argue in various ways that the Board improperly assessed the credibility of patients 2 and 3 and that, based upon such impropriety, the Board erroneously concluded Dr. Levine committed sexual misconduct with them. Errors 10 – 13 argue that the penalty imposed by the Board is contrary to law and should be modified.

The Appellee offers that although the “Board did not formally move to modify the findings of fact, such a finding is implied by the Board’s conclusion that the conduct alleged in Counts Two and Three constituted a violation of the Medical Practices Act...” The trouble with Appellee’s argument is that that is not what the Board’s Order states.

The Board, after lengthy discussion concluded with a final vote. That vote was taken based on the following: “Dr. Steinbergh moved to approve and confirm Mr. Stehura’s Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the Matter of Jack Mark Levine, D.O. Mr. Hairston seconded the motion.” A vote was taken and the motion carried. The court reads the motion as approving and confirming Hearing Examiner Stehura’s Findings of Fact.

The court reads the motion as approving and confirming Hearing Examiner Stehura’s Conclusions of Law as amended to read that “Dr. Levine’s acts, conduct and/or admissions involving Patient 2, individually and/or collectively DO constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board” as that clause is used in R.C. 4731 22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.” and that “As a result Dr. Levine’s acts, conduct, and/or omissions involving Patients (sic) 2, individually

and/or collectively, DO constitute "a departure from, or 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." and that "Dr. Levine's acts, conduct and/or admissions involving Patient 3, individually and/or collectively DO constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board" as that clause is used in R.C. 4731.22(B)(20), to wit Rule 4731-26-02(A), Ohio Administrative Code." and that "As a result Dr. Levine's acts, conduct, and/or admissions involving Patients (sic) 3, individually and/or collectively, DO constitute "a departure from, or 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." The reason the court reads the conclusions of law as amended is that the Board's Order on page 9 sets forth a formal amendment to do so by motion of Dr. Amato.

The court reads the Board's Order as amending Hearing Examiner Stehura's proposed sanction to an order of Permanent Revocation. The reason the court reads the proposed sanction as amended to an order of Permanent Revocation is that the Board's Order on page 10 sets forth a formal amendment to do so by motion of Dr. Amato.

After the two separate Motions, one to amend the Hearing Examiner's Conclusions of Law and the other to amend the Hearing Examiner's proposed sanction to Permanent Revocation, the Board voted by roll call to amend the Hearing Examiner's Report and Recommendation.

However, the Board did not consider any motion to amend Hearing Examiner Stehura's findings of fact nor was there any vote taken to do so. Accordingly this court finds the Board's

Order explicitly approved and confirmed Hearing Examiner Stehura's findings of fact by roll call vote upon Dr. Steinbergh's motion as seconded by Mr. Hairston to do so.

Appellee would have the court find that the Board implicitly amended the Hearing Examiner's findings of fact. Given that the Board had upon motion and roll call vote explicitly amended specific portions of Hearing Examiner Stehura's Report and Recommendation and accepted the other portions of the Hearing Examiner's Report, the court is left with little choice other than to accept Board's Order as written. The Board clearly knew how to amend the Hearing Examiner's conclusions of law and the proposed sanction with which it disagreed and did so explicitly. The Board certainly knew how to amend the factual findings of the Hearing Examiner, i.e. by motion and roll call vote, but did not do so.

At one point in the Board's discussion, Dr. Steinbergh stated "she would like to drop the Findings of Fact, because she finds that they are inconsistent with the Conclusions of Law." (Page 8, ¶ 1). No other member of the Board picked up on the thread of dropping or amending Hearing Examiner Stehura's Findings of Fact. The court does not find that the statement of one member of the board that she would like to "drop" the Hearing Examiner's finding of facts supports an inference that the Board implicitly amended the Hearing Examiner's findings of facts in regard to Patient 2 or Patient 3.

Accordingly, this court finds that there is insufficient evidence to support the Board's conclusion that Dr. Levine's conduct in relation to Patient 2 and Patient 3 violated Rule 4731-26-02(A) and there is insufficient evidence to support the Board's conclusion that Dr. Levine's conduct in relation to Patient 2 and Patient 3 constituted a departure from the minimal standards of care of similar practitioners under the same or similar circumstances. Thus the Board's order as to those conclusions is not supported by reliable, probative and substantial evidence. And insofar as the Board's Order is based on its conclusion of law as to Patient 2 and Patient 3, the

order is not in accordance with law. Where a Board's Order is not supported by reliable, probative and substantial evidence and is, therefore, not in accordance with law, this court "may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative and substantial evidence and that is in accordance with law." *Univ of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108 at 110.

This court declines to reverse, vacate, or modify the Board's Order based upon what the court considers their erroneous conclusions of law as to Patient 2 and Patient 3. Such error is, given the admission by Dr. Levine that he engaged in sexual misconduct with Patient 1 and that he misled the Board's investigator, harmless beyond a reasonable doubt.

The record is replete with specific examples of Dr. Levine's inappropriate sexual misconduct with Patient 1. The Board carefully examined Dr. Levine's underlying conduct with Patient 1 and concluded that Dr. Levine's use of Patient 1 as his "sex toy" degraded Patient 1 beyond sexual boundaries in a manner that treated Patient 1 as less than a human being. At least one Board member, Dr. Madia, viewed Dr. Levine as "using treatment to use the patient as a sex toy." (Page 9, ¶ 5) Dr. Madia was not alone in his view of Dr. Levine's conduct, Dr. Amato stated that "Dr. Levine was using his prescriptive authority, his granted license to heal, in a way that could only hurt." (Page 9, ¶ 4)

That is, members of the Board viewed Dr. Levine's sexual misconduct with Patient 1 as coercive based upon Patient 1's ability to get a script for Suboxone from Dr. Levine only if she acted as his sex toy. Patient 1 needed treatment because she was addicted to drugs; to obtain treatment from him, Dr. Levine required her sexual degradation as the *quid pro quo*.

And it was this serious misuse of his medical license that caused the Board to reject Hearing Examiner Stehura's recommended sanction and replace it with an Order of Permanent Revocation. The Board was within its power to do so.

Mr. Stehura sent a Memorandum on July 6, 2009 along with copies of the transcript, exhibits and Report and Recommendation concerning the adjudication of Jack Mark Levine, D.O. Hearing Examiner Stehura's memorandum advised the Board that the "Disciplinary Guidelines do not limit any sanction the Board may impose, and that the range of sanctions available in this matter extends from dismissal to permanent revocation." (July 6, 2009 Memorandum to Board Members accompanying the official record.)

Specifically, Mr. Stehura set forth that the Maximum Penalty for Sexual Misconduct within Practice is Permanent revocation of certificate. (Guideline II.B). The Maximum Penalty for a Publishing a Fraudulent Statement is Permanent revocation of certificate. (Guideline III.D). Thus, the Board had the power to Permanently Revoke Dr. Levine's certificate to practice osteopathic medicine and surgery in the State of Ohio for either his admitted sexual misconduct with Patient 1 or his admitted Fraudulent Statement to the Board's investigator. Given that Dr. Levine admitted both violations, the Board was within its guidelines and powers in ordering permanent revocation.

Dr. Levine urges this court to set aside the Board's Permanent Revocation of his certificate to practice osteopathic medicine and surgery. He cites six cases where the Board ordered a less serious sanction. However, none of those cases involved coercive sexual conduct by the physician with a patient. This court would be reluctant to overturn the Board's considered sanction in this case. And this court recognizes that it lacks legal authority to modify an authorized penalty imposed by an agency exercising its delegated powers. *Henry's Café, Inc. v. Board of Liquor Control* (1959) 170 Ohio St. 223, 163 N.E.2d 678, syllabus para. 3.

**CONCLUSION**

Because the Board imposed an authorized penalty for Dr. Levine's admitted conduct that constituted two separate and distinct violations of law, either of which would support permanent revocation of his medical certificate, this court **AFFIRMS** the Board's Order permanently revoking Dr. Levine's certificate to practice osteopathic medicine and surgery in the State of Ohio as that set forth in Case Number 08-CFR-080.

**IT IS SO ORDERED.**

  
JOHN P. BESSEY, JUDGE

Copies to:

Thomas M. Spetnagel, Esq.  
Paige J. McMahon, Esq.  
Counsel for Plaintiff/Appellant, Jack Mark Levine, D.O.

Kyle C. Wilcox, Esq.  
Katherine Bockbrader, Esq.  
[kbockbrader@ag.state.oh.us](mailto:kbockbrader@ag.state.oh.us)  
Counsel for Defendant/Appellee, State Medical Board of Ohio

Any attorney or party *pro se* whose e-mail address is noted above has received this document electronically. The original will be filed within 24 hours of the time noted on the e-mail transmittal message.

**Thomas M. Spetnagel, Esq.  
Paige J. McMahon, Esq.  
Spetnagel and McMahon  
42 East Fifth Street  
Chillicothe, Ohio 45601**

**Kyle C. Wilcox, Esq.  
Katherine Bockbrader, Esq.  
Assistant Attorney Generals  
Health and Human Services Section  
State Office Tower  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3428**

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

JACK MARK LEVINE, D.O.,

Plaintiff/Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Defendant/Appellee.

CASE NO. 09CVF10-16197

JUDGE BESSEY

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2009 DEC -8 AM 11:00  
CLERK OF COURTS

**DECISION AND ENTRY GRANTING DEFENDANT/APPELLEE'S  
MOTION TO RECONSIDER CONDITIONAL STAY OF ADMINISTRATIVE ORDER,  
FILED NOVEMBER 6, 2009**  
**AND**  
**ORDER VACATING NOVEMBER 2, 2009 ENTRY GRANTING  
APPELLANT'S MOTION FOR STAY**  
**AND**  
**DECISION AND ENTRY DENYING APPELLANT'S  
MOTION FOR STAY PENDING APPEAL,  
FILED OCTOBER 29, 2009**

These matters are before the Court upon the Motion to Reconsider Conditional Stay of Administrative Order, filed by Defendant/Appellee, State Medical Board of Ohio (hereinafter "Appellee Board"), on November 6, 2009. On November 20, 2009, Plaintiff/Appellant, Jack Mark Levine, D.O. (hereinafter "Appellant"), filed a Memorandum Contra Appellee Board's Motion to Reconsider Conditional Stay of Administrative Order Pending Appeal.

**I. Background**

On October 29, 2009, Appellant filed his Notice of Appeal from an Administrative Order, pursuant to R.C. 119.12, from the October 14, 2009 Order of the State Medical Board of Ohio issued in Case Number 08-CFR-080, which permanently revoked his certificate to practice orthopathic medicine and surgery in the State of Ohio.

Also on October 29, 2009, Appellant filed a Motion for Stay Pending Appeal. On November 2, 2009, an Entry granting Appellant's Motion for Stay was filed.

On November 6, 2009, the Appellee Board filed the Motion to Reconsider Conditional Stay of Administrative Order, which is now before the Court.

## II. Discussion

Appellee Board requests that the Court reconsider its November 2, 2009 Entry granting Appellant's Motion to Stay the October 14, 2009 Order, which permanently revoked Appellant's medical license for serious violations of the Medical Practices Act. The Appellee Board contends that the Entry was signed by the Court before the Appellee Board had a chance to file a response, and that the Appellee Board has compelling argument against staying this Order. Therefore, the Court will now reconsider Appellant's Motion for Stay Pending Appeal.

As stated above, Appellant requested the Court for a stay, during the pendency of this appeal, of the October 14, 2009 Order, which permanently revoked Appellant's medical license. Appellant contended that the Appellee Board's Order was not based on reliable, probative, and substantive evidence, and was not issued in accordance with law. Appellant further argued that enforcement of the Appellee Board's Order would cause him to suffer extreme harm before the matter was even ripe for final review, as other licensing authorities would follow the Appellee Board's decision, and he would not be able to obtain or maintain employment, even in another state.

The relevant portion of R.C. 119.12, states as follows:

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms.

In addition, in *Bob Krihwan Pontiac-GMC Truck, Inc. v. GMC* (2001), 141 Ohio App. 3d 777, the Tenth District Court of Appeals discussed what factors the Court should consider when determining whether to grant a stay pending an administrative appeal. The Court stated:

Although R.C. 119.12 does not set forth or proscribe the factors the court may consider in determining whether to suspend operation of an administrative order, those factors have been refined by the courts. The Sixth Circuit, in addition to many other courts, has repeatedly relied upon the following factors as logical considerations when determining whether it is appropriate to stay an administrative order pending judicial review. Those factors are: (1) whether appellant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether appellant has shown that it will suffer irreparable injury; (3) whether the issuance of a stay will cause harm to others; and (4) whether the public interest would be served by granting a stay. See *Hamlin, supra*; *Gurtzweiler v. United States* (1985), 601 F.Supp. 883; *Holden v. Heckler* (1984), 584 F.Supp. 463; *UpJohn Company v. Finch* (1969), 303 F.Supp. 241; *Friendship Materials v. Michigan Brick, Inc.* (1982), 679 F.2d 100; and *Virginia Petroleum Jobbers Assn. v. FPC* (1958), 104 U.S. App. D.C. 106, 259 F.2d 921.

*Bob Krihwan Pontiac-GMC Truck, Inc.*, 141 Ohio App. 3d at 783.

Appellant further argued that the health, safety, and welfare of the public would not be threatened by a suspension of the Order, as the basis for the Appellee Board's Order was sexual misconduct with a patient, which occurred during telephone calls. Appellant argued that he had voluntarily entered into psychological treatment, and that his health care providers did not believe that he would repeat that conduct. In addition, Appellant argued that his current employment was at an emergency room in a hospital where he had limited contact with patients that was closely supervised, and that he had 31 letters that were provided by health care professionals, including those associated with Appellant's current employer, that showed that he was fully capable of practicing medicine without any conditions or limitations to prevent harm to the public.

However, the Appellee Board argues that Appellant failed to show that he would suffer an “unusual” hardship if the Appellee Board’s Order was not stayed. The Appellee Board further argues that courts throughout Ohio and the Franklin County Common Pleas Court have repeatedly held that the mere denial of the right to practice medicine is not an “unusual” hardship as contemplated by the General Assembly. See, *Randall Leuvoy v. State Medical Board* (Oct. 10, 2006), Franklin C.P. Case No. 06CVF10-1247, unreported (Frye, R.); *Leo D’Souza, M.D. v. State Medical Board* (Jun. 12, 2008), Franklin C.P. Case No. 08CVF05-7342, unreported (Frye, R.); *Benjamin Gill, D.O., v. State Medical Board of Ohio* (Sept. 14, 2007), Franklin Co. C.P. Case No. 07CVF09-11839, unreported (Brown, E.); *Dolce v. State Board of Chiropractic Examiners* (Mar. 10, 1993), Franklin Co. C.P. Case No. 92CVF11-9231.

In addition, the Appellee Board argues that Appellant’s continued practice would threaten the public’s health, safety, and welfare. The Appellee Board argues that the bottom line of the instances of Appellant’s misconduct is that he used his position as a physician to gain trust of these patients and then he repeatedly took advantage of them for his own gratification. The Appellee Board further argues that it carefully reviewed the record and was convinced that Appellant’s practice was far below the standard of care and unanimously voted to permanently revoke his license. As such, the Appellee Board argues that keeping Appellant in a position where he still has access to female patients is not acceptable and would be placing the public at risk.

Based on the foregoing, the Court finds the Appellee Board’s arguments well taken and specifically finds that Appellant’s alleged loss of his license and his inability to practice medicine does not rise to the level of the “unusual hardship” that is required by R.C. 119.12. As the Appellee Board argues, this Court has repeatedly rejected the notion that

economic loss or the mere denial of the right to practice medicine alone can qualify as “undue hardship,” within the meaning of R.C. 119.12. In addition, the Court finds that the alleged conduct and behavior of Appellant is a definite threat to the public’s safety and welfare, which cannot be sacrificed. As such, the Court further finds that pursuant to R.C. 119.12, Appellant failed to meet the criteria for a suspension of the Appellee Board’s Order.

Therefore, the Court accordingly hereby **GRANTS** the Appellee Board’s Motion to Reconsider Conditional Stay of Administrative Order, and **ORDERS** that the Court’s previous Entry vacating Appellant’s Motion to Stay is **VACATED**, and Appellant’s Motion for Stay Pending Appeal is **DENIED**.

**IT IS SO ORDERED.**

  
JOHN P. BESSEY, JUDGE

Copies to:

Thomas M. Spetnagel, Esq.  
Paige J. McMahon, Esq.  
Counsel for Plaintiff/Appellant, Jack Mark Levine, D.O.

Kyle C. Wilcox, Esq.  
Katherine Bockbrader, Esq.  
[kbockbrader@ag.state.oh.us](mailto:kbockbrader@ag.state.oh.us)  
Counsel for Defendant/Appellee, State Medical Board of Ohio

Any attorney or party *pro se* whose e-mail address is noted above has received this document electronically. The original will be filed within 24 hours of the time noted on the e-mail transmittal message.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Jack Mark Levine, D.O.,

Appellant,

vs.

State Medical Board of Ohio,

Appellee.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 09CVF10-16197

Judge \_\_\_\_\_

ENTRY

IT IS ORDERED, ADJUDGED AND DECREED that having reviewed Appellant's Motion for Stay, this Court finds Appellant's Motion for Stay well-taken and hereby GRANTS Appellant's Motion to Stay.

The decision of Appellee, State Medical Board of Ohio to permanently revoke Appellant's license, as set forth in the September 9, 2009 Entry of Order, is stayed.

IT IS SO ORDERED.

10.30.09  
Date

*Philip C. Bessie*  
JUDGE

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2009 NOV -2 PM 4: 00  
CLERK OF COURTS

(1)

✓

09CVF10-16197

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**JACK MARK LEVINE, D.O.**  
7428 State Route 772  
Piketon, Ohio 45661

**STATE MEDICAL BOARD**  
**CASE NO. 08-CFR-080**

STATE MEDICAL BOARD  
OF OHIO  
2009 NOV 16 PM 3:36

Appellant,

**FRANKLIN COUNTY COURT**  
**Of COMMON PLEAS CASE**  
**NO. \_\_\_\_\_**

vs.

**STATE MEDICAL BOARD OF OHIO**  
30 E. Broad St., 3<sup>rd</sup> Floor  
Columbus, Ohio 43215

**JUDGE \_\_\_\_\_**

Appellee.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2009 OCT 29 PM 12:19  
CLERK OF COURTS

\*\*\*\*\*

**NOTICE OF APPEAL**  
**FROM AN ADMINISTRATIVE ORDER**

Pursuant to Ohio Revised Code §119.12, Appellant, Jack Mark Levine, D.O., gives notice of his appeal to the Common Pleas Court of Franklin County, Ohio from the Order of the State Medical Board of Ohio issued in Case Number 08-CFR-080 and mailed to him on October 14, 2009 which permanently revoked his certificate to practice osteopathic medicine and surgery in the State of Ohio.

Appellant appeals from this Order on the grounds that it is not supported by substantial, reliable, and probative evidence and is further not in accordance with law. Specifically, the

Board's Order contains the following legal and factual errors:

STATE MEDICAL BOARD  
OF OHIO  
2009 OCT 29 AM 11:58

1. The Board improperly denied Appellant his rights to substantive and procedural due process and equal protection under the law as guaranteed by the United States Constitution as applied to States by the Fourteenth Amendment thereto and further by the Ohio Constitution, with such deprivations including but not limited to the following acts:
  - a. The Board improperly quashed and failed to enforce subpoenas issued by Appellant to compel the attendance of witnesses and produce documents

essential to his defense;

- b. The Board improperly refused to permit Appellant to confront and cross-examine witnesses, including but not limited to the patients who accused him of misconduct and the Board's own Investigator;
  - c. The Board improperly denied Appellant's request for pre-hearing discovery; and,
  - d. The Board permanently revoked Appellant's license to practice medicine upon insufficient evidence.
2. The Board improperly concluded that Appellant's treatment of his patients constituted a violation of O.R.C. §4731.22(B)(5);
  3. The Board improperly concluded that Appellant had committed sexual misconduct with Patients 2 and 3 as set forth under O.A.C. §4731-26-01 and §4731-26-02;
  4. The Board improperly determined that Patients 2 and 3 were credible witnesses despite overwhelming evidence to the contrary and the findings of its own Hearing Examiner;
  5. The Board improperly speculated and found that Appellant's conduct was based upon a financial motive, despite a complete lack of evidence to support such a finding;
  6. The Board improperly found that some of the witnesses who offered testimony against Appellant "came forward" following the complaint brought by Patient 1, despite no evidence to support that conclusion;
  7. The Board improperly disregarded the evidence of the relationship between Patients 1 and 3 which included Patient 3's actual composition of Patient 1's complaint;
  8. The Board improperly concluded that the prescriptions issued by Appellant would cause his patients to become prostitutes;
  9. The Board improperly permitted the Assistant Attorney General to engage in improper arguments such as claiming that Appellant's denial of the charges constituted evidence of his guilt;
  10. The Board improperly permitted the Assistant Attorney General to engage in improper arguments such as claiming that Patient 1 was a vulnerable patient despite a complete lack of evidence of any such vulnerability;

11. The Board improperly found that Patient 1 was a vulnerable patient despite all evidence to the contrary;
12. The Board improperly engaged in disparate treatment by imposing a penalty upon Appellant that was grossly disproportionate and dissimilar to penalties imposed in other similar or even more egregious situations;
13. The Board improperly imposed the most severe sanction available without showing that lesser sanctions would not be efficacious;
14. The Board improperly disregarded any and all mitigating evidence presented on behalf of Appellant, including but not limited to:
  - a. Appellant has been licensed to practice medicine in three States for over twenty years and has never been the subject of a prior disciplinary action;
  - b. Appellant has been board-certified by the American Board of Osteopathic Surgeons in general surgery and critical care medicine since 1995 and has further been a fellow of the American College of Osteopathic Surgeons since 1988;
  - c. Appellant produced 31 letters, including multiple statements from female health care providers confirming Appellant's good conduct, professionalism and trustworthiness;
  - d. The sexual misconduct which Appellant admitted was an isolated incident which only occurred with a single Patient and was committed over the telephone;
  - e. Following the incident with Patient 1, Appellant voluntarily sought treatment with a Psychologist and licensed Professional Counselor who diagnosed Appellant as suffering from depression; however, he opined that Appellant's prognosis made it extremely unlikely that he would ever engage in such behavior again; and
  - f. Appellant's treating Psychologist and the Board's own Hearing Examiner strongly emphasized the "extreme" and "sincere" remorse shown by Appellant for his conduct with Patient 1.
15. The Board engaged in improper cross-examination of Appellant following his admission to one of the charges in order to arouse the passion and prejudice of the Board members;
16. The Board improperly deviated from the recommendations of its own Hearing Examiner and increased the penalty imposed upon Appellant due to the statements of witnesses that no reasonable person would find to be credible;

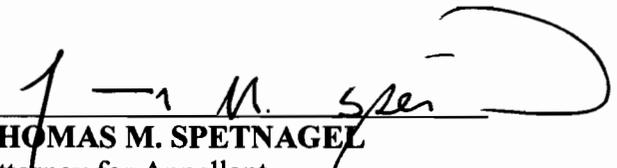
17. The Board improperly concluded that Appellant departed from minimum standards of care and that the permanent revocation of Appellant's license was necessary to protect the public; and,
18. Other errors apparent on the record.

A true copy of the Order appealed from is attached hereto and incorporated herein.

  
**THOMAS M. SPETNAGEL (0003820)**  
**PAIGE J. MCMAHON (0040755)**  
SPETNAGEL AND MCMAHON  
Attorneys for Appellant  
42 East Fifth Street  
Chillicothe, Ohio 45601  
Phone: (740) 774-2142  
Fax: (740) 774-2147

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing Notice of Appeal was served upon Barbara J. Pfeiffer, Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215 by regular U.S. Mail on this 29<sup>th</sup> day of October, 2009.

  
**THOMAS M. SPETNAGEL**  
Attorney for Appellant

# 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

September 9, 2009

Jack Mark Levine, D.O.  
7428 St. Rt. 772  
Piketon, OH 45661

Case No. 08-CRF-080

Dear Doctor Levine:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Paul Stehura, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 9, 2009, including motions modifying the Conclusions of Law and amending the Proposed Order, and adopting the Findings of Fact, Conclusions of Law and Order, as amended.

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.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3184 0415  
RETURN RECEIPT REQUESTED

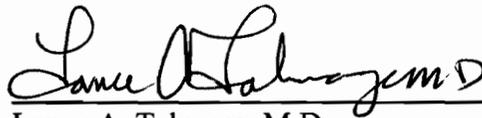
Cc: Jeffrey J. Jurca, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3936 3184 0422  
RETURN RECEIPT REQUESTED

*Mailed 10.14.09*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Paul Stehura, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 9, 2009, including motions modifying the Conclusions of Law, amending the Proposed Order and adopting the Findings of Fact, Conclusions of Law and Order as amended; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Jack Mark Levine, D.O., Case No. 08-CRF-080, as it appears in the Journal of the State Medical Board of Ohio.

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



\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

\_\_\_\_\_  
September 9, 2009

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NO. 08-CRF-080

\*

JACK MARK LEVINE, D.O.

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 9, 2009.

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

It is hereby ORDERED that the Conclusions of Law be amended as follows:

**CONCLUSIONS OF LAW**

2. Dr. Levine's acts, conduct, and/or admissions involving Patient 2, as set forth in Finding No. 2, individually and/or collectively, do constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board" as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine's acts, conduct, and/or omissions involving Patients 2, as set forth in Finding No. 2, individually and/or collectively, do 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."

3. Dr. Levine's acts, conduct, and/or admission involving Patient 3, as set forth in Finding No. 3, individually and/or collectively, do constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board" as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine's acts, conduct, and/or omissions involving Patients 3, as set forth in Finding No. 3, individually and/or collectively, do 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."

It is further ORDERED that:

The certificate of Jack Mark Levine, D.O., to practice osteopathic medicine and surgery in the State of Ohio is hereby PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.  
Secretary

September 9, 2009

Date

2009 JUL -6 AM 10: 15

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

\*

Case No. 08-CRF-080

Jack Mark Levine, D.O.

\*

Hearing Examiner Stehura

Respondent.

\*

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated June 11, 2008 [Notice Letter], the State Medical Board of Ohio [Board] notified Jack Mark Levine, D.O. [Respondent] that it proposed to determine whether to limit, revoke, permanently revoke, or suspend Respondent's certificate to practice osteopathic medicine and surgery, or to reprimand him or place him on probation based on allegations that Respondent: (1) made inappropriate phone calls to Patient 1, a drug-addicted female patient Respondent was treating in a Suboxone program, in which Respondent engaged in "sexual misconduct" by making numerous and varied statements of a sexual nature and Respondent continued to treat such patient; (2) engaged in "sexual misconduct" with Patient 2, a drug-addicted female patient Respondent was treating in a Suboxone program, by asking said patient whether she had ever hitch-hiked for drugs or prostituted herself for drugs, and that she would need to do so again to get her Suboxone; (3) engaged in "sexual misconduct" with Patient 3, a drug-addicted female patient Respondent was treating in a Suboxone program, by asking her to make notes about masturbating and orgasms and bring them to an office visit and inappropriately touching said patient's breasts; and (4) in a December 2007 Board interview, denied that he told Patient 1 that she was Respondent's sex toy, stated that he made only one inappropriate phone call to said patient, and stated that he was only trying to help said patient feel like a woman. (State's Exhibit [St. Ex.] 17)

The Notice Letter stated that Respondent's acts, conduct, and/or omissions as alleged in items (1), (2) and (3) above, individually and collectively, constituted "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of [Ohio Revised Code] Chapter 4731 or any rule promulgated by the board" as that clause is used in Ohio Revised Code [R.C.] 4731.22(B)(20), to wit: Ohio Administrative Code [Rule] 4731-26-02(A), a violation of which also violates R.C. 4731.22(B)(6), which is a "[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." The Notice Letter further stated that Respondent's acts, conduct, and/or omissions as alleged in item (4) above, individually and collectively, constituted "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice

of medicine and surgery, osteopathic medicine and surgery \* \* \* or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board” as that clause is used in R.C. 4731.22(B)(5).

The Board advised Respondent of his right to request a hearing and received his written request for hearing on or about June 25, 2008. (St. Ex. 19)

#### Appearances at the Hearing

On behalf of the State of Ohio: Richard Cordray, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General.

On behalf of Dr. Levine: William Scott Lavelle and Jeffrey J. Jurca.

Hearing Dates: December 16-17, 2008 and January 8 and 13, 2009

### **PROCEDURAL ISSUES**

Prior to the hearing, Dr. Levine requested that the Board issue various subpoenas for, among other things, Patients 1, 2, and 3 and various health care facilities to provide all medical records regarding those patients’ care and treatment received during the time period covered in the Notice Letter to Dr. Levine. Additionally, Respondent’s counsel requested subpoenas for medical records from other health care facilities where Patient 2 received medical treatment. The Board’s counsel objected to these subpoenas on the grounds of relevance and the fact that such information is confidential and each patient would need to voluntarily waive her right to confidentiality prior to those records being presented and considered. Setting aside the issue of relevance, this Hearing Examiner obtained testimony from Patients 1, 2, and 3 to explain their rights of confidentiality as it relates to their requested medical records and to ask whether any or all of them wished to waive their right to confidentiality and produce the medical records requested by Dr. Levine. Upon explanation and inquiry under oath, none of the Patients 1, 2, or 3 agreed to waive their confidentiality and release the requested medical records. Accordingly, the Hearing Examiner quashed in part the subpoenas issued at Dr. Levine’s request, and the requested medical information was not produced under the subpoenas issued to Patients 1, 2, or 3 or of the various health care facilities on behalf of Patient 2. (Transcript [Tr.]) at 30-42, 50, 55-62, 77-87)

Additionally, at the hearing, Dr. Levine presented testimony in mitigation that he was suffering from depression and low self-esteem at the time he allegedly made the phone calls to Patient 1, and that he has regularly seen a licensed psychologist and professional counselor since early 2008 to address any conditions that may have influenced his conduct toward Patient 1. Dr.

Levine's psychologist/counselor also testified at the hearing. As the Board's Notice Letter did not allege any psychological impairment or condition, this Hearing Examiner conducted a post-hearing conference with counsel on June 9, 2009 to determine whether Dr. Levine wished to provide an *Eastway* waiver<sup>1</sup> to permit the Board to consider the psychological/counseling evidence offered by Dr. Levine and possibly impose sanctions which may include provisions of psychological evaluation and treatment. Via email dated June 15, 2009, Respondent's counsel notified this Hearing Examiner that Dr. Levine had agreed to an *Eastway* waiver in these proceedings.

### SUMMARY OF EVIDENCE

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

#### Background Information

1. Jack Mark Levine, D.O. was initially licensed by the Board to practice osteopathic medicine and surgery in Ohio on April 14, 1989. Dr. Levine was licensed in Ohio until July 1, 2002, when his license expired. On October, 27, 2006, Dr. Levine's license to practice osteopathic medicine and surgery in Ohio was restored and has remained in effect to the present. Other than the instant matter, there has been no disciplinary action taken or pursued by the Board against Dr. Levine. (Transcript [Tr.] at 43-44)
2. Dr. Levine was born in New York and graduated from the New York College of Osteopathic Medicine in 1982. In addition to Ohio, Dr. Levine holds medical licenses in West Virginia (1988) and Illinois. He was board-certified by the American Board of Osteopathic Surgeons in 1995 in general surgery and critical care medicine, and became a fellow of the American College of Orthopedic Surgeons in 1988. (Tr. at 300; Respondent's Exhibit [Resp. Ex.] A)
3. Dr. Levine practiced as a general surgeon in Point Pleasant, West Virginia, from 1988 to 2001. From 2002 to 2006, he served as Chief of Staff, Chief of Surgery and Emergency Room Director for a small rural hospital in Shelbyville, Illinois. In early 2007, Dr. Levine relocated to Pike County, Ohio, and began a general surgery and emergency room position

---

<sup>1</sup> In *In re Eastway* (1994), 95 Ohio App.3d 516, 642 N.E.2d 1135, cert. denied, the Franklin County Court of Appeals held that the Board could not require psychiatric treatment as a condition of probation when it had not originally charged a physician with being mentally impaired. An *Eastway* waiver permits a licensee to present evidence of a condition for which he/she was not charged in the Board's Notice of Opportunity for Hearing and waive his/her right to object should the Board decide to impose sanctions in its order requiring the evaluation and/or treatment of that same condition. See also *Lawrence S. Krain, M.D. v. State Medical Board of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.

with the Pike Community Hospital in Waverly, Ohio. Presently, Dr. Levine works as an emergency room physician at Stonewall Jackson Memorial Hospital in Weston, West Virginia and commutes back to southern Ohio to be with his family. (Resp. Ex. A; Tr. at 302-308, 105-106)

### **Suboxone Program**

4. Pursuant to Dr. Levine's testimony at the hearing, Suboxone is a drug prescribed to patients dealing with addiction to opiates, OxyContin or heroin as an alternate to a Methadone protocol. Dr. Levine testified that Suboxone binds up the opiate receptors in a patient's brain to very rapidly stop the patient's withdrawal symptoms and also stop or reduce cravings for opiates. He emphasized that a patient should not be using drugs and needed to be in withdrawal before Suboxone could be prescribed; otherwise, the Suboxone could create withdrawal symptoms for the patient. He further testified that a physician prescribing Suboxone as part of his/her practice must first be certified online by the federal Drug Enforcement Administration [DEA]. (Tr. at 108-112, 115)
5. Dr. Levine testified that he first became aware of Suboxone while practicing in Illinois and became DEA-certified in Suboxone. He stated that when he returned to Ohio in 2007 and first prescribed Suboxone, his name was, unbeknownst to him, published on a website for Suboxone. He stated that thereafter he received "a hundred phone calls" from prospective patients seeking Suboxone treatment and eventually serviced these Suboxone patients from his medical office while employed with the Pike County Community Hospital. (Tr. at 108-112, 115)
6. Dr. Levine further stated that he and his office nurses would conduct a lot of follow up phone calls to patients, particularly in the first 48 hours after prescription and afterward as needed, to ensure patients "were doing well" on the Suboxone or to follow up with patients who did not maintain their scheduled follow up visits, drug screenings, or prescription refills. (Tr. at 112-114, 331-333)

### **Patient 1**

7. Patient 1 was a 42-year old female patient who was using 240-400 milligrams of OxyContin when she first presented to Dr. Levine in July 2007. Dr. Levine's records reflect that Patient 1 reported that she was a victim of domestic abuse and marital rape, and that she had been to the emergency room 17 times during her second marriage. (State's Exhibit [St. Ex.] 1)
8. Dr. Levine diagnosed Patient 1 with substance abuse and immediately prescribed a Suboxone regimen for her after determining her to be in withdrawal. He followed her treatment and continued her Suboxone prescription. Her medical records reflect follow-up drug screenings reported to Dr. Levine, including one positive drug screening and Dr. Levine's emphasis that

Patient 1 regularly attend addiction meetings (AA/NA) as part of her treatment. (St. Ex. 1, p. 30)

9. On or about December 6, 2007, Dr. Levine had a telephone conversation with Patient 1 in which he made numerous explicit sexual comments, some of which are as follows:

DR. LEVINE: I guess I'll have to wait. You going to be able to be my sex toy, or what?

PATIENT 1: Yeah. Is that what you want? \*\*\*

(St. Ex. 13 at 4) Additionally, the conversation included:

DR. LEVINE: That's right. I wouldn't. I just know what you need. You need to be back to being a woman again. I could tell the minute I saw you. You need – You need to feel alive again. You need to be able to fantasize like you used to. You need to have a master over you, telling you what to do. Don't you feel that way?

PATIENT 1: Yeah. So you would do that for me?

DR. LEVINE: Isn't that what you want?

PATIENT 1: Yeah.

\*\*\*

DR. LEVINE: Don't you want your pussy to feel the way it used to?

PATIENT 1: Yeah.

DR. LEVINE: Don't you want a master to tell you what to do?

PATIENT 1: Yeah.

DR. LEVINE: You need that. I know you gotta wet pussy. It just hasn't been wet for a while.

PATIENT 1: Right.

DR. LEVINE: You need a man to command you, don't you?

PATIENT 1: Yeah.

\*\*\*

DR. LEVINE: You need a sex god to rule you, don't you?

PATIENT 1: Yes.

(St. Ex.13 at 9-10) Furthermore, the same conversation included:

DR. LEVINE: Are you on your bed?

PATIENT 1: Yes.

DR. LEVINE: Well, what are you doing?

PATIENT 1: (unintelligible) naked like you told me to.

DR. LEVINE: I like that idea. Are you rubbing yourself?

PATIENT 1: Wherever you want me to.

DR. LEVINE: Yeah, I want you to rub your tits. I want you to get your nipples hard.

\* \* \*

DR. LEVINE: You should see my cock right now.

PATIENT 1: What, baby?

DR. LEVINE: You should see my cock right now.

PATIENT 1: Is it hard?

DR. LEVINE: Well –

PATIENT 1: Is it hard, baby?

(St. Ex.13 at 11-12)

10. On or about December 6, 2007, Dr. Levine had a second telephone conversation with Patient 1 in which he made additional comments of a sexual nature, which were similar to the first conversation. (St. Ex. 14, 4-10)
11. On or about December 17, 2007, Dr. Levine had a third telephone conversation with Patient 1 in which he again made sexually explicit comments, similar to the prior conversation. (St. Ex.15 at 4)
12. With respect to the Board's allegations in its Notice Letter regarding Patient 1 (Items 1 and 4 of the letter), Dr. Levine, through his counsel, submitted at the hearing a signed document admitting to all acts and conduct described in the Notice letter. The admission, which is signed by Dr. Levine and his counsel, states as follows:

Now come (sic) Respondent, Jack Mark Levine, D.O., who hereby admits the following:

1. He engaged in all of the acts and conduct described in paragraph (1) of the Medical Board's June 11, 2008 letter to him.
2. He engaged in all of the acts and conduct described in paragraph (4) of the Medical Board's June 11, 2008 letter to him.

IT IS SO ADMITTED.

(Resp. Ex. D; Tr. at 63-76)

13. Upon specific questioning at the hearing, Dr. Levine agreed that he in fact had the phone conversation with Patient 1 depicted as State's Exhibit 8 (transcript at St. Ex. 14) and that it bore no therapeutic value to Patient 1. Dr. Levine emphatically stated that "there is nothing that I could possibly say that could give me justification or reason to you, to anyone, to my wife, to my God, why I made that phone call and said those things to her." Dr. Levine further stated that the phone call "was totally inappropriate" and that "[he] regret[s] it every single day that [he] did it" and "[t]here isn't a word to say how sorry [he is]." He further referred to all his phone calls to Patient 1 as "wrong," "sinful," "totally inappropriate," and "inexcusable." Dr. Levine further referred to his phone conversations with Patient 1 as occurring when he was in "a dark period" in which he was "sad and depressed" due to the separation from his family and when things were not going well for him. He stated that the publicity which surrounded has led people to want to make this situation "who (he is) as a man and as a surgeon \*\*\* [but] [t]hat is not who [he is]." (Tr. at 149-151, 160, 343-344)

14. After repeating how sorry he was about making the call and how inappropriate the call was, Dr. Levine stated that he did not know whether that call harmed Patient 1. He agreed that his conduct in engaging in the phone call constituted “sexual misconduct” between a physician and his patient. He also stated these types of phone conversations with a patient “never happened before, it has never happened since, and it will never happen again.” (Tr. at 153-155)
15. Dr. Levine further stated that he has talked extensively with his wife and family about his inappropriate conversations with Patient 1. He testified that he has gained a lot of insight from his meetings with his psychologist (J. Edwin Black, Ph.D.) about his weaknesses and the low self-esteem that he had during the time period he made the phone calls to Patient 1. He stated that he will continue to see Dr. Black regardless of the disposition of the Board charges. (Tr. at 343-349)

## **Patient 2**

16. Patient 2 was a 40-year old female patient who was addicted to opiates and cocaine when she first presented to Dr. Levine on October 9, 2007. Dr. Levine considered Patient 2 a difficult patient due to her cocaine use. Patient 2 testified that she “was in such an awful state of addiction” at that time and has “a lot of memory loss.” Dr. Levine prescribed a Suboxone regimen for Patient 2. Dr. Levine’s records for Patient 2 reflect that she had one or more instances of drug use after becoming Dr. Levine’s patient and was terminated from the Suboxone program effective November 16, 2007. (St. Ex. 2 at 45-46; Tr. at 184, 336)
17. Patient 2 testified that she had a discussion with Dr. Levine in his office about her inability to come to his office when he called for unscheduled drug screenings. Patient 2 stated that Dr. Levine, in an angry tone, asked Patient 2 whether she ever prostituted herself for drugs or hitchhiked to get drugs and she answered both in the affirmative. Patient 2 stated that Dr. Levine stated to her, “Well, that’s what you’re going to have to do now to get your Suboxone.” She also provided a written statement to the Board relaying the content of that conversation. Patient 2 admits that she was a cocaine addict at the time of the alleged conversation with Dr. Levine and her providing the written statement, but that she is now “clean.” (Tr. at 190-191, 195-196; St. Ex. 5)
18. Dr. Levine recalls Patient 2 telling him that she lived far from his office and had transportation problems. Dr. Levine stated that he has no recollection of asking Patient 2 whether she hitchhiked. He stated that he did recall stressing to Patient 2, as he did with all his Suboxone patients, that her Suboxone cost \$16.00 per day and that however she made her money she needed to continue getting money in order to buy her Suboxone. He further stated that in that conversation with Patient 2, she did volunteer that she had a “sugar daddy”; however, he specifically denied telling Patient 2 that she needed to prostitute herself for the money to buy Suboxone. (Tr. at 165-167, 334-335)

### **Patient 3**

19. Patient 3 was a 45-year old female patient with a history of previous breast implants who first presented to Dr. Levine on April 15, 2007 complaining of breast tenderness. She also presented to Dr. Levine's office on June 4, 2007 stating that she had been addicted to OxyContin for the past two years and was a drug addict for three or four years before the hearing. Dr. Levine prescribed Suboxone to Patient 3 and the patient had initial success. Shortly after being prescribed the Suboxone, Patient 3 had a positive drug screen, and Dr. Levine gave her a second chance to stay in the Suboxone program. Patient 3 did not provide subsequent drug screens to Dr. Levine's office and was terminated from the Suboxone program on August 9, 2007. (St. Ex. 3; Tr. at 226)
20. Sometime after her initial visit, Dr. Levine arranged for Patient 3 to have a mammogram. Patient 3 alleges that, upon reviewing the mammogram results with Patient 3 in Dr. Levine's office, he conducted a brief exam of her breasts. She stated that Dr. Levine had her lean back on an exam table and he lifted her shirt and touched her breasts. She stated that Dr. Levine "felt the bottom of my breast and kind of squeezed them together." In a different part of her testimony, Patient 3 stated that Dr. Levine "was feeling the knots on my breasts, and he was jiggling them and bouncing them around, and said that everything was okay, that he thought one of them (breast implants) may have a leak in it." Patient 3 stated that the breast exam made her feel "very uncomfortable" and "violated." She stated that she did not return to Dr. Levine's office after these incidents. (Tr. at 221, 222-225)
21. Patient 3 further testified that Dr. Levine asked her "how (she) dealt with orgasms or whatever." She further stated that Dr. Levine told her that it was okay to masturbate and that she should "write it down" when she masturbated and implied that Dr. Levine wanted to see what she would write. (Tr. at 223-224)
22. Patient 3 prepared a written statement for the Board on January 11, 2008. She acknowledged that she knows Patient 1, and had driven Patient 1 to the Waverly, Ohio, police station where Patient 3 wrote Patient 1's statement. She further stated that Patient 1 had told her of her experiences with Dr. Levine. (St. Ex. 6; Tr. at 244)
23. Dr. Levine emphatically denies ever speaking to Patient 3 about masturbation, orgasms or requesting that she write notes about those issues for him. (Tr. at 337)
24. Dr. Levine testified that he has conducted "thousands and thousands" of breast exams. He stated that his breast exams typically take about one minute unless a needle biopsy is needed. Dr. Levine readily admits conducting a breast examination of Patient 3 after her initial mammogram results were abnormal. Dr. Levine's records for Patient 3 do indicate "some prominent fibrocystic disease" in the lower quadrant of the left breast after an April 30, 2007 breast exam and a plan to repeat a mammogram and treatment thereafter. He stated that he had conducted a second mammogram and a second breast exam to follow up

on something he had felt in the first exam of her left breast and because she was still experiencing pain in the left breast. Dr. Levine adamantly denied bouncing Patient 3's breast(s) during the second exam and stated that "nothing unusual or inappropriate" occurred during that exam. (Tr. at 177-178, 337-338; St. Ex. 3, p. 15-16)

25. Dr. Levine stated that he has gotten out of the "office-based general surgeon" practice since mid-2008 because of "all the mistakes that [he] made, the misjudgments, the inappropriate behavior, [and] lack of judgment that [he] made \*\*\*" (Tr. at 307-308)

**Kevin Randy Beck**

26. Kevin Randy Beck testified that he has been employed by the Board for 17 years conducting investigations, first as an enforcement investigator and currently as an enforcement supervisor. He stated that he investigates complaints against all Board licensees (M.D.s, D.O.s, podiatrists, licensed massage therapists and the like) and has conducted well over one thousand investigations for the Board. (Tr. at 286-288)
27. Upon questioning, Mr. Beck stated that under general Board procedures, witness statements regarding a licensee which are obtained from a sheriff or prosecutor are put into the Board's enforcement file. He stated that a Board enforcement attorney is the individual who drafts a "citation" letter if one is warranted after reviewing the enforcement file, including any witness statements obtained. Mr. Beck stated that he was not aware that the Board attempted to pursue any summary suspension of Dr. Levine's certificate based on the charges in the Board's citation letter in this matter. (Tr. at 290-297)

**J. Edward Black, Ph.D.**

28. J. Edward Black, Ph.D. testified that he is a licensed Psychologist and Licensed Professional Counselor in the state of Ohio. He stated that he has had a private outpatient psychotherapy practice in Jackson, Ohio, since the mid 1990s. Dr. Black testified that Dr. Levine had been a patient of his during the mid 1990s for an unspecified period of time.<sup>2</sup> (Tr. at 412-414)
29. Dr. Black further testified that Dr. Levine presented for professional treatment a second time beginning in February 2008 due to what Dr. Levine reported to be "possible charges" pending as a result of "some conversations \*\*\* with a female client" of a very explicit sexual nature. Dr. Black stated that Dr. Levine expressed to him that he wanted to know psychologically what had caused him to have such a lapse in judgment so that similar behavior would not reoccur. Dr. Black also stated that Dr. Levine's behavior was not his normal character and that Dr. Levine "felt extremely guilty and remorseful" about the

---

<sup>2</sup> Dr. Black could not provide the specific dates of his initial treatment of Dr. Levine because Dr. Black's office and patient records were destroyed by fire in November 1996.

conversations with the patient and kept saying, “How could I have done this?” (Tr. at 416-418; Resp. Ex. B-3)

30. Dr. Black stated that Dr. Levine has met with him about once every three weeks since February 2008 with a few breaks due to scheduling and out-of-town business travel. He stated that Dr. Levine’s separation from his wife and family, while they were still in Illinois and he in Ohio, caused Dr. Levine to become depressed, anxious and have difficulty functioning effectively at times. Dr. Black stated that he recommended some lifestyle changes (eating right, sleeping better and exercise) and encouraged more contact with his wife even when they were apart. (Tr. at 418-420)
31. Dr. Black stated that his diagnosis for Dr. Levine is Depressive Disorder, NOS and that his prognosis is good. He further opined that Dr. Levine is “psychologically clear as to how this (telephone calls to Patient 1) happened and how not to repeat the same again.” Dr. Black concluded that Dr. Levine does not suffer from a psychological condition that would impair his ability to practice medicine. Dr. Black does not believe that conduct such as the sexually-charged phone calls to a patient is likely to re-occur. (Tr. at 423-433; Resp. Ex. B-3)
32. Upon cross-examination, Dr. Black stated that Dr. Levine should not have engaged in telephone calls of a sexual nature with a patient; that such was “improper conduct” and that Dr. Levine crossed a boundary by doing so. Dr. Black stated that Dr. Levine’s conduct “could be damaging to the therapeutic relationship.” Dr. Black testified that he believed Dr. Levine engaged in such conduct because “Dr. Levine was lonely \*\*\* and feeling distant from his wife.” (Tr. at 443-446)

#### **Dr. Levine’s Reference Letters**

33. Dr. Levine presented 31 letters (Resp. Exs. B-1-31) from various close friends, acquaintances, co-workers and colleagues in the medical care profession. Selected portions of these letters are as follows:

Marion Bennett, RN BSN, a Nursing Supervisor who worked with Dr. Levine. states she found “Dr. Levine to be highly professional, courteous and confident in a highly critical and working environment.” (Resp. Ex. B-1)

Mark Bolton, M.D., an emergency room physician who worked with Dr. Levine in West Virginia, found Dr. Levine to be “a highly competent surgeon who is reliable, trustworthy and pleasant” and someone who “truly cares for his patients.” (Resp. Ex. B-4)

Robert F. Connolly, PT, a long-time friend of Dr. Levine who also worked with him professionally, states that Dr. Levine “is a man of great integrity” and a “caring and sensitive man.” (Resp. Ex. B-7)

Joy Fetty, CRNA, has known Dr. Levine since he first came to Point Pleasant, West Virginia in 1988. She states that Dr. Levine is “[n]ot only a skilled surgeon but a compassionate man” who “would often care for the indigent who had been denied care by other surgeons.” (Resp. Ex. B-9)

John M. Ketner, D.O., F.A.C.O.S., has known Dr. Levine for 25 years. He states that Dr. Levine “is a highly capable physician and surgeon” who has “consistently demonstrated compassion for his patients.” He further states that “Dr. Levine has never demonstrated any abuse of his position for personal or professional gain.” (Resp. Ex. B-14)

Fredric E. LaCarbonara, M.D., is a head pathologist at Pleasant Valley Hospital in Point Pleasant, West Virginia who has known Dr. Levine since 1988. He states that he always found Dr. Levine to be “a dedicated, confident and compassionate physician” whose “ethical conduct and character were above reproach.” (Resp. Ex. B-15)

Patient JR is a former patient of Dr. Levine at Pike Community Hospital in the Suboxone program who states that Dr. Levine “was always kind and respectful, and didn’t look down on me because of the problems I was having.” She stated that Dr. Levine “was always very professional and never inappropriate” with her. (Resp. Ex. B-21)

Jill E. Valuch, D.O., F.A.A.P., has known Dr. Levine personally and professionally since 1983. She states that she has “found Dr. Levine to be nothing but professional in his dealing with patients and their families.” She also states that “Dr. Levine has shown nothing but caring and compassion to his patients” and that he has a “high ethical standard with which he practices medicine. (Resp. Ex. B-25)

Five registered nurses from Mount Pleasant Hospital, who worked with Dr. Levine and also observed him in social situations, state that he has “always acted in a mature, responsible manner.” (Resp. Ex. B-28)

### **RELEVANT OHIO ADMINISTRATIVE CODE RULES**

1. Ohio Administrative Code [Rule] 4731-26-01, in part, states:

For purposes of Chapter 4731-26 of the Administrative Code:

\* \* \*

(G) "Sexual misconduct" means behavior that exploits the physician-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes the following:

(1) Sexual impropriety by the licensee, such as behaviors, gestures, or expressions that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:

\* \* \*

(c) Making comments that are not clinically relevant about or to the patient, including but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance;

\* \* \*

(e) Initiation by the licensee of conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(f) Requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation;

2. Rule 4731-26-02, in pertinent part, states:

Sexual behavior between a licensee and a patient is never diagnostic or therapeutic.  
(A) A licensee shall not engage in sexual misconduct with a patient, key third party, or chaperone.

3. Rule 4731-26-03, in pertinent part, states:

(A) Except as provided in paragraph (C) of this rule, a violation of rule 4731-26-02 of the Administrative Code, as determined by the board, shall constitute the following:

(1) For a physician, "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 division (B)(6) of section 4731.22 of the Revised Code.

## FINDINGS OF FACT

1. In or about December, 2007, Jack Mark Levine, D.O., engaged in behavior that constituted “sexual misconduct,” as that term is defined in Rule 4731-26-01(G) by making at least three phone calls to Patient 1, a then-current female patient who Dr. Levine was treating for withdrawal symptoms for opiate drugs under a Suboxone program, and in such phone conversations making statements to Patient 1 and/or asking her: to write letters/notes to Dr. Levine about sex and masturbating; to be naked when he called her on the phone; stating to her that she needed to have a master to tell her what to do;” asking her to say “Fuck me master;” telling her that he would like to “Fuck [her]” and that when he called her she should be “Ready to fuck;” telling her that she “should see (his) cock right now;” telling her that he wanted her to “get a vibrator;” telling her that she was his “sex toy;” telling her that she needed to be a “sex machine;” and asking Patient 1 if she liked what she saw in the office, with her asking if he meant his penis, and Dr. Levine indicating in the affirmative. Dr. Levine had engaged in the above-described conduct after Patient 1 had tested positive for drugs other than Suboxone, and he continued to treat her in his Suboxone program.

The Board alleged that Dr. Levine engaged in the above-described conduct in paragraph (1) of its Notice Letter to Dr. Levine dated June 11, 2008. By his admission at the hearing, Dr. Levine has admitted to all the acts and conduct of paragraph (1) of the Board’s June 11, 2008 Notice Letter involving the comments of a sexual nature that Dr. Levine made to Patient 1.

2. In or around 2007, Dr. Levine provided treatment to Patient 2, a female patient addicted to opiates, in his Suboxone program. Patient 2 had transportation problems which made it difficult for her to keeping her office appointments with Dr. Levine. Patient 2 was terminated from the Suboxone program effective November 16, 2007, due to her repeated failure to appear at Dr. Levine’s office for drug screenings and failed drug tests.

The reliable evidence at hearing was insufficient to establish that Dr. Levine made the statements alleged or committed the acts alleged regarding Patient 2 (paragraph 2 of the Notice Letter). Factors contributing to this finding are Patient 2’s credibility and memory issues, including, but not limited to: Patient 2’s 17 year drug addiction; her admitted significant memory loss including periods during and after her drug use; her admission of utilizing cocaine for the two days prior to giving her written statement; and her perception that Dr. Levine and her staff was “stalking” her when calling her for unscheduled drug screens in the face of her transportation difficulties.

3. Dr. Levine provided treatment for breast tenderness to Patient 3, a female patient with previous breast implants, beginning on April 15, 2007. Beginning on June 4, 2007, Dr. Levine also began treating Patient 3 in his Suboxone program after Patient 3 revealed her long-time addiction to OxyContin. During the course of treating Patient 3, Dr. Levine ordered one mammogram of Patient 3’s breasts and conducted two brief breast examinations. There was a clear medical basis for Dr. Levine to conduct the breast exams of Patient 3.

Further, this Hearing Examiner finds that the reliable evidence was insufficient to establish that Dr. Levine made the statements to Patient 3 that he is alleged to have made in paragraph (3) of the Notice Letter. Specifically, the evidence is insufficient to establish that Dr. Levine requested that Patient 3 write notes about masturbation and orgasms and bring them to her next office visit or that Dr. Levine inappropriately touched Patient 3's breasts and/or bounced her breasts during an examination. Factors contributing to these findings are Patient 3's credibility issues, including, but not limited to: Patient 3's other incredible allegations about Dr. Levine in her written statement not believed by the Board; Patient 3's exposure to the allegations of Patient 1 against Dr. Levine (Patient 3 actually wrote Patient 1's statement), and the similarity of Patient 3's allegations without evidentiary basis; Patient 3's failure to make any complaint prior to becoming aware of Patient 1's complaint; and the lack of specificity regarding Dr. Levine's alleged misconduct, particularly regarding the allegation that he requested that she write notes about masturbation and orgasms and bring those to him. Further, in reviewing Dr. Levine's records for Patient 3, there was a clear medical basis for him to conduct at least two breast exams, particularly for suspicion of possible fibrocystic disease or implant leakage.

4. During a December 19, 2007 interview with a Board investigator, Dr. Levine denied telling Patient 1 that she was his "sex toy," stated that he had made only one inappropriate telephone call to Patient 1 and further said that he was only attempting to help Patient 1 and make her feel like a woman when in fact Dr. Levine did tell Patient 1 that she was his sex toy and he made more than one inappropriate call to Patient 1.

By his admission at the hearing, Dr. Levine has admitted to all the acts and conduct of paragraph (4) of the Board's June 11, 2008 Notice Letter, to wit: that he did tell Patient 1 in at least one phone call that she was his "sex toy" and that he made more than one inappropriate call to Patient 1, and that he had denied these acts when interviewed by the Board investigator.

### **CONCLUSIONS OF LAW**

1. Dr. Levine's acts, conduct, and/or admission involving Patient 1, as set forth in Finding No. 1 above, individually and collectively, constitutes "sexual misconduct" as that term is defined in Ohio Rule 4731-26-01(G), and as such, is prohibited activity with a patient pursuant to Rule 4731-26-02(A).

Pursuant to Rule 4731-26-03(A)(1), Dr. Levine's violation of Rule 4731-26-02 further constitutes "a departure from, or the failure to conform to, minimal standards of care of

[physicians] under the same or similar circumstances” as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

Further, Dr. Levine’s violation of Rules 4731-26-01 and 4731-26-02, as established above, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule promulgated by the board” as that clause is used in Ohio Revised Code [R.C.] 4731.22(B)(20).

2. Dr. Levine’s acts, conduct, and/or admissions involving Patient 2, as set forth in Finding No. 2, individually and/or collectively, do not constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board” as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine’s acts, conduct, and/or omissions involving Patients 2, as set forth in Finding No. 2, individually and/or collectively, do not 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.”

3. Dr. Levine’s acts, conduct, and/or admission involving Patient 3, as set forth in Finding No. 3, individually and/or collectively, do not constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board” as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine’s acts, conduct, and/or omissions involving Patients 3, as set forth in Finding No. 3, individually and/or collectively, do not 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.”

4. As set forth in Finding of Fact No. 4 above, Dr. Levine’s conduct in his interview with the Board constituted making “false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery \*\*\* or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board” as that clause is used in R.C. 4731.22(B)(5).

### **Rationale for the Proposed Order**

With the transcripts of the phone conversations between Dr. Levine and Patient 1, one can accurately assess the extreme inappropriate sexual misconduct engaged in by Dr. Levine. The content of the phone conversations can be described as nothing less than extremely graphic,

totally lacking in any therapeutic treatment for the patient, wholly inappropriate between any physician and patient, and a clear departure from the minimal standards of care of practitioners in Ohio under similar circumstances. As such, this Hearing Examiner believes that significant discipline is warranted upon consideration of all relevant factors.

The extreme nature of Dr. Levine's conduct toward Patient 1 reveals several of the Board's aggravating factors contained in its Disciplinary Guidelines. Such factors include: the false statements Dr. Levine originally made to the Board Investigator; the vulnerable state of Patient 1, and the extreme nature of Dr. Levine's conduct toward Patient 1 in the three telephone conversations. This Hearing Examiner must also point out the existence of several mitigating factors as well in determining a recommended sanction for Dr. Levine. As noted, Dr. Levine has no previous discipline in the three states in which he is licensed and, despite allegations of two other patients in the Notice Letter which were not proven by at least a preponderance, the allegations of sexual misconduct involving Patient 1 are an isolated incident among thousands of patients treated. Further, Dr. Levine has been regularly seeing a licensed psychologist and counselor, J. Edward Black, Ph.D., since February 2008 regarding the issues leading to his misconduct involving Patient 1. While noting Dr. Levine's extreme guilt and remorse, Dr. Black concluded that Dr. Levine had come to understand the unique reasons why he made the telephone calls to Patient 1 and that such behavior is not likely to re-occur. Finally, this Hearing Examiner wishes to emphasize for the Board the extreme, sincere remorse that Dr. Levine displayed throughout the four days of hearing regarding his conduct toward Patient 1. This remorse was evident in his testimony and demeanor throughout the proceedings and is perhaps best evidenced by the passages from Dr. Levine's testimony set forth in paragraph 13 of the Summary of Evidence.

### **PROPOSED ORDER**

It is hereby ORDERED, that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jack Mark Levine, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED; such revocation is STAYED, and Dr. Levine's certificate shall be SUSPENDED for an indefinite period of time but not less than two years.
- B. **INTERIM MONITORING:** During the period that Dr. Levine's certificate to practice in Ohio is suspended, he shall comply with the following terms, conditions, and limitations:
  1. **Obey the Law:** Dr. Levine shall obey all federal, state, and local laws, and all rules governing the practice of physicians in any state in which he practices.

2. **Semi-Annual Appearances and Quarterly Declarations**: Dr. Levine shall appear in person for an interview before the full Board or its designated representative during the sixth month following the effective date of this Order, or as otherwise requested by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Dr. Levine shall submit semi-annual declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first semi-annual declaration must be received in the Board's offices on or before the first day of the sixth month following the month in which this Order becomes effective, or as otherwise requested by the Board. Subsequent semi-annual declarations must be received in the Board's offices on or before the first day of every sixth month.

3. **Psychological Assessment/Continued Psychotherapy**: Within 30 days of the effective date of this Order, or an otherwise determined by the Board, Dr. Levine shall submit to the Board for its prior approval the name and curriculum vitae of a psychologist or counselor (hereinafter "therapist") of Dr. Levine's choice. The Board may consider Dr. Black as an approved provider.

Upon approval by the Board, Dr. Levine shall obtain from the approved therapist a written assessment of Dr. Levine's current status. Prior to the initial assessment, Dr. Levine shall furnish the approved therapist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to the therapist.

Upon completion of the initial assessment, Dr. Levine shall cause a written report to be submitted to the Board from the approved therapist. The written report shall include:

- a. A detailed report of the evaluation of Dr. Levine's current status and condition;
- b. A detailed plan of recommended treatment, if any, based upon the therapist's informed assessment of Dr. Levine's current needs;
- c. A statement regarding any recommended limitations upon his practice, and
- d. Any reports upon which the treatment recommendation is based, including reports of examination and psychological or other testing.

Should the Board-approved therapist recommend psychological treatment, and upon approval by the Board, Dr. Levine shall undergo and continue treatment weekly or as otherwise directed by the Board. Dr. Levine shall comply with his treatment plan, including taking medications as prescribed for his disorder.

Dr. Levine shall continue in psychological treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved therapist. The reports shall contain information describing Dr. Levine's current treatment plan and any changes that have been made to the treatment plan since the prior report, Dr. Levine's compliance with the treatment plan, Dr. Levine's status, Dr. Levine's progress in treatment, and results of any studies that have been conducted since the prior report. Dr. Levine shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Levine's quarterly declaration.

In addition, Dr. Levine shall ensure that his therapist immediately notifies the Board of Dr. Levine's failure to comply with his treatment plan and/or any determination that Dr. Levine is unable to practice due to his disorder.

In the event that the designated therapist becomes unable or unwilling to serve in this capacity, Dr. Levine must immediately so notify the Board in writing and make arrangements acceptable to the Board for another therapist as soon as practicable. Dr. Levine shall further ensure that the previously designated therapist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

4. **Releases:** Dr. Levine shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Levine's chemical dependency/abuse and psychiatric and/or physical conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Levine further shall provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

5. **Required Reporting of Change of Address:** Dr. Levine shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
6. **Professional Ethics and Patient/Physician Boundary Course:** During the interim monitoring, Dr. Levine shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics, as well as a course or courses dealing with patient/physician boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Levine's certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Levine shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Levine shall have maintained compliance with all the terms, conditions and limitations set forth in Paragraph B of this Order.
3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Levine shall provide written documentation acceptable to the Board verifying that Dr. Levine otherwise holds a full and unrestricted license to practice in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.
4. **Demonstration of Ability to Resume Practice:** Dr. Levine shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care. Such demonstration shall include but shall not be limited to the following:
  - a. Evidence of continuing full compliance with this Order.
  - b. Two written reports indicating that Dr. Levine's psychological ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care, with respect to any psychological or emotional disorder(s).

The reports shall have been made by psychologists who have been approved in advance by the Board to provide an assessment of Dr. Levine. Further, the two aforementioned psychologists shall not be affiliated with the same treatment provider or group practice. Prior to the assessments, Dr. Levine shall provide the assessors with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the assessors shall include any recommendations for treatment, monitoring, or supervision of Dr. Levine, and any conditions, restrictions, or limitations that should be imposed on Dr. Levine's practice. The reports shall also describe the basis for the assessor's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement or restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

5. **Additional Evidence of Fitness to Resume Practice/SPEX:**

Prior to submitting his application for reinstatement or restoration, Dr. Levine shall take and pass the SPEX examination, or other written examination that the Board approves, to assess Dr. Levine's clinical competency.

6. **Evidence of Completion of Required Courses:** Dr Levine shall submit documentation of successful completion of the courses dealing with professional ethics and patient/physician boundaries required in paragraph (B) (6) above.

In addition, at the time Dr. Levine submits the documentation of successful completion of the courses dealing with professional ethics and patient/physician boundaries, he shall also submit to the Board a written report describing the course, setting forth what he learned from each course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

D. **PROBATION:** Upon reinstatement or restoration, Dr. Levine's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Obey the Law:** Dr. Levine shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in any state in which he is practicing.

2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Levine shall continue to subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
3. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Levine is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
4. **Practice Plan:** Within thirty days of the date of Dr. Levine's reinstatement or restoration, or as otherwise determined by the Board, Dr. Levine shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Levine's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Levine shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Levine submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Levine and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Levine and his medical practice, and shall review Dr. Levine's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Levine must immediately so notify the Board in writing. In addition, Dr. Levine shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Levine shall ensure that the previously designated

monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Levine's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Levine violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Levine shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Levine provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Levine shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Levine shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

Dr. Levine further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Levine receives from the Board written notification of the successful completion of the probation.

3. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Levine shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgment of delivery bearing the original ink signature of the person to whom

a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

Respectfully submitted,

  
Paul Stehura  
Hearing Examiner 

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov



## EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 9, 2009

### REPORTS AND RECOMMENDATIONS

Dr. Madia announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Madia asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in the matters of: Atta J. Asef, D.P.M.; Daryl E. Cavin; Mohan S. Chandran, M.D.; Syed Kazmi, M.D.; Jack Mark Levine, D.O.; Douglas S. Moinuddin, M.D.; Alaa M. Nadour, M.D.; and Julie A. Taylor, M.D. A roll call was taken:

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

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

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

Dr. Madia - aye

Dr. Madia noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matters of Dr. Nadour, as that case is not disciplinary in nature and concerns only the doctor's qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

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

.....

JACK MARK LEVINE, D.O.

Dr. Madia directed the Board's attention to the matter of Jack Mark Levine, D.O. He advised that objections were filed to Hearing Examiner Stehura's Report and Recommendation and were previously distributed to Board members.

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

Dr. Levine was accompanied by Jeffrey J. Jurca, Esq. Mr. Jurca advised that Dr. Levine has a statement for the Board.

At this time, Dr. Levine read the following statement:

It has been two years since I shamed my family and myself and my long career by making this inexcusable, inappropriate phone call. I live with this totally out-of-character mistake in judgment every day. I offered no excuses at the hearing in January, and I have no excuses to you for why I made that phone call. I pray that the Board will not judge my 25-year career in healthcare by my shameful words I uttered two years ago.

For you to take my livelihood away over this will hurt my wonderful family who are just totally innocent. I have three wonderful children, two still in college, and an incredibly bright and beautiful wife. And they have endured such embarrassment due to my inexcusable actions. To take away my ability to support them over an inappropriate phone call seems very unfair to them.

I understand that the Prosecutor and the Board exist to protect the public from bad

doctors. I am just not that type of physician. I have been in this wonderful profession since 1983, and I have saved hundreds of lives and helped thousands of patients without any complaints to any Medical Board or hospital CEO, or any director of nursing. Since my shameful phone call in 2007, I've continued to help thousands of patients in underserved areas without any inappropriate actions or any complaints.

Since late 2007 I come to you with a totally changed career. I've given up my full-time surgical career. I am now a full-time emergency room physician. I will never again have an office practice or have any long-term chronic patients. My patient relationships will all be acute care. My patient contacts are constantly monitored on a daily basis. My medical director and vice-CEO are all females and well aware of this situation when I was hired. The majority of the R.N.s and clerks I work with are females. Their character references that I have with me here will show you the high regard they have for me. I have also voluntarily surrendered my Suboxone license, so I will no longer deal with these very difficult types of chronic care patients. I continue to visit my therapist regularly to understand my own inadequacies and how to keep improving myself to be a better husband and a doctor.

Although I never, ever, touched this client, I still consider what I said to her an act of betrayal to my wife, and a sinful infidelity that I will live with forever. My wonderful wife never deserved this stupidity, this bad behavior.

I ask for your mercy and for simple fairness in your decision for punishment. There are many doctors who have had sexual relations with patients that were given written reprimands or short suspensions. There have been doctors who have had felonies and been in prison and had nine-month suspensions. This Prosecutor and Hearing Officer have recommended a two-year suspension.

Although my words were inexcusable, if you consider my entire career achievements, I feel the recommendations are very harsh. I have references from persons who have known me a short time, but also people who have known me for ten, twenty, and thirty years, and know of my good character.

As far as the second charge of lying to the investigator, [for which] the Hearing Officer recommended a year's suspension, I just have to say we were not allowed to discuss at the hearing any part of the investigator's visit to my office. He came to my office at the start of the office hours with three police officers. The chief sheriff was standing right over me, two feet [away], with his handcuffs, club and a gun. The investigator pointed his finger at me and bombarded me with questions. I made a very stupid mistake with this patient, but I am not a stupid man. I knew at that time that he had a tape, so why would I deliberately lie? I never deliberately lied to him. I was in a total panic. I was feeling palpitations and chest pains, so the exact details to his questions were totally

blurred to me, but I never--

Dr. Madia advised Dr. Levine that he had one minute to conclude his statement.

I never deliberately lied. I respect your ideals to protect the public, and in my case the Board renewed my license to practice in June of '08. If I was a danger to the public, I could have been suspended then. The actions I committed in 2007 weigh on me and my family, and I just wish that you would judge me not on my darkest instant in an otherwise wonderful career. I have volunteered my time to many. I'm one of the surgeons who would come in for any type of patient, any time a doctor asked. I just ask you to consider my 20 years of unquestioned service prior to '07, but more importantly, the work I've done since '07 to give you confidence in my character. I have many, many references since 2007 to show you that.

The personal and professional changes I have made and the good work that I have done should help you realize what kind of man and physician I truly am. It's obvious, and I just believe that if you could just take all this into account, I just ask and I pray that you will just be lenient with me and my family.

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

Ms. Pfeiffer stated that this case is one of the most disturbing cases that she's ever tried before the Board. This is not a case about two people who cared for each other, two people who fell in love, or even two people who had a physical attraction for each other. It's a case of a physician who fulfilled his own sexual selfish desires by engaging in conduct that she considers depraved. He controlled, he dominated and he manipulated not just patients, but vulnerable patients with built-in credibility issues. That is, these patients were all drug addicts. She noted, in particular, Patient 1, who came to Dr. Levine for help to get into a Suboxone treatment program. Ms. Pfeiffer stated that this was not a single instance of a single telephone call. There were repeated calls from Dr. Levine to Patient 1 at her home at times when she had family members there.

Ms. Pfeiffer stated that it's not her goal to embarrass or shame Dr. Levine, but to make sure that the Board understands what he did. She stated that it's not just the sexual, kind of embarrassing, humiliating nature of this case that's troublesome, but the fact that he manipulated a vulnerable patient. Ms. Pfeiffer stated that, in her estimation, Dr. Levine was basically feeding the patient Suboxone as long as she continued to engage in this sexual banter. Dr. Levine told the investigator who first approached him that, at first, it was just a single phone call, and that all he was doing was trying to help Patient 1. He told the investigator that this was a patient who'd been sexually abused. His patient records document the fact that this was a patient who had been abused in the past, had addiction issues. Yet, he told the investigator that he "was only trying to help her."

Ms. Pfeiffer at this time read a number of statements Dr. Levine made to Patient 1, contained in the

transcript of the recordings made. She noted that Patient 1's answer was either, "yeah," "okay," or "yes."

I like when you do things I want you to do.

I told you to talk to me and write me . . .

I don't get anything. . . . You know, I want what I want, need what I need. Are you able to do that?

I want to help you. I want you to help me.

Are you going to be my sex toy?

You'll do what I tell you to do?

Don't you want a master to tell you what to do?

You need a man to command you, don't you?

Ms. Pfeiffer stated that what Dr. Levine wanted the patient to write were letters about sex and masturbation.

Ms. Pfeiffer stated that this patient relapsed several times while seeing Dr. Levine. She relapsed and tested "dirty" for Oxycodone, Tylox, and Darvocet. He continued to write her prescriptions for Suboxone, because he's getting what he wants in exchange. He said that he never touched the client, but if you listen to the tapes carefully, there is a part of the conversation when Dr. Levine asked Patient 1, "Hey, did you like what you felt today in the office," and she replied, "Your cock?" and he said "Yeah."

Ms. Pfeiffer stated that this was not a compassionate, two-sided affair. It was Dr. Levine crossing all bounds of decency, morality, and integrity to get what he wanted from an extremely vulnerable patient. Ms. Pfeiffer commented that Dr. Levine talks about being taken aback and not being truthful at first, but he didn't know about the tapes right away. It was after the tapes were made known to him that he decided to admit those allegations. Ms. Pfeiffer stated that if the Board didn't have those tapes, Dr. Levine probably wouldn't be here today.

Ms. Pfeiffer stated that the recommendation in this case is insufficient. She stated that the Board's goal is to protect the public, and, again, the line that Dr. Levine crossed is so clear, and he's crossed over it so far, she thinks that he has no moral compass. Ms. Pfeiffer stated that the only way to protect the public in this case is to remove him from practice. She urged the Board to consider permanent revocation in this case.

Dr. Steinbergh stated that this was a tough case to read through. She noted that Paragraph 3 of the "Background Information" in the "Summary of Evidence, should be corrected to read as follows:

Dr. Levine was born in New York and graduated from the New York College of Osteopathic Medicine in 1982. In addition to Ohio, Dr. Levine holds medical licenses in West Virginia (1988) and Illinois. He was board-certified by the American Board of Osteopathic Surgeons in 1995 in general surgery and critical care medicine, and became a fellow of the American College of Osteopathic Surgeons in 1998.

Dr. Steinbergh stated that as she approached this case, she was probably as disgusted as everyone else. She stated that she wondered why a man, who is Board-certified in surgery, decided to prescribe Suboxone. He had no specialty training in psychiatry or addiction medicine. Although he was in his rights to prescribe because he passed an on-line test by the FDA, it appears to her that he does it for money. She stated that the Board didn't charge him with this, and her judgments aren't based on this, but Board members do know that when physicians step out of their areas of competency, the areas for which they've been trained, they generally do get into trouble.

Dr. Steinbergh stated that she agrees with the Ms. Pfeiffer that, had Patient 1 not come forward, and had the Board not had the tapes, the Board wouldn't be here discussing three cases. But Patient 1 did come forward, and after she came forward with these tapes and with these charges, subsequently Patients 2 and 3 came forward.

Dr. Steinbergh stated that she reviewed the case, which was very detailed, and she read Dr. Levine's objections and the State's objections. She stated that she doesn't think that this is a case of one phone call. She doesn't think that this is a case of one patient. She stated that she thinks that this is a case where a physician who, for self-gratification, was pornographic with his patients, the most vulnerable of patients. Dr. Steinbergh stated that it is shameful when physicians treat addicted patients with less respect than they would treat other patients.

Dr. Steinbergh stated that she agrees with the State's objections regarding witness credibility. The Hearing Examiner has outlined very clearly the Board's sexual boundary guidelines. She referred the Board to Rule 4731-26-01, OAC, and noted that the Board also has a white paper on physical examinations by physicians, which demonstrates to physicians how to appropriately examine a patient. Dr. Steinbergh read the following excerpts from the aforementioned rule:

For purposes of Chapter 4731-26 of the Administrative Code:

\* \* \*

(G) "Sexual misconduct" means behavior that exploits the physician-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes the following:

- (1) Sexual impropriety by the licensee, such as behaviors, gestures, or expressions

that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:

\* \* \*

(c) Making comments that are not clinically relevant about or to the patient, including but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance;

\* \* \*

(e) Initiation by the licensee of conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(f) Requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation;

Dr. Steinbergh stated that she feels that Dr. Levine was disrespectful of Patient 3's privacy. Testimony indicates that he lifted her shirt and felt her breasts. Patient 3 testified that the breast examination made her feel very uncomfortable and violated. Dr. Steinbergh stated that, although the Hearing Examiner did not find that to be true, she, herself, finds it to be true.

Dr. Steinbergh stated that Dr. Levine violated paragraph (c) with all three of his patients, but especially with Patient 1. By asking Patient 3 to write down her acts of masturbation, Dr. Levine violated paragraph (f).

Dr. Steinbergh stated that she found Dr. Levine to be very unprofessional and preposterous with these patients who were suffering from substance addiction. She added that Dr. Levine was not following the Board's guidelines in the sense that he never had anyone else in the room to substantiate his claims. He had no third party there when he was examining these patients. He didn't appropriately ask Patient 3 to get into a gown to appropriately examine her breasts. He had reason to examine her breasts, but he never explained to her why he was going to examine her breasts and he did it in a very inappropriate way.

Dr. Steinbergh asked whether she is supposed to believe this physician, who has led himself to these pornographic situations, over the drug-abusing women. Dr. Steinbergh stated that, essentially, she found that this case came down to that. The Hearing Examiner didn't find them to be reliable witnesses, but she felt that these women were not going to come forward and expose themselves to this type of a hearing process if they didn't mean to say what they wanted to say. Dr. Steinbergh stated that it's true that no one came forward until Patient 1 came forward, but the Board frequently finds that in sexual cases, and frequently in minimal standards cases, until the first patient comes forward, other people who may have wanted to come forward but did not because of the scrutiny of this type of a process.

Dr. Steinbergh stated that she would like to drop the Findings of Fact, because she finds that they are inconsistent with the Conclusions of Law. She advised that she would like to amend the Conclusions of Law in this matter to read as follows:

2. Dr. Levine's acts, conduct, and/or admissions involving Patient 2, individually and/or collectively, DO constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board" as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine's acts, conduct, and/or omissions involving Patients 2, individually and/or collectively, DO 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."

3. Dr. Levine's acts, conduct, and/or admission involving Patient 3, individually and/or collectively, DO constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board" as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine's acts, conduct, and/or omissions involving Patients 3, individually and/or collectively, DO 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."

Dr. Steinbergh continued that she would support the Hearing Examiner's Proposed Order.

Dr. Steinbergh continued that the Board did not charge Dr. Levine with impairment or mental illness, but Dr. Levine, during the hearing process, allowed testimony to come into play where his current treating psychologist and examining psychologist allowed that he was, in fact, depressed at the time that these acts occurred, separated from his family at that time, and that Dr. Levine had gone to the psychologist asking how he could have done this type of thing. Dr. Steinbergh noted that Dr. Levine did sign the *Eastway* waiver, which allows that, even though the Board didn't charge him with impairment or mental illness, the Board may, in fact, consider that this case could be related to his depression. The Proposed Order is consistent with that. Dr. Steinbergh stated that Dr. Levine would get psychological assessment and continued therapy. She noted that the Proposed Order does outline the psychiatric assessment that is needed. He would also be required to take professional ethics and patient/physician boundary courses. She noted that the Proposed Order also includes conditions for reinstatement or restoration of Dr. Levine's license.

Dr. Steinbergh stated that this Board's concern is for the patient. She added that she does respect the fact that the Board has no further evidence of cases or complaints against Dr. Levin, but she finds that Dr. Levine did what these patients say he did. She added that she believes that there was more than one phone call made by Dr. Levine. She doesn't know if there were others who didn't come forward. Dr. Steinbergh stated that this kind of behavior is absolutely unacceptable for patient care, and she's certain that Dr. Levine understands that.

Dr. Mahajan stated that he agrees with Dr. Steinbergh, and he supports the Proposed Order.

Dr. Suppan stated that she agrees with everything that Ms. Pfeiffer said. She added that she thinks that Ms. Pfeiffer left one thing out in her list of very hurtful things that he did to the one patient, and that was that he basically objectified the patient to the point where he made her less than human. He put her in a place in his mind where he called her a "sex toy." Dr. Suppan stated that people are human beings and women are not toys. Dr. Suppan stated that she has a great deal of difficulty with a physician, who should hold human beings above all else, being able to categorize a human being as a toy or a sex toy. She stated that that is something that is so fundamental to the practice of medicine, that it goes way beyond an understanding or concern for mental illness or any other defense in this situation. She stated that she is absolutely appalled by any physician ever making a person an object in that way. She stated that for these reasons, she would support the State's case for permanent revocation.

Dr. Amato indicated that young people are frequently taken into a life of prostitution due to use of drugs. Dr. Levine was using his prescriptive authority, his granted license to heal, in a way that could only hurt. Dr. Amato stated that he agrees more with Dr. Suppan. He believes this case goes beyond suspension.

Dr. Madia stated that he's also leaning more toward the direction of Dr. Suppan and Dr. Amato. He stated that Dr. Levine has gone beyond just sexual boundaries. He was using treatment to use the patient as a sex toy. He spoke in support of permanent revocation.

**DR. AMATO MOVED TO AMEND THE CONCLUSIONS OF LAW IN THE MATTER OF JACK MARK LEVINE, D.O., TO READ AS FOLLOWS:**

2. Dr. Levine's acts, conduct, and/or admissions involving Patient 2, individually and/or collectively, DO constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board" as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine's acts, conduct, and/or omissions involving Patients 2, individually and/or collectively, DO 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.”

3. Dr. Levine’s acts, conduct, and/or admission involving Patient 3, individually and/or collectively, DO constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [R.C. Chapter 4731] or any rule promulgated by the board” as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02(A), Ohio Administrative Code.

As a result, Dr. Levine’s acts, conduct, and/or omissions involving Patients 3, individually and/or collectively, DO 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.”

**DR. AMATO FURTHER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JACK MARK LEVINE, D.O., BY SUBSTITUTING AN ORDER OF PERMANENT REVOCATION. DR. SUPPAN SECONDED THE MOTION.**

Dr. Steinbergh stated that the Board needs to take a look at this in one of two ways: if it accepts Dr. Levine’s defense of depression, that he stepped away from his normal ethical and moral standards, and if the Board believes this, then the Board needs to sanction him in the same way as it would someone who was mentally ill at that time or impaired at that time. If the Board doesn’t believe that, she would agree to the proposed permanent revocation. She stated that that was a very difficult thing for her. She agrees that this was a terrible case. The question is whether the Board totally removes him from practice because of this, or does it consider that this physician may have been ill at the time and that there is reason to believe that he can be healed.

Dr. Talmage left the meeting during the previous discussion.

A vote was taken:

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

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. STEHURA'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF JACK MARK LEVINE, D.O. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:**

ROLL CALL:	Mr. Albert	- abstain
Where's Varyani's vote?	Dr. Suppan	- aye
	Mr. Ogg	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.



# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

June 11, 2008

Case number: 08-CRF-080

Jack Mark Levine, D.O.  
7428 State Rt. 772  
Piketon, OH 45661

Dear Doctor Levine:

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

- (1) In the course of an investigation by the Board, you were interviewed by a Board investigator on or about December 19, 2007 [December 2007 interview]. During your interview, you stated that you had made "inappropriate" phone calls to Patient 1, who you were treating in a Suboxone program and is identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure). Although you indicated to the investigator that you were only trying to help Patient 1 feel good about herself, you engaged in behavior that constituted "sexual misconduct," as that term is defined in Rule 4731-26-01(G), Ohio Administrative Code. Such sexual misconduct included, but was not limited to, making statements in or around November and/or December 2007 to Patient 1 asking her to write letters/notes to you about sex and masturbating; asking her to be naked when you called her on the phone; stating to her that she needed a master to tell her what to do; asking her to say "Fuck me master;" telling her that you would like to "Fuck [her]" and that when you called her she should be "Ready to fuck;" telling the patient that she should see your "cock right now;" telling the patient that you wanted her to "get a vibrator;" telling the patient that she was your "sex toy;" telling the patient that she needed to be a "sex machine;" and you asking if she liked what she felt in the office, with her asking if you meant your penis, and you then indicating the affirmative.

In addition, you engaged in the aforementioned sexual misconduct after Patient 1 had tested positive for drugs other than Suboxone, and you continued to treat her in the Suboxone program.

- (2) In or around 2007, you provided treatment to Patient 2, identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure), in a Suboxone program. After Patient 2 tested positive for the use of drugs other than Suboxone, you

*Mailed 6-12-08*

engaged in behavior that constituted "sexual misconduct" as that term is defined in Rule 4731-26-01(G), Ohio Administrative Code. Such sexual misconduct included making statements to Patient 2 that asked her whether she had ever hitch-hiked for drugs and whether she ever prostituted herself for drugs, and when she responded in the affirmative, you stated that she would have to do that again to get her Suboxone.

- (3) In or around 2007, you provided treatment to Patient 3, identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure), in a Suboxone program. After Patient 3 tested positive for the use of drugs other than Suboxone, you engaged in behavior that constituted "sexual misconduct" as that term is defined in Rule 4731-26-01(G), Ohio Administrative Code. Such sexual misconduct included asking Patient 3 to write notes about masturbating and orgasms, and to bring those notes with her on her next office visit. In addition, while purporting to examine Patient 3 during an office visit in or around 2007, you inappropriately touched her breasts, and, in fact, the patient claimed that you bounced her breasts.
- (4) During the December 2007 interview, you denied telling Patient 1 that she was your sex toy, you stated that you had only made one inappropriate call to her, and you further stated that you were only trying to help the patient and attempting to make her feel like a woman.

In fact, you did tell Patient 1 that she was your sex toy, and you made more than one inappropriate call to the patient.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is "[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."

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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.

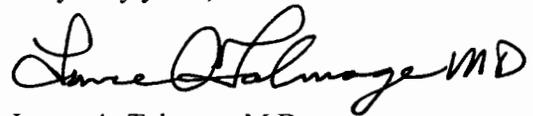
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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/MRB/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3691 3079  
RETURN RECEIPT REQUESTED

cc: William Scott Lavelle, Esq.  
Jeffrey J. Jurca, Esq.  
Lavelle Jurca & Lashuk, LLC  
6797 North High St., Suite 314  
Worthington, Ohio 43085

CERTIFIED MAIL #91 7108 2133 3934 3691 3086  
RETURN RECEIPT REQUESTED