

**STATE OF OHIO
THE STATE MEDICAL BOARD**

**SURRENDER OF CERTIFICATE
TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY**

I, Arturo Portales, D.O., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, Arturo Portales, D.O., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice osteopathic medicine and surgery, No. 34-005032, to the State Medical Board of Ohio, thereby relinquishing all rights to practice osteopathic medicine and surgery in Ohio. This surrender shall be effective upon acceptance of this Surrender of Certificate to Practice Osteopathic Medicine and Surgery by the Secretary and Supervising Member of the State Medical Board of Ohio.

I understand that as a result of the surrender herein that I am no longer permitted to practice osteopathic medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement of certificate to practice osteopathic medicine and surgery No. 34-005032, or issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, on or after the date of signing this Surrender of Certificate to Practice Osteopathic Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

This Surrender of Certificate to Practice Osteopathic Medicine and Surgery supersedes, and serves as a resolution of all obligations arising from, the February 13, 2002, Entry of Order by the State Medical Board of Ohio in the Matter of Arturo Portales, D.O., effective March 5, 2002, a copy of which is attached hereto and incorporated herein.

Further, I stipulate and agree that I am taking the action described herein in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(22), Ohio Revised Code, to wit: Kentucky Board of Medical Licensure Agreed Order of Indefinite Restriction and Fine, filed May 15, 2002, a copy of which is attached hereto and incorporated herein.

I, Arturo Portales, D.O., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies.

I, Arturo Portales, D.O., agree to provide my social security number to the Board and hereby authorize the Board to utilize that number in conjunction with that reporting.

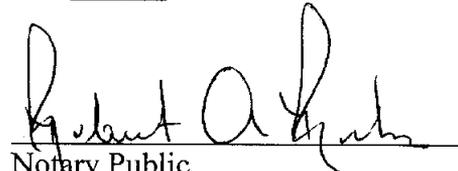
Signed this 20 day of Nov 2002.


Signature of Physician


Witness

Pusupa Jain
Witness

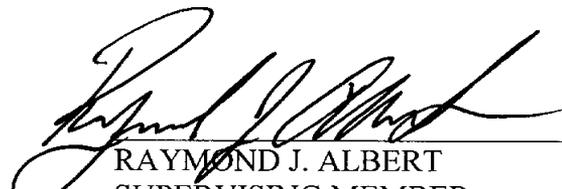
Sworn to and subscribed before me this 20 day of Nov 2002.


Notary Public

SEAL (This form must be either witnessed OR notarized)

Accepted by the State Medical Board of Ohio:


ANAND G. GARG, M.D.
SECRETARY


RAYMOND J. ALBERT
SUPERVISING MEMBER

11/29/02
DATE

11/26/02
DATE

Enclosures



State Medical Board of Ohio

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

February 13, 2002

Arturo Portales, D.O.
2529 Sungale Court
Lexington, KY 40513

Dear Doctor Portales:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 13, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal 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 a Notice of Appeal with the State Medical Board of Ohio and 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

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5147 1562
RETURN RECEIPT REQUESTED

Cc: H. Ritchey Hollenbaugh and Kristine L. Hayes, Esqs.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5147 1555
RETURN RECEIPT REQUESTED

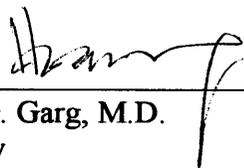
Mailed 3.5.02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 13, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Arturo Portales, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

February 13, 2002

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

ARTURO PORTALES, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on February 13, 2002.

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

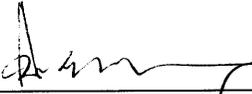
It is hereby ORDERED that:

1. **Indefinite Suspension Of License**: The license of Arturo Portales, D.O., to practice osteopathic medicine and surgery in the State of Ohio be SUSPENDED for an indefinite period of time.
2. **Conditions for Restoration**: The Board shall not consider restoration of Dr. Portales' certificate to practice unless all of the following minimum requirements are met:
 - a. Dr. Portales shall submit an application for restoration, accompanied by appropriate fees.
 - b. Dr. Portales shall enter into a written consent agreement with the Board. The consent agreement shall include probationary terms, conditions and limitations as determined by the Board, including any requirements deemed appropriate to ensure Dr. Portales' compliance with Ohio statutes and rules pertaining to the practice of telemedicine.

- c. Pursuant to §4731.222, O.R.C., the Board may exercise its discretion to require additional evidence of Dr. Portales' fitness to resume practice.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)



Anand G. Garg, M.D.
Secretary

February 13, 2002

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF ARTURO PORTALES, D.O.**

The Matter of Arturo Portales, D.O., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 3, 2001.

INTRODUCTION

I. Basis for Hearing

A. By letter dated July 11, 2001, the State Medical Board of Ohio [Board] notified Arturo Portales, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio based on the following allegations:

1. Dr. Portales' certificate to practice osteopathic medicine and surgery in Ohio was suspended by operation of law, on or about September 30, 1998, for non-payment of renewal fees and has not been reinstated.
2. On or about April 19, 2000, the Arizona Board of Osteopathic Examiners in Medicine and Surgery [Arizona Board] issued a Stipulation and Consent Order for Restriction of License, which ordered, effective April 19, 2000, that Dr. Portales' license for the practice of osteopathic medicine and surgery in Arizona be restricted. That restriction prohibited Dr. Portales from prescribing any prescription-only and controlled substance medications via the Internet without performing complete physicals and histories on the patients. Further, Dr. Portales was restricted from renewing any prescriptions for prescription-only and controlled substance medications via the Internet for patients that have not had complete physicals and histories, until the Arizona Board made a further determination.

The Arizona Board found that an investigation had been opened on April 10, 2000, after it had received an allegation that Dr. Portales had been prescribing prescription-only and controlled substance medications via the Internet without establishing a doctor-patient relationship or seeing the patient in the office to complete a physical and history.

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Dr. Portales did not contest the findings of fact and conclusions of law, voluntarily relinquishing any rights to a hearing on, or to seek judicial review of, the above Arizona Board Stipulation and Consent Order for Restriction of License.

3. Effective October 23, 2000, the Arizona Board issued a Stipulation and Consent Order for Surrender of License which encompassed a mutual agreement and an Order that Dr. Portales voluntarily surrender his license to practice as an osteopathic physician in Arizona and to no longer practice medicine in Arizona.

The Arizona Board found that, on or about April 10, 2000, information was brought to their attention that Dr. Portales may have inappropriately been prescribing medication and controlled substances over the Internet without conducting a physical examination of the patient, maintaining adequate medical records, or establishing an appropriate physician-patient relationship.

The Arizona Board also found that, on or about April 19, 2000, the Arizona Board had entered into a Stipulation and Consent Order for Restriction of License, pending further investigation and an investigative hearing. Further, they found that Dr. Portales had been scheduled for an investigative hearing before the Arizona Board at a public meeting scheduled for October 14, 2000, at which time Dr. Portales requested to be allowed to voluntarily withdraw from the practice of medicine in Arizona, due to the fact that he resided in another state. The Arizona Board agreed to his surrender of licensure.

The Board alleged that the Arizona Board Stipulation and Consent Order for Restriction of License, as alleged in paragraph two above, constitutes “any of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to May 17, 2000.”

The Board also alleged that the Arizona Board Stipulation and Consent Order for Surrender of Licensure, as alleged in paragraph three above, constitutes “any of

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the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to April 10, 2001."

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

- B. On August 2, 2001, James B. Stoneking, Esq., submitted a written hearing request on behalf of Dr. Portales. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Hanz R. Wasserburger, Assistant Attorney General.
- B. On behalf of the Respondent: H. Ritchey Hollenbaugh, Esq., and Kristine L. Hayes, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State:
 - Arturo Portales, D.O. as on cross-examination.
- B. Presented by the Respondent:
 - Arturo Portales, D.O.

II. Exhibits Examined

- A. Presented by the State:
 - 1. State's Exhibits 1A-1S: Procedural exhibits.

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2. State's Exhibit 2: Certified copy of October 31, 2000, Arizona Osteopathic Licensure Verification for Arturo Portales, D.O., with attached copies of documents from the Arizona Board file.

B. Presented by the Respondent:

Respondent's Exhibit A1: December 3, 2001, Bench Brief of Respondent Arturo Portales, D.O. with attached copies of documents contained in State's Exhibit 2 which were pre-marked by Respondent's Counsel as "Exhibit A" and "Exhibit B".

PROCEDURAL MATTERS

At hearing the record was held open to allow the State an opportunity to submit a post hearing brief in response to Respondent's Exhibit A1, and to allow the Respondent to reply to the State's brief. The State elected not to file a brief and the record closed on December 17, 2001.

SUMMARY OF THE EVIDENCE

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

1. Arturo Portales, D.O., testified that he had graduated from the Ohio University College of Osteopathic Medicine in 1989, and that he had been licensed to practice osteopathic medicine and surgery in Ohio in 1990. He was board certified in emergency medicine in July 1997. He practiced in Ohio until 1998. (Hearing Transcript [Tr.] at 31-32)
2. Dr. Portales testified that he currently resides and practices emergency medicine in Kentucky. Dr. Portales explained that he works primarily at Pattie Clay Hospital in Richmond, Kentucky. However, he also does some work at other hospitals in the region. Dr. Portales has been practicing in Kentucky since May 2000. Dr. Portales testified that he currently has no interest in practicing in Ohio. (Tr. 15, 24, 33-34, 36, 39)
3. At hearing, the parties stipulated that Dr. Portales' certificate to practice osteopathic medicine and surgery in Ohio was suspended by operation of law on or about September 30, 1998, for non-payment of renewal fees and has not been reinstated. (Tr. 5)

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Dr. Portales testified that, when his Ohio license had come up for renewal in September 1998, he had elected not to renew it. He also testified that it had been his understanding at the time that his Ohio license would simply lapse. (Tr. 34-35)

4. On April 19, 2000, the Arizona Board of Examiners in Osteopathic Medicine and Surgery [Arizona Board] issued a Stipulation and Consent Order for Restriction of License [April Order], which ordered, effective April 19, 2000, that Dr. Portales' license for the practice of osteopathic medicine and surgery in Arizona be restricted. That restriction prohibited Dr. Portales from prescribing, or renewing prescriptions for, any prescription-only and controlled substance medications via the Internet without performing complete physicals and histories on the patients. (State's Exhibit [St. Ex.] 2)

The Arizona Board found that an investigation had been opened on April 10, 2000, after it had received an allegation that Dr. Portales was prescribing prescription-only and controlled substance medications via the Internet without establishing a doctor-patient relationship or seeing the patient in his office to complete a physical and history. (St. Ex. 2)

Dr. Portales did not contest the findings of fact and conclusions of law, voluntarily relinquishing any rights to a hearing on, or to seek judicial review of, the April Order. (St. Ex. 2, Tr. 15-17)

Dr. Portales testified that he had understood at the time he signed the April Order that his Arizona license was being restricted. (Tr. 16-17)

Dr. Portales testified that, subsequent to the issuance of the April Order he has never violated any of the terms of that Order. Dr. Portales also testified that he continued to practice medicine while the April Order was in force. He further testified that there were not any formal proceedings between the issuance of the April Order and the issuance of the October Order. (Tr. 35-36)

5. The Arizona Board issued a Stipulation and Consent Order for Surrender of License, effective October 23, 2000, which incorporated an agreement with Dr. Portales and an Order that Dr. Portales voluntarily surrender his license to practice as an osteopathic physician in Arizona and to no longer practice medicine in Arizona [October Order]. (St. Ex. 2)

In the October Order, The Arizona Board restated the allegations contained in the April Order. The Arizona Board also found that Dr. Portales had been scheduled for an investigative hearing before the Arizona Board at a public meeting scheduled for October 14, 2000, at which time Dr. Portales requested to be allowed to voluntarily

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withdraw from the practice of medicine in Arizona, due to the fact that he resided in another state. The Arizona Board agreed to his surrender of licensure. (St. Ex. 2; Tr. 25)

6. Dr. Portales testified that, on the advice of legal counsel, he had eventually decided not to contest the allegations made by the Arizona Board. Dr. Portales explained that in October 2000 he had been offered the opportunity to resolve the Arizona matter by surrendering his Arizona license based on the fact that he was no longer residing in Arizona. (Tr. 17-19, 37)

Dr. Portales testified that, by the time he elected to surrender his Arizona license, he was residing in Kentucky and had no intention of ever resuming practice in Arizona.

Dr. Portales elaborated that he had only lived in Arizona for only two years. He had moved to Arizona to start a business that eventually failed. He testified that he had been working in the emergency department at Phoenix Regional Medical Center until it closed permanently. Subsequently he had worked at other hospitals in the Phoenix area.

Dr. Portales stated that the climate for the practice of emergency medicine in Arizona is not to his liking. He explained that he was able to obtain significantly better working conditions and income by accepting employment in Kentucky. (Tr. 19, 22-25, 33)

Dr. Portales testified that the cost in time and money to fight the Arizona allegations was a factor in his decision to surrender his Arizona license. He explained that, since he did not intend to ever resume practice in Arizona, fighting the allegations was unnecessary. He stated, "If I lived there, I think it would be a different situation, I would be fighting tooth and nail." He conceded that he would have denied some, but not all, of the Arizona allegations. Dr. Portales testified that, had he not surrendered his Arizona license, it would have expired on December 31, 2000, and he would not have renewed it. (Tr. 28-31, 38-42)

Dr. Portales testified that he has never had a malpractice action or complaint to any state medical board filed against him, except for the Arizona action at issue in the present hearing. (Tr. 37-38)

LEGAL ISSUES

At hearing, Counsel for Dr. Portales asserted that, under the authority of *Urella v. State Medical Board of Ohio*, 118 Ohio App 3d, 555, March 6, 1997, there was no legal basis for the Board to proceed against Dr. Portales. Counsel for Dr. Portales argued that there is no underlying discipline in Arizona on which to base an Ohio action. (Hearing Transcript at 10-11)

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Subsequent to the rendering of the *Urella* decision, the General Assembly enacted a revision of Section 4731.22(B)(22), Ohio Revised Code, which allows the Board to take action against a Respondent based on the action of another state's board. Section 4731.22(B)(22) no longer requires that the Board find that the other board's action had been based on conduct that would also violate the Ohio Medical Practices Act. Thus, *Urella* is not applicable to the present matter.

FINDINGS OF FACT

1. Dr. Portales' certificate to practice osteopathic medicine and surgery in Ohio was suspended by operation of law on or about September 30, 1998, for non-payment of renewal fees and has not been reinstated.
2. On April 19, 2000, the Arizona Board issued a Stipulation and Consent Order for Restriction of License, which ordered, effective April 19, 2000, that Dr. Portales' license for the practice of osteopathic medicine and surgery in Arizona be restricted. That restriction prohibited Dr. Portales from prescribing any prescription-only and controlled substance medications via the Internet without performing complete physicals and histories on the patients. Further, Dr. Portales was restricted from renewing any prescriptions for prescription-only and controlled substance medications via the Internet for patients that have not had complete physicals and histories until the Arizona Board made a further determination.

The Arizona Board found that an investigation had been opened on April 10, 2000, after it had received an allegation that Dr. Portales was prescribing prescription-only and controlled substance medications via the Internet without establishing a doctor-patient relationship or seeing the patient in the office to complete a physical and history.

Dr. Portales did not contest the findings of fact and conclusions of law, voluntarily relinquishing any rights to a hearing on, or to seek judicial review of, the above Arizona Board Stipulation and Consent Order for Restriction of License.

3. Effective October 23, 2000, the Arizona Board issued a Stipulation and Consent Order for Surrender of License which encompassed a mutual agreement and an Order that Dr. Portales voluntarily surrender his license to practice as an osteopathic physician in Arizona and to no longer practice medicine in Arizona.

The Arizona Board found that, on or about April 10, 2000, information was brought to their attention that Dr. Portales may have inappropriately been prescribing medication and controlled substances over the Internet without conducting a physical examination of the

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patient, maintaining adequate medical records or establishing an appropriate physician-patient relationship.

The Arizona Board also found that, on or about April 19, 2000, the Arizona Board had entered into a Stipulation and Consent Order for Restriction of License, pending further investigation and an investigative hearing. Further, they found that Dr. Portales had been scheduled for an investigative hearing before the Arizona Board at a public meeting scheduled for October 14, 2000, at which time Dr. Portales requested to be allowed to voluntarily withdraw from the practice of medicine in Arizona due to the fact that he resided in another state. The Arizona Board agreed to his surrender of licensure.

CONCLUSIONS OF LAW

1. The Arizona Board Stipulation and Consent Order for Restriction of License, as described in Findings of Fact 2, constitutes “any of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to May 17, 2000.
2. The Arizona Board Stipulation and Consent Order for Surrender of Licensure, as described in Findings of Fact 3, constitutes “any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to April 10, 2001.

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PROPOSED ORDER

It is hereby ORDERED that:

- A. **LIMITATION AND RESTRICTION OF CERTIFICATE:** The certificate of Arturo Portales, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be LIMITED and RESTRICTED as follows:
1. **Refrain from Commencing Practice in Ohio:** Dr. Portales shall not commence practice in Ohio without prior Board approval.
 2. **Conditions for Approval of Commencement of Practice in Ohio:** The Board shall not consider granting approval for Dr. Portales to commence practice in Ohio unless all of the following minimum requirements have been met:
 - a. **Hold Current Certificate to Practice in Ohio:** Dr. Portales shall hold a current certificate to practice medicine and surgery in the State of Ohio.
 - b. **Notify Board in Writing:** Dr. Portales shall notify the Board in writing that he intends to commence practice in Ohio.
 - c. **Enter Into Consent Agreement:** Dr. Portales shall enter into a written consent agreement with the Board. The consent agreement shall include probationary terms, conditions, and limitations, as determined by the Board.

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



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 13, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matter of John A. Campa, III, M.D.; Khozema Campwala, M.D.; Dannie K. Gipe, Jr., M.D.; Lonnie Marsh, II, M.D.; Arturo Portales, D.O.; Susan M. Stone, M.D.; Stephen J. Sveda, M.D.; Philip G. Wagman, M.D.; and Jimmie Steve Ward, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Somani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Somani	- aye

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

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

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

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Dr. Garg left the meeting at this time.

ARTURO PORTALES, D.O.

Dr. Somani directed the Board's attention to the matter of Arturo Portales, D.O. He advised that no objections were filed to Hearing Examiner Roberts' Report and Recommendation.

MS. SLOAN MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ARTURO PORTALES, D.O. DR. TALMAGE SECONDED THE MOTION.

Dr. Somani stated that he would now entertain discussion in the above matter.

Dr. Stienecker stated that he thinks that it is fairly reasonable to deduce from the testimony given that Dr. Portales surrendered his license to the Arizona Board in lieu of its going further with an investigation into his internet prescribing and a number of other issues. He does have concerns with the Proposed Order, in terms of its focus on Dr. Portales' commencement of practice in Ohio. This is a situation where Dr. Portales does not currently hold an active Ohio license, but the Proposed Order would permit him to restore the license that he allowed to lapse. Dr. Stienecker stated that he thinks that the Board should first of all say that Dr. Portales would have to meet certain reinstatement conditions before it imposes specific limitations on his license. Dr. Stienecker stated that he would prefer to indefinitely suspend Dr. Portales' license at this time and establish conditions for reinstatement. One of those conditions would be that he enter into a consent agreement that specifically addresses the allegations underlying Arizona's action.

DR. STIENECKER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ARTURO PORTALES, D.O., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

1. **Indefinite Suspension Of License**: The license of Arturo Portales, D.O., to practice osteopathic medicine and surgery in the State of Ohio be SUSPENDED for an indefinite period of time.
2. **Conditions for Restoration**: The Board shall not consider restoration of Dr. Portales' certificate to practice unless all of the following minimum requirements are met:
 - a. Dr. Portales shall submit an application for restoration, accompanied by appropriate fees.
 - b. Dr. Portales shall enter into a written consent agreement with the Board. The consent agreement shall include probationary terms, conditions and limitations as determined by the Board, including any requirements deemed appropriate to ensure Dr. Portales' compliance with Ohio statutes and rules pertaining to the practice of telemedicine.
 - c. Pursuant to §4731.222, O.R.C., the Board may exercise its discretion to require additional evidence of Dr. Portales' fitness to resume practice.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

DR. BHATI SECONDED THE MOTION.

Dr. Somani stated that he would now entertain further discussion in the above matter.

Dr. Egner spoke in support of Dr. Stienecker's motion to amend.

Dr. Buchan asked where the language addressing the acts underlying Arizona's action would be.

Dr. Stienecker stated that the consent agreement required for reinstatement would need to include "requirements deemed appropriate to ensure Dr. Portales' compliance with Ohio statutes and rules pertaining to the practice of telemedicine." Dr. Stienecker stated that he's given it a little broader language because the Board can't be sure how telemedicine laws might change during the time between now and when Dr. Portales might request restoration.

Dr. Talmage stated that Dr. Stienecker's Proposed Order is a well-crafted amendment. It addresses the problem and prepares for the future.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye

Dr. Buchan	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Stienecker	- aye
Dr. Somani	- aye

The motion carried.

DR. STIENECKER MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ARTURO PORTALES, M.D. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Somani	- aye

The motion carried.



State Medical Board of Ohio

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

July 11, 2001

Arturo Portales, D.O.
13501 N. Manzanita Lane
Fountain Hills, Arizona 85268

Dear Doctor Portales:

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

- (1) Your certificate to practice osteopathic medicine and surgery in Ohio was suspended by operation of law, on or about September 30, 1998, for non-payment of renewal fees and has not been reinstated.
- (2) On or about April 19, 2000, the Arizona Board of Osteopathic Medicine and Surgery (hereinafter the "Arizona Board") issued a Stipulation and Consent Order for Restriction of License which ordered, effective April 19, 2000, that your license for the practice of osteopathic medicine and surgery in Arizona be restricted. That restriction prohibited you from prescribing any prescription-only and controlled substance medications via the Internet without performing complete physicals and histories on the patients. Further, you were restricted from renewing any prescriptions for prescription-only and controlled substance medications via the Internet for patients that have not had complete physicals and histories, until the Arizona Board makes a further determination.

The Arizona Board found that an investigation was opened on April 10, 2000, after receiving an allegation that you were prescribing prescription-only and controlled substance medications via the Internet without establishing a doctor/patient relationship or seeing the patient in the office to complete a physical and history.

You did not contest the findings of fact and conclusions of law, voluntarily relinquishing any rights to a hearing on, or to seek judicial review of, the above Arizona Board Stipulation and Consent Order for Restriction of License, a copy of which is attached hereto and incorporated herein.

- (3) Effective October 23, 2000, the Arizona Board issued a Stipulation and Consent Order for Surrender of License which encompassed a mutual agreement and an Order that you voluntarily surrender your license to practice as an osteopathic physician in Arizona and no longer practice medicine in Arizona.

The Arizona Board found that, on or about April 10, 2000, information was brought to their attention that you may have inappropriately been prescribing medication and

Mailed 7.12.01

controlled substances over the Internet without conducting a physical examination of the patient, maintaining adequate medical records or establishing an appropriate physician-patient relationship.

Further, they found that, on or about April 19, 2000, the Arizona Board had entered into a Stipulation and Consent Order for Restriction of License, paragraph two (2) above, pending further investigation and an Investigative hearing. Further, they found that you were scheduled for an Investigative hearing before the Arizona Board at a public meeting scheduled for October 14, 2000, at which time you requested to be allowed to voluntarily withdraw from the practice of medicine in Arizona, due to the fact that you resided in another state. The Arizona Board agreed to your surrender of licensure.

A copy of the Arizona Board Stipulation and Consent Order for Surrender of Licensure is attached hereto and incorporated herein.

The Arizona Board Stipulation and Consent Order for Restriction of License, as alleged in paragraph two (2) above, constitutes "any of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to May 17, 2000.

Further, the Arizona Board Stipulation and Consent Order for Surrender of Licensure, as alleged in paragraph three (3) above, constitutes "any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to April 10, 2001.

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

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

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

Arturo Portales, D.O.

Page 3

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 0401
RETURN RECEIPT REQUESTED

4045 E. Bell Road
Phoenix, Arizona 85032

CERTIFIED MAIL # 7000 0600 0024 5140 0395
RETURN RECEIPT REQUESTED

2529 Sungale Court
Lexington, Kentucky 40513

CERTIFIED MAIL # 7000 0600 0024 5140 0388
RETURN RECEIPT REQUESTED

3425 Oakwood Circle
Ashland, Kentucky 41102

CERTIFIED MAIL # 7000 0600 0024 5140 0371
RETURN RECEIPT REQUESTED

NOV 13 2000

BEFORE THE ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

IN THE MATTER OF:

Arturo Portales, D.O.
Holder of License No. 3315 for the
practice of osteopathic medicine in the
State of Arizona

Case No. 2766

**STIPULATION AND CONSENT
ORDER FOR RESTRICTION OF
LICENSE**

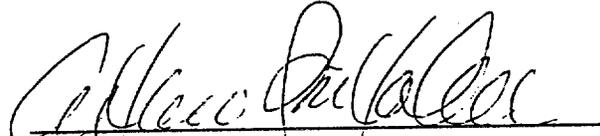
STIPULATION

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Arturo Portales, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Stipulation and the attached Consent Order; and Respondent is aware of and understands the content of these documents.
2. Respondent understands that by entering into this Stipulation, he voluntarily relinquishes any rights to a hearing on or to seek judicial review of the stipulated consent order in state or federal court.
3. Respondent understands that this Stipulation and Consent Order will not become effective unless approved by the Board and signed by its Executive Director.
4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public record that will be disseminated as a formal action of the Board.
5. Respondent does not contest the statement of facts and conclusions of law contained in the Stipulated Consent Order.
6. All admissions made by Respondent are solely for immediate disposition of this matter pending an Informal Interview/Investigative Hearing and any subsequent administrative proceedings or litigation involving the board, Respondent and the State of Arizona.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend this Stipulation or any part of the Consent Order, although said Stipulation has not yet been accepted by the Board and issued by its Executive Director, without first obtaining Board approval.

REVIEWED AND ACCEPTED this 19th day of April, 2000.


Arturo Portales, D.O.

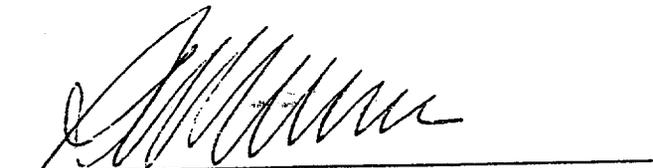
STATE OF ARIZONA)
) ss
County of Maricopa)

This instrument was acknowledged before me this _____ day of April, 2000 by the above-named individual.

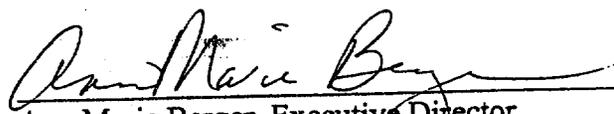
Notary Public

My Commission expires:

REVIEWED AND APPROVED as to form by counsel for Respondent on this 19th day of April, 2000.


Stephen W. Myers

REVIEWED AND SIGNED this 19th day of April, 2000 for the Board by:


Ann Marie Berger, Executive Director
Arizona Board of Osteopathic Examiners in
Medicine and Surgery

NOV 13 2000

BEFORE THE ARIZONA BOARD OF

OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

IN THE MATTER OF:

Case No. 2766

Arturo Portales, D.O.
Holder of License No. 3315 for the
practice of osteopathic medicine in the
State of Arizona

**STIPULATION AND CONSENT
ORDER FOR RESTRICTION OF
LICENSE**

FINDINGS OF FACT

1. Arturo Portales, D.O., (hereafter "Respondent"), is a licensee of the Board and the holder of License No. 3315.
2. The following information was brought to the attention of the Board that Respondent may be engaging in the practice of medicine regarding prescribing prescription-only and controlled substances medications without a proper evaluation of the patient and may have committed one or more acts of unprofessional conduct as defined in A.R.S. § 32-1854, including but not limited to subsections (6) and (38):
 - a. On April 10, 2000 an investigation was opened after receiving an allegation that Respondent was prescribing prescription-only and controlled substance medications via the internet to the public without establishing a doctor/patient relationship or seeing the patient in the office to complete a physical and history.
3. Respondent will appear at a Board meeting for an Informal/Investigative Hearing for the Board to review this matter.

CONCLUSIONS OF LAW

1. Pursuant to Arizona Revised Statutes § 32-1800, et seq., the Arizona Board of Osteopathic Examiners in Medicine and Surgery has subject matter and personal jurisdiction in this matter.

2. Pursuant to Arizona Revised Statutes § 32-1855(E) and § 1092.07(F)(5), the parties may enter a Stipulated Consent Order for the restriction of a license.

3. Based upon the Findings of Fact set forth above herein, the Board concludes that it has the requisite factual basis and legal authority for Respondent to restrict his license.

ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

1. Respondent's Board License Number 3315 for the practice of osteopathic medicine and surgery in the State of Arizona is hereby restricted from prescribing any prescription-only and controlled substance medications via the internet without performing complete physicals and histories or renewing any prescriptions for prescription-only and controlled substance medications via the Internet that have not had complete physicals and histories until the Board makes a further determination.

EFFECTIVE this 19th day of April, 2000.

**ARIZONA BOARD OF OSTEOPATHIC
EXAMINERS IN MEDICINE AND SURGERY**

By: Ann Marie Berger
Ann Marie Berger, Executive Director
.9535 E. Doubletree Ranch Rd.
Scottsdale, AZ 85258

Served by personal service or sending
U.S. certified mail and via fax (480) 816-6964
this _____ day of April, 2000-04-18

Arturo Portales, D.O.
13501 Manzanita Lane
Fountain Hills, AZ 85268
Copy mailed this _____ day of April, 2000
to:

Blair Driggs

Assistant Attorney General
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007

STATE OF ARIZONA
NOV 13 2000

Celina Shepherd

NOV 13 2000

BEFORE THE ARIZONA BOARD OF

OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

IN THE MATTER OF:)

ARTURO PORTALES, D.O.)

Holder of License No. 3315 for the)
practice of osteopathic medicine in the)
State of Arizona.)

STIPULATION AND CONSENT)
ORDER FOR SURRENDER OF)
LICENSE)

STIPULATION

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Arturo Portales, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Stipulation and Consent Order; and, Respondent is aware of and understands the content of this document.

2. Respondent understands that by entering into this Stipulation, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the consent order in state or federal court.

3. Respondent understands that this Stipulation and Consent Order will not become effective unless approved by the Board and signed by its Executive Director.

4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public record as required by A.R.S. §§ 32-1855 (K).

5. Respondent admits to the statement of facts contained in this Stipulated Consent Order.

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent administrative proceedings or litigation involving the Board, Respondent and the State of

Arizona; and, therefore, said admissions by Respondent are not intended for any other purpose or administrative regulatory proceeding or litigation in another state or federal court.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend this Stipulation or any part of the Consent Order, although said Stipulation has not yet been accepted by the Board and issued by its Executive Director, without first obtaining Board approval.

STATEMENT OF FACTS

8. Case No. 2766 was to be scheduled as an Investigative Hearing before the Board of Osteopathic Examiners in Medicine and Surgery (hereafter "Board") at a public meeting on October 14, 2000 regarding Arturo Portales, D.O. (hereafter "Respondent"); and, the Board and Respondent mutually agree to the surrender of Respondent's license.

9. The Arizona Board of Osteopathic Examiners in Medicine and Surgery is empowered, pursuant to A.R.S. § 32-1800, *et seq* to regulate the licensing and practice of osteopathic medicine in the State of Arizona.

10. Respondent is a licensee of the Board and the holder of License No. 3315 for the practice of osteopathic medicine in the State of Arizona.

11. Information was brought to the attention of the Board on or about April 10, 2000 that Respondent may have inappropriately been prescribing medication and controlled substances over the Internet without conducting a physical examination of the patient, maintaining adequate medical records or establishing an appropriate physician-patient relationship.

12. On April 19, 2000, the Board entered into a Stipulation and Consent Order for Restriction of License pending further investigation and an Investigative Hearing.

13. At the October 14, 2000 Board Meeting, Respondent requested that the Board to allow him to voluntarily withdraw from the practice of medicine in Arizona due to the fact that he resides in another State.

ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY AGREED AND ORDERED THAT:**

Arturo Portales, D.O. ("Respondent") shall voluntarily **SURRENDER** his license to practice as an osteopathic physician in the State of Arizona; and,

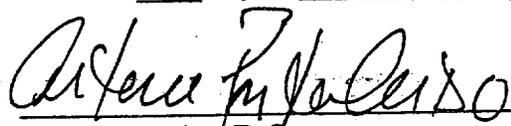
Respondent shall, within ten (10) days from the effective date of this Consent Order, return by U.S. mail or personal delivery to the Board's office all documents in his possession establishing Board licensure to practice as an osteopathic physician; and,

Respondent shall no longer engage in the practice of medicine in the State of Arizona, after the effective date of this Order.

In the event that Respondent makes application for licensure by the Board in the future, he must satisfy all of the applicable statutory and Board administrative rule requirements for licensure.

Service of this Consent Order is effective upon either personal delivery or the date of mailing, by U.S. certified mail, addressed to Respondent's last known address of record with the board. See A.R.S. § 31-1855(F).

REVIEWED AND ACCEPTED this 21 day of October, 2000.



Arturo Portales, D.O.

STATE OF ~~ARIZONA~~ ^{Kentucky})
County of ~~Pima~~ ^{Fayette})

SS

This instrument was acknowledged before me this 21 day of October, 2000 by the above-named individual.

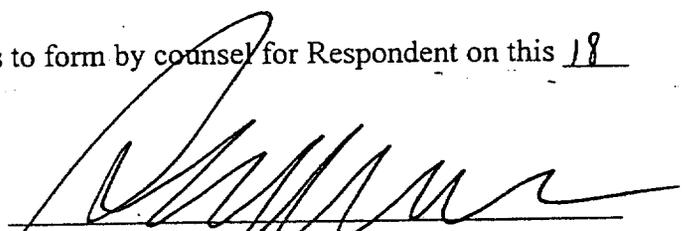


Notary Public

My Commission expires:

10/25/10

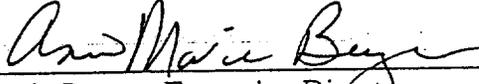
REVIEWED AND APPROVED as to form by counsel for Respondent on this 18 day of October, 2000.



Stephen W. Myers

DATED AND EFFECTIVE this 23rd day of October, 2000.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: 

Ann Marie Berger, Executive Director
9535 E. Doubletree Ranch Rd.
Scottsdale AZ 85258-5539
(602) 657-7703

Copy mailed by U.S. certified mail
(return receipt requested) this _____
day of October, 2000 to:

Arturo Portales, D.O.
2529 Sungate Court
Lexington Kentucky 40513

NOV 13 2000

Copy mailed this 23rd day of
October, 2000 to:

Stephen W. Myers, Esq.
Myers & Jenkins
3003 N. Central Ave., Suite 1900
Phoenix AZ 85012

Blair Driggs
Assistant Attorney General
CIV/LES
1275 W. Washington
Phoenix AZ 85007

Tom Dennis
Assistant Attorney General
Solicitor General's Office
1275 W. Washington
Phoenix AZ 85007

Arizona Board of Pharmacy
5060 N. 19th Ave., Suite 101
Phoenix AZ 85015

Drug Enforcement Administration
Attention: Diversion Section
3010 N. 2nd St
Phoenix AZ 85012