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

TERMINATION NO. 10
BY KI 4/10/01

PETER CLEMENS, D.O.,		
Plaintiff,	:	
v.	:	Case No. 00CVF06-5004
STATE MEDICAL BOARD OF OHIO,	:	Judge Johnson
Defendants.	:	

FINAL APPEALABLE ORDER

DECISION AND JUDGMENT ENTRY AFFIRMING THE ORDER OF THE STATE MEDICAL BOARD OF OHIO

Rendered this 10th day of April, 2001.

JOHNSON, J.

This case is before the Court on a R.C. 119.12 appeal from the Order of the State Medical Board of Ohio suspending Appellant's medical license for three months, staying the suspension, and placing him on probation for a minimum of one year.

The case began when, on August 11, 1999, the Board notified Dr. Clemens that it intended to take disciplinary action against his license based on the following allegations:

> (1) From on or about July 29, 1996, to at least December 16, 1996, on at least sixteen (16) different occasions, you signed an otherwise blank prescription without ensuring that the prescription was completed and without ensuring that it was provided to the patient for whom it was intended. Your office protocol allowed for such signed prescriptions to be out of your control and authority.
>
> (2) On or about October 15, 1996, a physician assistant in your employ admitted to you that at her request her boyfriend called prescriptions to pharmacies while using your name. She also admitted that she was stealing narcotics from your office. You failed to report these admissions to the State Medical Board of Ohio.

The Board's letter concluded that the acts alleged in paragraphs 1, above, constituted violations of R.C. 4731.22(B)(12) and R.C. 3719.06(A) and those acts cited paragraph 2 constituted violations of R.C. 4731.22(B)(20), R.C. 4731.224(B), R.C.4731.22(B)(12), and R.C. 4730.32(B). Dr. Clemens was advised of his right to a hearing which he requested through his attorney. The hearing resulted in a report and recommendation by the hearing officer which was adopted, but modified to a lesser sanction by the Board and this timely appeal followed.

At the hearing, held January 26, 2000, the following evidence was presented. Dr. Clemens is a board certified family practitioner who has been licensed in Ohio since 1993. He bought a physician's practice and took on his employees and many of his practices. One of those practices was to sign blank prescription forms for mail in prescriptions which the nurses then filled.[1] In 1996, Dr. Clemens hired a physician's assistant by the name of Deb Pabon. On October 15, 1996, Pabon returned from lunch one hour late. Dr. Clemens informed her that being late would not be tolerated and confronted her about a call he had received from a friend of hers who claimed she was writing prescriptions for her boyfriend. Although Pabon initially denied it, when Appellant pursued the matter further, she admitted it. Remarkably, she was not fired at the time. Dr. Clemens denied this conversation took place at trial but admitted it in his deposition. Moreover, there is a memorandum concerning the confrontation in Pabon's personnel file which became State's Exhibit 23 at the hearing.

Clemens also admitted the signatures on the prescriptions were his at the deposition, but would only admit they looked like his at the hearing. He asserted they were probably forged. Appellant admitted, under cross-examination, that at the time of the investigatory deposition he believed that Pabon, and not he, was the focus of the Board's investigation. The State presented 16

[1] Dr. Clemens denied this at the hearing, but admitted it in an investigatory deposition and to a Board investigator. The hearing officer did not find his trial testimony to be credible on that subject.

prescriptions which were written by Pabon or her boyfriend on blank prescription forms pre-signed by Dr. Clemens.

On December 16, 1996, Appellant fired Pabon for insubordination. Dr. Clemens claims to have first found out about the stolen prescriptions when a pharmacist called the office over a prescription he had filled for Pabon dated well after she had left Clemens' employ. He instructed his nurse to call the Drug Enforcement Agency (DEA). In actuality, she called the Allen County Sheriff's Office. No notification was ever made to the Medical Board.

Appellant argues that the deposition should not have been admitted into evidence. OAC 4731-13-20 mirrors closely the civil rule. It reads, in relevant part:

> Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.

Generally a deposition is taken for discovery or preservation of testimony or where a witness unavailable. This was a discovery-type deposition which was used extensively on cross-examination to impeach the doctor. The deposition itself probably should not have been admitted; however, the hearing examiner expressly stated that he was admitting it to protect Dr. Clemens because he was concerned that the questions asked by the state's attorney were not correctly phrased. Additionally, his report makes no additional findings of inconsistency which were not elicited on cross-examination by the assistant attorney general. Therefore, the admission of the deposition, if error in an administrative proceeding, was harmless. The hearing examiner made a reasonable conclusion based on the inconsistencies between the discovery disposition and the trial

testimony that he was not credible. He admitted that had he known he was the focus of the investigation, his answers would have been different. He claimed he was unprepared.

This argument is made, of course, because the deposition is quite damaging to Dr. Clemens. The hearing examiner did not believe him and his conclusion as to credibility was adopted by the Board. The Court must afford due deference to the findings of fact resulting from credibility evaluations made by the trier of fact. ***University of Cincinnati v. Conrad (1980), 63 Ohio St.2d 108.***

R.C. 3919.06 controls prescribing medication and requires the physician to include the name and address of the patient for which the prescription is writing:

> Each written prescription shall be dated and signed by the dentist or physician prescribing on the day when issued and shall bear the full name and address of th person for whom the controlled substance is prescribed and the full name, address, and registry number under the federal drug abuse control laws of the person prescribing.

Appellant argues that the word "issued" means given to someone and not stolen from the office. He asserts that the statute is not designed to punish doctors who are victims of crime. The evidence is clear that Dr. Clemens was a victim. But, Dr. Clemens was also negligent in employing this practice of signing prescriptions ahead of time and especially, once he knew about it, not immediately changing his habits.[2] It was his negligence, at least in part, which led to the unlawful processing of these prescriptions.

Pursuant to R.C. 3719.99, violation of R.C.3719.06 is a misdemeanor.

R.C.4731.22(B)(12), in the form it was in at the time these acts occurred, read as follows:

> (B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on

[2] Despite the fact the he claims he immediately changed his practice, there is significant evidence that it did not change until he was contacted by the Board's investigator in early 1999. This evidence came from his nurse.

> probation the holder of a certificate for one or more of the following reasons:
>
> (12) Commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice;

Despite the fact that he was never prosecuted, his actions constitute a violation of the statute.

As regards that second allegation, Appellant simply claims that he was not aware he had to report the conduct of his former physician's assistant to the Board since he had reported it to the police. He only asserts that he is being punished too harshly. However, numerous sections of the Code and Board's rules, in effect at the time he failed to report Pabon's conduct, required reporting. These are sections which control his practice and which he is charged with knowing. R.C. 4731.224(B) reads in pertinent part:

> (B) If any individual authorized to practice under this chapter or any association or society of individuals authorized to practice under this chapter believes that a violation of any provision of this chapter, Chapter 4730. of the Revised Code, or any rule of the board has occurred, the individual, association, or society shall report to the board the information upon which the belief is based.

R.C. 4370.32 contained almost identical language:

> (B) Any physician assistant, society of physician assistants, physician, or society of physicians that believes a violation of any provision of this chapter, Chapter 4731. of the Revised Code, or rule of the board has occurred shall report to the board the information upon which the belief is based.

OAC 4731-15-01 provided:

> (A) Any individual licensed under Chapter 4731. of the Ohio Revised Code or any association or society of individuals licensed under Chapter 4731. of the Revised Code or any physician assistant or society of physician assistants shall report to the board a belief that a violation of Chapter 4731., or Chapter

> 4730. of the Revised Code, or any rule of the board has occurred...

Appellant's failure to report Pabon's clearly unlawful conduct violates R.C. 4731.22(B)(12) above as well as R.C. 4731.22(B)920):

> (B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:
>
> (20) ...violating...directly or indirectly...any provisions of this chapter or any rule promulgated by the board.

The Court suspects that his suspension[3] was as much the result of lying to the Board as it was the violations themselves. But, whatever the reason the Board imposed the punishment it did, it is within it prerogative and was, in fact, a much lesser punishment than that recommended by the Hearing Examiner.

It has long been held that the Board is in the best position to assess the technical and ethical requirements of its peers and that the court may not modify the penalty lawfully imposed. ***Pons v. Ohio State Medical Bd. (1993), 66 Ohio St.3d 619.*** In this case, the Board clearly felt that message had to be sent, no doubt because of the amount of time between his discovery of the problem and his correction of it. The Board also felt he needed to be re-educated in his responsibilities to the Board itself. The sanction here was clearly within the realm of those available to the Board[4] and was, in this Court's evaluation, rather lenient.

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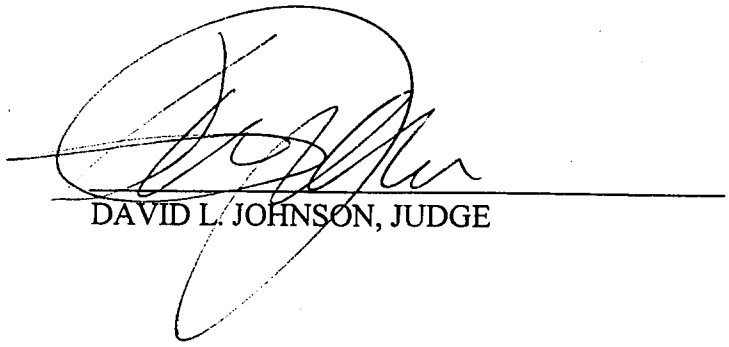
[3] The suspension will not go into effect, because it had been stayed, unless he violates his probation.

[4] See R.C. 4731.22 which provides for suspension or revocation of a medical license.

The Order of the State Medical Board of Ohio is supported by substantial reliable, and probative evidence. It is, therefore, **AFFIRMED**. Costs to Appellant.



DAVID L. JOHNSON, JUDGE

Appearances:

Rebecca J. Albers, Esq.
Attorney for Appellant

Matthew C. Huffman, Esq.
Attorney for Appellee

BEFORE THE STATE MEDICAL BOARD OF OHIO

PETER C. CLEMENS, D.O. 830 West High Street, #307 Lima, Ohio 45801	* *	
Appellant,	*	CASE NO.
-vs-	*	*JUDGE*
STATE MEDICAL BOARD OF OHIO 77 S. High Street, 17th Floor Columbus, Ohio 43266-0315	* *	***NOTICE OF APPEAL***
Appellee.	*	

Peter C. Clemens, Appellant, hereby gives notice of appeal on questions of law and fact to the Common Pleas Court of Franklin County, upon the authority of Ohio Revised Code §119.12 from the action of the State Medical Board suspending the certificate of Peter C. Clemens to practice osteopathic medicine pursuant to Entry of Order entered on the journal of the State Medical Board on May 10, 2000. A copy of said Order is attached hereto.

1. The evidence submitted to the Board does not support the Board's factual finding that the Appellant signed the prescriptions submitted or that the previous protocol allowed any prescriptions to be out of the authority or control of Dr. Clemens.

2. The Board's finding that there is a violation of Ohio Revised Code §3719.06(A) is not supported by the evidence.

GOODING, HUFFMAN,
KELLEY & BECKER
ATTORNEYS AT LAW
127-129 N. PIERCE STREET
POST OFFICE BOX 546
LIMA, OHIO 45802
TELEPHONE (419) 227-3423
FAX (419) 228-1937

3. The admission of the deposition of the appellant into evidence is contrary to the Rules of Procedure of the State Medical Board.

4. The order of the State Medical Board is inconsistent with the laws of the State of Ohio and the evidence adduced at Trial.

GOODING, HUFFMAN, KELLEY & BECKER
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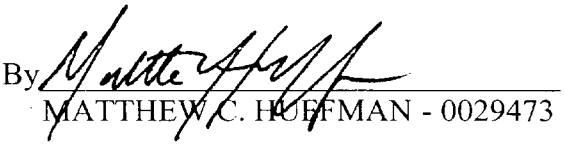
Lima, Ohio 45802
Telephone: (419) 227-3423
ATTORNEYS FOR APPELLANT

By 
MATTHEW C. HUFFMAN - 0029473

STATE MEDICAL BOARD
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State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

May 10, 2000

Peter Conover Clemens, D.O.
830 West High Street, #307
Lima, OH 45801

Dear Doctor Clemens:

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 May 10, 2000, 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 may be taken to the Franklin County Court of Common Pleas only.

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 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. Z 281 981 288
RETURN RECEIPT REQUESTED

cc: Mathew C. Huffman, Esq.
CERTIFIED MAIL RECEIPT NO. Z 281 981 289
RETURN RECEIPT REQUESTED

Mailed 5/24/00

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 May 10, 2000, 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 Peter Conover Clemens, 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.

Anand G. Garg, M.D.
Secretary

(SEAL)

MAY 10, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

PETER CONOVER CLEMENS, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 10, 2000.

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. The certificate of Peter Conover Clemens, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for a period of three (3) months. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one (1) year.

    a. Dr. Clemens shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Clemens shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Clemens shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

    b. Dr. Clemens shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Clemens has privileges or appointments. Further, Dr. Clemens

shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Clemens applies for or obtains privileges or appointments. Further, Dr. Clemens shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

c. Dr. Clemens shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.

d. Dr. Clemens shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio statutes and Board rules relating to the practice of physician assistants. Successful completion of this examination shall be a prerequisite to Dr. Clemens being released from probation. In the event that Dr. Clemens fails this examination, he must wait at least three months between re-examinations.

e. In the event that Dr. Clemens should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Clemens must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

f. Dr. Clemens shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

g. Dr. Clemens shall appear in person for interviews before the full Board or its designated representative within three months of the date on which this order becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, 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. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Clemens' responsibility to know when personal appearances will occur. If he does not receive written notification

from the Board by the end of the month in which the appearance should have occurred, Dr. Clemens shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

h. If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Clemens shall cease practicing osteopathic medicine and surgery in Ohio beginning the day following Dr. Clemens' receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice of medicine in violation of Section 4731.41, 4731, Ohio Revised Code.

i. If Dr. Clemens violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

j. Periods of time during which Dr. Clemens' certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

k. If Dr. Clemens violates probation 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.

3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Clemens' certificate will be fully restored.

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

Anand G. Garg, M.D.
Secretary

(SEAL)

MAY 10, 2000
Date

OHIO STATE MEDICAL BOARD
MAR 1 0 2000

REPORT AND RECOMMENDATION
IN THE MATTER OF PETER CONOVER CLEMENS, D.O.

The Matter of Peter Conover Clemens, D.O., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on January 26, 2000.

INTRODUCTION

I. Basis for Hearing

A. By letter dated August 11, 1999, the State Medical Board of Ohio [Board] notified Peter Conover Clemens, D.O., that it had proposed to determine whether to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

1. From on or about July 29, 1996, to at least December 16, 1996, on at least sixteen (16) different occasions, Dr. Clemens signed an otherwise blank prescription without ensuring that the prescription was completed and without ensuring that it was provided to the patient for whom it was intended. Dr. Clemens' office protocol allowed for such signed prescriptions to be out of his control and authority.

2. On or about October 15, 1996, a physician assistant in Dr. Clemens' employ admitted to Dr. Clemens that at her request her boyfriend called prescriptions to pharmacies while using Dr. Clemens name. She also admitted that she was stealing narcotics from Dr. Clemens' office. Dr. Clemens failed to report these admissions to the Board.

The Board alleged that the acts, conduct, and/or omissions of Dr. Clemens as alleged in paragraph 1, individually and/or collectively, constitute "'[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 3719.99(E), Ohio Revised Code (as in effect prior to March 31, 1997), 'Penalties,' to wit: Section 3719.06(A), Ohio Revised Code (as in effect prior to July 22, 1998), 'Prescribing, dispensing and administering by dentist, physician, veterinarian or advanced practice nurse.'"

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The Board further alleged that Dr. Clemens' acts, conduct, and/or omissions as alleged in paragraph 2, individually and/or collectively, constitute "'[v]iolating 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 (as in effect prior to March 9, 1999), to wit: Section 4731.224(B), Ohio Revised Code (as in effect prior to March 9, 1999), 'Health Care Facilities, Licensees, Professional Associations, and Insurers to Report Misconduct.'"

The Board also alleged that Dr. Clemens' acts, conduct, and/or omissions as alleged in paragraph 2, individually and/or collectively, constitute "'[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 4731.99(E), Ohio Revised Code (as in effect prior to March 9, 1999), 'Penalties,' to wit: Section 4731.224(B), Ohio Revised Code (as in effect prior to March 9, 1999)."

The Board further alleged that Dr. Clemens' acts, conduct, and/or omissions as alleged in paragraph 2, individually and/or collectively, constitute "'[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 4730.99(B), Ohio Revised Code, 'Penalties,' to wit: Section 4730.32(B), Ohio Revised Code (as in effect prior to March 9, 1999), 'Health Care Facility or Professional Society To Report Disciplinary Proceeding; Persons And Organizations Obliged To Report Suspected Violation; Report By Liability Insurer.'"

The Board also alleged that Dr. Clemens' acts, conduct, and/or omissions as alleged in paragraph 2, individually and/or collectively, constitute "'[v]iolating 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) (as in effect prior to March 9, 1999), Ohio Revised Code, to wit: Rule 4731-15-01, Ohio Administrative Code, 'Licensee Reporting Requirement; Exceptions.'"

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

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B. On August 31, 1999, Jerry Johnson, Esq., filed a written hearing request on behalf of Dr. Clemens. (State's Exhibit 1B)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.

B. On behalf of the Respondent: Matthew C. Huffman, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State:

1. Brock Douglass
2. Cathy Hacker
3. Terrill D. McLaughlin
4. Peter Conover Clemens, D.O., as on cross examination

B. Presented by the Respondent:

1. Robert A. Wheeler, M.D.
2. John E. Pack, R.Ph.
3. Joan Starr, R.N.
4. Jerry Johnson, Esq.
5. Peter C. Clemens, D.O.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1R: Procedural exhibits.

2. State's Exhibits 2-17: Copies of prescriptions.

3. State's Exhibit 20: Copy of June 15, 1999, Investigatory deposition of Peter C. Clemens, D.O.

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4. State's Exhibit 21: Copy of May 10, 1996, letter to Dr. Clemens from the Board.

5. State's Exhibit 22: Copy of January 8, 1997, letter to the Board from Dr. Clemens.

6. State's Exhibit 23: Copy of October 15, 1996, page from the personnel file of Deborah Pabon maintained by Dr. Clemens' office.

B. Presented by the Respondent:

1. Respondent's Exhibit A: Copy of October 27, 1997, letter to Investigator Douglass from Dr. Clemens.

2. Respondent's Exhibit B: Dr. Clemens' curriculum vitae.

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. Peter Conover Clemens, D.O., is a physician in solo family practice in Lima, Ohio. He graduated from the University of Health Sciences College of Osteopathic Medicine in Kansas City, Missouri, in 1986. Dr. Clemens completed residency training at the University of Missouri, Kansas City, Truman Medical Hospital in 1989. Dr. Clemens is board certified in family practice and has privileges at both hospitals in Lima. (Transcript [Tr.] at 40-45, 58, 158-169; Respondent's Exhibit [Resp. Ex.] B)

   Dr. Clemens testified that he purchased his Lima practice from a retiring physician in 1991. A short time later, Lima lost two other physicians. Dr. Clemens explained that he had needed help with the resulting increase in patients and started trying to recruit another physician for his practice. Unable to locate a partner, Dr. Clemens hired three successive physician assistants, the last being Deborah Pabon, who was hired in late March or April 1996. Dr. Clemens testified that he had previously used and supervised physician assistants while in the Public Health Service and the military. [Note: Ms. Pabon is now known as Deborah Pope.] (Tr. 44-45, 158-169)

OHIO STATE MEDICAL BOARD
MAR 1 0 2000

2. Cathy Hacker testified that she is the Physician Assistant Program Administrator for the Board. Ms. Hacker testified that, among other responsibilities, she is the keeper of records for physician assistants. She further testified that in the course of her employment she had become familiar with the Board's physician assistant file pertaining to Dr. Clemens. Ms. Hacker noted that Dr. Clemens was notified by letter at the time his physician assistant supervision agreement with Ms. Pabon was approved that it was renewable every two years. Dr. Clemens was further notified that both he and Ms. Pabon were required to notify the Board within two week days if the agreement were terminated. (Tr. 30-32; State's Exhibit [St. Ex.] 21)

   Ms. Hacker testified that Dr. Clemens notified the Board by letter dated January 8, 1997, that Ms. Pabon had been terminated on December 16, 1996. (Tr. 32)

3. Dr. Clemens testified that Ms. Pabon had been fired on December 16, 1996, due to patient care issues and insubordination unrelated to any drug allegations. (Tr. 167-168; St. Ex. 20 at 27)

4. Dr. Clemens testified that, in October 1996, he received a telephone call from an individual who told him that Ms. Pabon was having her boyfriend impersonate Dr. Clemens to telephone in prescriptions. Dr. Clemens testified that as a result of the call, he contacted his attorney, Jerry Johnson. Dr. Clemens testified that Mr. Johnson advised him to do some checking of pharmacies in the area to determine if there was any evidence to substantiate those allegations. Dr. Clemens further testified that he made those calls and reported back to Mr. Johnson that he could find no corroboration of the allegations. (Tr. 161-163)

5. The record contains a page from Dr. Clemens' personnel file for Ms. Pabon. This document states that Ms. Pabon had returned from lunch 1 hour late on October 15, 1996, and that as a result Dr. Clemens asked to meet with her. According to the document, Dr. Clemens then related to Ms. Pabon "the information we gained almost a week ago from a friend of hers. We were told [Ms. Pabon] had been writing prescriptions for her boyfriend for Stadol." In addition, the document states that Ms. Pabon initially denied any wrongdoing but then admitted the allegation. Dr. Clemens advised Ms. Pabon that he already had grounds to fire her for being late and that the drug allegations were being investigated by his attorney, the pharmacies, and a friend. (St. Ex. 23)

   Dr. Clemens explained at hearing that the document had been written by his wife, who is also an employee of his practice, and that this page had set forth what his wife had understood had happened. However, Dr. Clemens testified that he believed that some of the information in the exhibit was incorrect. He noted that he had not seen this page until

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1999 and had not known that it had been in the file. Dr. Clemens explained at hearing that he and Ms. Pabon never had any discussions about any written prescriptions for Stadol. He further explained that he had had discussions with Ms. Pabon about her boyfriend calling in prescriptions for Stadol. However, he could not recall if that topic was discussed on October 15, 1996. (Tr. 45-46, 51-55; St. Ex. 20 at 28-29 and St. Ex. 23)

Dr. Clemens had testified at a June 1999 Board deposition that, he had confronted Ms. Pabon on October 15, 1996, about several unrelated work issues and told her of the allegations that someone had made against her and her boyfriend. Dr. Clemens further testified that Ms. Pabon had admitted to him that she had had her boyfriend call in narcotic prescriptions by pretending to be Dr. Clemens. Dr. Clemens also testified that Ms. Pabon had admitted to stealing narcotics from his office. Dr. Clemens moreover, explained that he had placed her on probation and told her that he would report her to the DEA if anything similar happened in the future. (Tr. 45, 51-53, 55-57, 67-68, 163-166; St. Ex. 20 at 17-18, 27-28)

At hearing, Dr. Clemens denied that Ms. Pabon had ever made admissions of misconduct to him. He stated that when she was confronted she broke down and cried. Dr. Clemens stated that his recollection of the meeting was not complete or clear. (Tr. 45, 51-53, 55-57, 67-68)

Dr. Clemens explained the discrepancies in his testimony by stating that at the time of the deposition he had been trying to recall events that had occurred two and a half years earlier and that he had simply been mistaken in his deposition. (Tr. 163-166)

Dr. Clemens testified that Ms. Pabon never displayed any signs of being under the influence of drugs in his presence. Dr. Clemens, further testified that, in October 1996 and at his 1999 deposition, he had believed that Ms. Pabon had been stealing narcotics from his office in 1996. However, he also testified that this was impossible because he had kept Fiorinal, Fiorocet, Ambien and benzodiazepines but no narcotics. However, at the deposition, Dr. Clemens had claimed that he had contacted the DEA about Ms. Pabon because "to [his] knowledge, Deborah Pabon was stealing narcotics from our office. She was going into locked cabinets and stealing narcotic medication that had been signed for and that had been properly stored in a locked cabinet and she was breaking into that cabinet and stealing, it was our belief." Dr. Clemens commented at hearing that when he had used the term narcotics in his June 1999, deposition that he was being imprecise and was actually thinking of Fiorinal, Fiorocet, benzodiazepines and other scheduled drugs. (Tr. 55-59, 172; St. Ex. 20 at 17-19)

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At hearing, Dr. Clemens testified that, after consulting with his attorney and several colleagues, he had not felt that he had sufficient evidence to prove the suspected thefts. He further testified that he placed Ms. Pabon on notice that if "anything happened like this again, [he] would call the DEA." (Tr. 59-60)

6. Brock Douglass testified at hearing on behalf of the State of Ohio. Investigator Douglass is employed by the Allen County Sheriff and is assigned to the Lima-Allen County Drug Task Force, which investigates drug felonies and prescription violations. (Tr. 15-16)

Inv. Douglass testified that, in late September or early October 1997, a local pharmacist had questioned a prescription presented by Ms. Pabon and which had purportedly been signed by Dr. Clemens. The pharmacist had noticed that the prescription was on an old form no longer in use by Dr. Clemens' office. The pharmacist had contacted Dr. Clemens' Office which then contacted Inv. Douglass on October 2, 1997. Inv. Douglass seized a number of prescriptions from local pharmacies. Inv. Douglass learned that Ms. Pabon was a physician assistant who had been employed in Dr. Clemens' office. He also learned that all of prescriptions he had seized had been passed after Ms. Pabon had been terminated by Dr. Clemens. Inv. Douglass seized the following prescriptions for Ms. Pabon:

Exhibit	Date	Drug	Quantity	Refills
2	9/29/97	Tylenol #3	90	4
3	6/24/97	Tylenol #3	70	4
4	12/23/96	Fiorinal tablets	90	4
5	1/27/97	Levbid tablets	60	3
6	1/27/97	Ercaf	100	4
7	2/14/97	Soma 350	40	3
8	3/31/97	Imitrex injectable	1 box	4
9	3/31/97	Stadol NS	1	4
10	5/7/97	Bentyl 20 mg	100	5
11	7/6/97	Fioricet	90	4
12	9/29/97	Fioricet	120	3
13	7/29/96	Fiorinal	100	unmarked
14	7/29/96	Tylenol #3	90	3
15	8/26/96	Stadol NS	1	5
16	9/11/96	Valium	40	2
17	11/26/96	Tylenol #3	60	3

(Tr. 16-21; St. Exs. 2-17; Resp. Ex. A)

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Inv. Douglass testified that, during his investigation, he had been told by Dr. Clemens' office that Dr. Clemens believed that Ms. Pabon had removed an undetermined number of prescription pads from his office at the time she was terminated. Inv. Douglass also testified that Ms. Pabon had told him that she had possessed about a dozen blank prescription forms at the time of her termination. Ms. Pabon did not tell Inv. Douglass if the blanks had been pre-signed by Dr. Clemens or not. (Tr. 24-30)

Ms. Pabon told Inv. Douglass that she had needed the prescriptions for migraine headaches. Ms. Pabon was charged with 2 felonies of the 5th degree. Inv. Douglass testified that he believed Ms. Pabon had eventually plead guilty to 1 count of Attempted Improper Processing of Drug Documents, a misdemeanor. (Tr. 16-19)

7. Dr. Clemens testified that he is aware that as a licensee of the Board he is responsible for knowing the laws and rules that govern the practice of osteopathic medicine in Ohio. Dr. Clemens further testified that he did not notify the Board about the prescriptions being passed by Ms. Pabon. He also testified that he was unaware of his obligation to report her conduct to the Board. He explained that he had believed that he had discharged his duty by calling Inv. Douglass. Dr. Clemens apologized at hearing for not knowing of his duty to report to the Board and stated that, had he known, he would have reported Ms. Pabon's activity to the Board. (Tr. 42, 61-62, 176)

   During his June 1999 deposition, Dr. Clemens had testified that each of these prescription forms included his signature. However, at hearing, Dr. Clemens testified that each of prescription forms in evidence included a signature that "looks like" his signature but would not confirm that they were indeed his signatures. At hearing, Dr. Clemens testified that, other than the signatures which looked like his, he did not recognize any of the writing on the prescriptions. Dr. Clemens explained that there is a possibility that his signature is on those prescriptions and that is also possible that someone else forged his signature on them. One prescription also contains a second "physician's" signature which Dr. Clemens testified he was unable to identify. (Tr. 62-67, 71-75, 169-171; St. Exs. 2-17; St. Ex. 20 at 23-30, 34-37)

8. Terrill D. McLaughlin testified that he is the Assistant Director of the Board. He explained that reports of suspected misconduct by Board licensees come to him and that no complaint or report had ever been filed with the Board against Ms. Pabon by Dr. Clemens. (Tr. 34-36)

9. Dr. Clemens testified that during the time Ms. Pabon was in his employ it was his office protocol for him to sign a blank prescription form and then have his staff fill in the other information on the form. Dr. Clemens further testified that there were a lot of different

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prescriptions going out of his office for a lot of different reasons. Dr. Clemens explained that he would stand at a desk in his front office and an assistant would stand at a nearby desk as he dictated notes after seeing a patient. Dr. Clemens also explained that an office assistant would tell him how many mail order prescriptions were needed for a particular patient. He would sign the appropriate number of prescription blanks and hand them to the nurse or assistant to complete. He also explained that he would sign prescriptions for patients seen by Ms. Pabon but that it would be the nurse or assistant, not Ms. Pabon, who would complete the pre-signed prescription blanks. (Tr. 76-84; St. Ex 20 at 25-26)

Dr. Clemens testified at his deposition that he believed that the prescription blanks used illegally by Ms. Pabon would have to have been signed for mail order prescriptions and stolen before her termination. He explained that the nurses would have noticed the disappearance of "acute prescriptions." He also explained that he suspected that as he stood at his front office desk that a phone would ring or a nurse would step away for a moment there were ample opportunities for Ms. Pabon to steal individual signed prescription blanks. However, at hearing Dr. Clemens testified that he does not know how she got them. (Tr. 84-89; St. Ex. 20 at 26, 30-35)

10. Dr. Clemens testified that Board Investigator Karl Sadler came to his office in early 1999. He explained that when Mr. Sadler started to ask him about his prescription habits he was taken aback. Dr. Clemens conceded that he was surprised and probably arrogant. Dr. Clemens explained that he volunteered to Mr. Sadler that he sometimes signed prescriptions in advance. Dr. Clemens testified that, when Mr. Sadler had told him that the Board "might have problems with the way that I signed prescriptions[,] I didn't think that was going to generate any action against my license." He noted that he had not thought it was a serious problem. However, he became frightened and told his staff that the practice would cease that day and that he would only sign prescriptions that were completely filled out. (Tr. 168-169, 173-174)

11. At hearing, Dr. Clemens testified that after the June deposition he had refreshed his recollection by speaking to members of his staff and reflecting on the questions. Dr. Clemens further testified that he had begun this process on his drive home from the deposition. Dr. Clemens also testified that during his drive home he attempted to call the Board no less then 10 times but was unable to reach Mr. Izzo who had conducted the deposition. Dr. Clemens attributed his inability to reach Mr. Izzo to difficulties dealing with the Board's automated telephone system. Dr. Clemens testified that upon arriving in Lima he spoke with his attorney who advised him to have no further conversations with Mr. Izzo. (Tr. 69-71; St. Ex. 20)

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12. Joan Starr, R.N., testified on behalf of the Respondent. Ms. Starr graduated from the Lima Memorial Hospital School of Nursing in 1962 and has worked as a nurse since that time. She worked for David Barr, M.D., from 1970, until his retirement in 1991 when Dr. Clemens purchased Dr. Barr's practice and retained Dr. Barr's staff. (Tr. 117-119)

    Ms. Starr testified that the office procedure had been for Dr. Barr to pre-sign prescription forms to be completed and sent out for mail order prescriptions. Ms. Starr further testified that this did not change when Dr. Clemens took over the practice. She explained that this procedure continued until Mr. Sadler advised Dr. Clemens that it was inappropriate. She noted that since that time all prescriptions are completely filled out, signed, and dated. (Tr. 119-122, 126-130)

    Ms. Starr testified that, in October 1996, the office received a telephone call from an individual alleging misconduct on the part of Ms. Pabon. Ms. Starr further testified that both she and Dr. Clemens spoke to Mr. Johnson about the matter. Ms. Starr told Mr. Johnson she was not aware of any evidence of misconduct by Ms. Pabon. At hearing, Ms. Starr conceded that she had been aware of rumors in the office that Ms. Pabon had been seen going into locked cabinets where she did not belong. However, she was aware of no evidence to support the rumors. (Tr. 122-129)

    Ms. Starr testified that she never observed any evidence of misconduct by Ms. Pabon until October 1997, when she learned of the illegally passed prescriptions from a local pharmacist. Ms. Starr immediately notified Dr. Clemens and he instructed her to notify the DEA. She testified that she immediately telephoned and left a message for Inv. Douglass. The following day Inv. Douglass returned her call and she explained the situation to him. Ms. Starr testified that it did not occur to her to contact the Board. (Tr. 124-130)

13. Jerry Johnson testified on behalf of the Respondent. Mr. Johnson is an attorney at law, licensed to practice in the State of Ohio. Mr. Johnson graduated from the College of Law at Ohio Northern University in 1975 and has been in private practice in Lima since that time. He is a former City Prosecutor and has served in various Bar Association positions. Mr. Johnson testified that he has not practiced before any of the professional licensing Boards except the Ohio Supreme Court. [NOTE: At hearing, Dr. Clemens stated that he had discussed his attorney-client privilege with Mr. Johnson prior to hearing and waived any claim to that privilege.] (Tr. 131-132, 151)

    Mr. Johnson testified that he has known Dr. Clemens since 1991 when Dr. Clemens was referred to Mr. Johnson as a client needing assistance with the purchase of Dr. Barr's practice. Coincidentally, Dr. Clemens also lives next door to Mr. Johnson. (Tr. 133)

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Mr. Johnson testified that Dr. Clemens is prone to "shoot from the hip" or make assumptions before all the evidence is in "because he wants to do the right thing." Mr. Johnson described Dr. Clemens as being a very principled, ethical person who has no tolerance for others who lie to him or violate ethical rules. (Tr. 138-139, 145-146)

Mr. Johnson testified that in October 1996, he had several telephone conversations with Dr. Clemens regarding Ms. Pabon and that Dr. Clemens had been quite upset. Mr. Johnson advised Dr. Clemens that he needed something to substantiate the allegations before putting Ms. Pabon's livelihood in danger by reporting her to the DEA or any other agency. Mr. Johnson further advised Dr. Clemens to contact pharmacists in the area. Dr. Clemens had told Mr. Johnson that he did not know if the caller had been truthful. Mr. Johnson testified that he was later advised, both by Dr. Clemens and Ms. Starr, that they had not located any information to substantiate the allegations against Ms. Pabon. Mr. Johnson then advised Dr. Clemens to confront, not accuse, Ms. Pabon and ask her if there was any truth to the callers claims. At hearing, Mr. Johnson explained that he was concerned about a possible lawsuit against Dr. Clemens by Ms. Pabon if Dr. Clemens acted without enough evidence. (Tr. 133-139, 145-146, 150-151)

Mr. Johnson testified that after Dr. Clemens confronted Ms. Pabon in October 1996, he advised Mr. Johnson that she had not admitted any impropriety in regard to prescriptions. Mr. Johnson further testified that he had been unaware that Dr. Clemens had testified differently at his board deposition until the Assistant Attorney General showed him the transcript at hearing in January 2000. (Tr. 139-140, 146-148; St. Ex. 20 at 27-28)

Mr. Johnson testified that he and Dr. Clemens did not discuss Ms. Pabon again until late December 1996. At that time Dr. Clemens advised him that he had terminated Ms. Pabon for reasons totally unrelated to the prescription allegations. (Tr. 140-141, 148, 150)

Mr. Johnson testified that he and Dr. Clemens next discussed Ms. Pabon in October of 1997. At that time he was told of the illegally passed prescriptions and that Dr. Clemens' office had already contacted the DEA. Mr. Johnson also testified that he did not advise Dr. Clemens to contact the Board or any other agency. (Tr. 141, 149)

Mr. Johnson testified that Dr. Clemens called him when he received a deposition subpoena in 1999. Mr. Johnson also testified that he had contacted the Board to determine the subject matter of the deposition and had been told that it was confidential. Both Mr. Johnson and Dr. Clemens concluded that the deposition would be about Ms. Pabon's conduct as reported to the DEA. (Tr. 141-143, 149-150)

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Mr. Johnson testified that after the deposition, Dr. Clemens had called him from his car phone and was frantic. Mr. Johnson further testified that Dr. Clemens told him that he had been confused during the deposition, that he had been asked questions, about his own conduct, and that he had not had the opportunity to consult his records. Mr. Johnson also testified that Dr. Clemens indicated he wanted to contact the Board and correct some of his answers. However, Mr. Johnson advised Dr. Clemens not to contact the Board for that purpose. (Tr. 143-144)

14. John E. Pack, R. Ph., testified on behalf of the Respondent. Mr. Pack received a Bachelor of Arts degree in 1970, served in the military, and then received a Bachelor of Science in Pharmacy from the University of Cincinnati in 1977. Mr. Pack has been the owner-operator of Pack Pharmacy in Lima since 1977. Mr. Pack has an extensive background of active public service with professional associations and in training pharmacy students. Mr. Pack also served a five year term on the Allen County Board of Health. Mr. Pack testified that he knows Dr. Clemens very well. He pointed out that after observing Dr. Clemens practice over several years from the vantage point of his work as a pharmacist he transferred his family's care to Dr. Clemens. (Tr. 100-104)

Mr. Pack further testified that he is not familiar with another physicians' office that is more responsive, more accurate in its communications with the pharmacy, and maintains Dr. Clemens level of expectations for excellence involving patient records and ordering drugs. Mr. Pack testified that he is familiar with Dr. Clemens reputation as a physician among physicians, pharmacists and patients in the community and that that reputation is sterling. Mr. Pack also testified that he is familiar with Dr. Clemens general reputation in the community and that reputation is very positive. Mr. Pack testified that he can not picture Dr. Clemens knowingly violating any statute or board rule. (Tr. 104-115)

Mr. Pack testified that signing an otherwise blank prescription and leaving it for a staff member to fill out would be bad practice just as signing a otherwise blank check would be bad practice. However, he also testified that in the complex real world there may occasionally be valid reasons for doing either. (Tr. 115; St. Exs. 2-17)

15. Robert A. Wheeler, M.D., practices internal medicine in Lima, Ohio. He graduated from Texas A & M College of Medicine in 1988 and did additional training in Richmond, Virginia, before relocating to Lima. Dr. Wheeler testified that he and Dr. Clemens have been both professional acquaintances and personal friends for about 8 years. Dr. Wheeler stated that he is familiar with Dr. Clemens personal and professional reputations in Lima and that both are "outstanding." Dr. Wheeler further testified that he believes that Dr. Clemens is a person of high character and that he couldn't see Dr. Clemens knowingly doing anything wrong. (Tr. 94-100)

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FINDINGS OF FACT

1. From on or about July 29, 1996, to at least December 16, 1996, on at least sixteen (16) different occasions, Peter Conover Clemens, D.O., signed an otherwise blank prescription without ensuring that the prescription was completed and without ensuring that it was provided to the patient for whom it was intended. Dr. Clemens' office protocol allowed for such signed prescriptions to be out of his control and authority. The evidence shows that the 16 prescriptions in evidence were pre-signed prescriptions stolen from his office. The testimony of Dr. Clemens and Ms. Starr proves that additional pre-signed prescriptions were handled in such a way that did not ensure that they were completed and provided to the intended patient.

2. On or about October 15, 1996, a physician assistant in Dr. Clemens' employ admitted to Dr. Clemens that, at her request, her boyfriend called prescriptions to pharmacies while using Dr. Clemens name. Dr. Clemens failed to report this admission to the State Medical Board of Ohio. The contemporaneous notes from Dr. Clemens' personnel file combined with his admission at deposition that Ms. Pabon had admitted her misconduct to him outweighs Dr. Clemens later claims that she made no admissions.

3. The evidence is insufficient to prove that narcotics were present in Dr. Clemens' office and could have been stolen by Ms. Pabon.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Peter Conover Clemens, D.O., as described in Findings of Fact 1 individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 3719.99(E), Ohio Revised Code (as in effect prior to March 31, 1997), "Penalties," to wit: Section 3719.06(A), Ohio Revised Code (as in effect prior to July 22, 1998), "Prescribing, dispensing and administering by dentist, physician, veterinarian or advanced practice nurse."

2. Dr. Clemens' acts, conduct, and/or omissions as described in Findings of Fact 2, individually and/or collectively, constitute "[v]iolating 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 (as in effect prior to March 9, 1999), to wit:

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Section 4731.224(B), Ohio Revised Code (as in effect prior to March 9, 1999), "Health Care Facilities, Licensees, Professional Associations, and Insurers to Report Misconduct."

Section 4731.224(B), Ohio Revised Code, required in part, a licensee who believes that a violation of any provision of Chapters 4730 and 4731 or any rule of the board has occurred shall report to the Board the information upon which the belief is based.

3. Dr. Clemens' acts, conduct, and/or omissions as described in Findings of Fact 2, individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 4731.99(E), Ohio Revised Code (as in effect prior to March 9, 1999), "Penalties," to wit: Section 4731.224(B), Ohio Revised Code (as in effect prior to March 9, 1999).

   Section 4731.99, Ohio Revised Code, stated in part, whoever violates Section 4731.224(B), Ohio Revised Code is guilty of a misdemeanor.

4. Dr. Clemens' acts, conduct, and/or omissions as described in Findings of Fact 2, individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 4730.99(B), Ohio Revised Code, "Penalties," to wit: Section 4730.32(B), Ohio Revised Code (as in effect prior to March 9, 1999), "Health Care Facility or Professional Society To Report Disciplinary Proceeding; Persons And Organizations Obliged To Report Suspected Violation; Report By Liability Insurer."

   Section 4730.99(B), Ohio Revised Code, states in part, whoever violates Section 4730.32(B), Ohio Revised Code, is guilty of a misdemeanor.

   Section 4730.32(B) required in part, a physician that believes a violation of any provision of Chapters 4730 and 4731 or rule of the Board has occurred shall report to the Board the information upon which the belief is based.

5. Dr. Clemens' acts, conduct, and/or omissions as described in Findings of Fact 2, individually and/or collectively, constitute "[v]iolating 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

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4731.22(B)(20) (as in effect prior to March 9, 1999), Ohio Revised Code, to wit: Rule 4731-15-01, Ohio Administrative Code, "Licensee Reporting Requirement; Exceptions."

Sections 4731.22(B)(20), Ohio Revised Code, provided in part, that 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 is a basis for discipline by the Board.

Rule 4731-15-01, Ohio Administrative Code, requires in part, any individual licensed under Chapter 4731, Ohio Revised Code or any physician assistant to report to the Board a belief that a violation of Chapter 4731 or 4730, Ohio Revised Code, or any rule of the Board has occurred.

* * * * *

The record provides ample proof that Peter Conover Clemens, D.O., failed to ensure that prescriptions were completed and provided to the intended patient. Dr. Clemens failure to appreciate the importance to the public safety and his legal obligation to make a report to the Board when he learned of Ms. Pabon's misconduct are of particular concern.

If Dr. Clemens intended to follow the law and the rules of the Board, he was very careless. This carelessness merits his suspension from practice. However, his immediate remediation and compliance efforts justify the staying of a suspension. Specifically, Dr. Clemens immediately ended his practice of pre-signing prescriptions when advised by Mr. Sadler it was inappropriate. In addition he made some efforts to report Ms. Pabon's misconduct to local authorities.

The record suggests that at a minimum, in addition to the general conditions of probation, Dr. Clemens should demonstrate proficiency in the laws governing physician assistants.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Peter Conover Clemens, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for a period of 1 year. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least 3 years.

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a. Dr. Clemens shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Clemens shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Clemens shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

b. Dr. Clemens shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Clemens has privileges or appointments. Further, Dr. Clemens shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Clemens applies for or obtains privileges or appointments. Further, Dr. Clemens shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

c. Dr. Clemens shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.

d. Dr. Clemens shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio statutes and Board rules relating to the practice of physician assistants. Successful completion of this examination shall be a prerequisite to Dr. Clemens being released from probation. In the event that Dr. Clemens fails this examination, he must wait at least three months between re-examinations.

e. In the event that Dr. Clemens should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Clemens must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

f. Dr. Clemens shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the

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Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

g. Dr. Clemens shall appear in person for interviews before the full Board or its designated representative within three months of the date on which this order becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, 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. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Clemens' responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Clemens shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

h. If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Clemens shall cease practicing osteopathic medicine and surgery in Ohio beginning the day following Dr. Clemens' receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice of medicine in violation of Section 4731.41, 4731, Ohio Revised Code.

i. If Dr. Clemens violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

j. Periods of time during which Dr. Clemens' certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

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k. If Dr. Clemens violates probation 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.

3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Clemens' certificate will be fully restored.

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 May 10, 2000

REPORTS AND RECOMMENDATIONS

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

Dr. Egner 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 matters of Thomas O. Bihr, L.M.T.; Dino T. Cacioppo, D.O., M.D.; Peter Conover Clemens, D.O.; Steven D. Gelbard, M.D.; Breton C. Juberg, M.D.; Gautam C. Thakur, M.D.; and Richard Wallace Thomas, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Egner	- aye

Dr. Egner 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. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye

Dr. Steinbergh	- aye
Dr. Egner	- aye

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. Egner 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.

Dr. Stienecker stated that he would recuse himself from the matter of Peter Conover Clemens, D.O.

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PETER CONOVER CLEMENS, D.O.

Dr. Egner directed the Board's attention to the matter of Peter Conover Clemens, D.O. She advised that objections were filed to Hearing Examiner Roberts' Report and Recommendation and were previously distributed to Board members.

Dr. Egner continued that a request to address the Board has been filed on behalf of Dr. Clemens.

MR. BROWNING MOVED TO ALLOW DR. CLEMENS TO ADDRESS THE BOARD. DR. BHATI SECONDED THE MOTION. A vote was taken:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- abstain
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

Dr. Egner advised that five minutes would be allowed for Dr. Clemens' address.

Mr. Huffman addressed the Board. He stated that he wants to make clear a couple of legal issues first, and then Dr. Clemens would personally address the Board. Mr. Huffman stated that the Board should keep in mind the fact that the most significant finding that the Hearing Examiner made was regarding the use of pre-signed prescriptions. In fact, there was never any evidence that the prescriptions used by the individual in question were ever signed by Dr. Clemens. The testimony provided by the investigating officer, Detective Douglas in Allen County, was that his investigation showed that the individual had actually stolen unsigned prescriptions and that she had forged Dr. Clemens' signature. That really is the basis of the entire set of charges dealing with the pre-signed prescriptions.

Mr. Huffman continued that the second point is that the statute that is alleged to have been violated relates only to prescriptions issued by the physician. The statute is intended to apply to situations where the doctor is simply issuing prescriptions, perhaps without a name or other important information. The word, "issue," has particular significance, because they have to have given it or sent it to some individual. There's no question that in this case the prescription blanks, whether pre-signed by Dr. Clemens or not, were stolen by an individual who worked in his office. Certainly Dr. Clemens could not have violated a statute where he was to have issued or given these prescriptions to somebody else. In that light, they believe that the charges regarding the prescriptions themselves are inappropriate.

Dr. Clemens stated that in 1992 he completed his public health term and he purchased his first private practice from David Barr, M.D., who is past president elect of the Ohio Academy of Family Physicians. Dr. Barr's practice, including some of the nurses whom Dr. Clemens retained, became Dr. Clemens' practice. Part of that practice was the closely supervised, occasional, pre-signing of mail-away prescriptions for Medicare patients. On the day he learned that this practice was unacceptable to the State Medical Board upon a visit from a Board investigator in Spring 1999, he ceased the practice. He has never pre-signed a prescription since that day.

Dr. Clemens continued that, as to the issue of reporting, he reported Ms. Pabon immediately in 1997 on the same day that he learned that she was passing prescriptions with his signature. He knows now that he should have notified the Board immediately in October 1996 when he suspected a problem. He is truly sorry for his oversight.

Dr. Clemens advised that he has been in private practice for four years. He was never in a situation like this previously. He didn't know the reporting requirements as well as he should have. He no longer employs a physician assistant; but if he did, and this happened again, he would certainly make a better decision. He sees approximately 25 patients per day. The reason he sees only 25 patients per day is because he prides himself on taking great care in looking after details. This was an important detail of reporting that got by him and he's very sorry for that.

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

Ms. Strait stated that she would like to respond to the points made by Mr. Huffman, the first point being that the most significant finding that the Hearing Examiner made had to do with the pre-signed prescriptions and his claim that there was never any evidence that the prescriptions actually used by the P.A. in question were ever signed by Dr. Clemens. Ms. Strait stated that that's not true. Dr. Clemens admitted in his investigatory deposition that it was his signature on those prescriptions. At hearing he changed that story, after he figured out that he'd better change his story. Ms. Strait stated that she would respectfully submit that Dr. Clemens has no credibility here. She pointed out that at hearing Dr. Clemens did not deny that it was his signature on the 16 prescriptions in question. What he said was that it was possible that they were his signatures, but he couldn't be sure. Ms. Strait stated that that was only one example of the differences between Dr. Clemens' testimony at hearing and his testimony at the deposition. Ms. Strait stated Dr. Clemens' attorney testified that they thought somebody else was under investigation when they gave the deposition and he didn't realize that Dr. Clemens was being investigated. Ms. Strait stated that she doesn't know what the Board is supposed to conclude from that. Would his answers have been different had he known that he was the one being investigated? Ms. Strait stated that it has always been her impression that when you are being deposed by anybody, particularly your own state licensing Board, you tell the truth.

Ms. Strait continued that the Hearing Examiner found that there was reliable, probative and substantial evidence to support the Board's charge that Dr. Clemens had violated the provisions of §3719.06, which has to do with pre-signing prescriptions. Even if the Board were to accept that these particular 16 prescriptions were not pre-signed by Dr. Clemens, Dr. Clemens testified that it was his office protocol to pre-sign prescriptions. Ms. Starr of his office testified that it was his office protocol to pre-sign prescriptions. As for Mr. Huffman's argument that these prescriptions were never really "issued," signing a prescription is like signing a check. He was signing blank checks. The point made in the objections is absolutely true. That statute is to prevent prescriptions from getting into the wrong hands. That's why the statute requires that everything on the prescription be filled out. That's exactly what happened here. These prescriptions that were pre-signed got into the wrong hands and were abused.

Ms. Strait stated that, with regard to mandatory reporting, Dr. Clemens has stated that he did not know there were mandatory reporting requirements. Ms. Strait stated that Dr. Clemens actually violated two different mandatory requirements, one being the requirement that when you terminate a P.A.'s employment, you notify the Board within two business days; the second being that when you're a licensee of this Board and you have knowledge that another licensee has violated the law, you must report that. Dr. Clemens violated both of those reporting requirements. Dr. Clemens is a physician licensed in the State of Ohio and is expected to know the laws and rules governing the practice of medicine.

Ms. Strait stated that she feels that the Proposed Order is quite generous to Dr. Clemens considering these factors. The Proposed Order calls for a stayed suspension and a three-year probation during which the only thing he has to do is take a test on the P.A. rules. Ms. Strait stated that if that is all the Board is going to

do, one thing the Attorney General's office would like to see added is a requirement that he take the prescribing course at Case Western or some similar course. Clearly, Dr. Clemens did not understand the rules and regulations with regard to prescribing of controlled substances.

Mr. Huffman and Dr. Clemens asked whether they could respond. Dr. Egner stated that they could not.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF PETER CONOVER CLEMENS, D.O. DR. AGRESTA SECONDED THE MOTION.

Dr. Egner stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that in reviewing this case, a couple of points come to mind. The first is that there is ample evidence to demonstrate that Dr. Clemens has been an appropriate physician except for this error in judgment regarding pre-signing prescriptions, and for not appropriately reporting his physician assistant. Dr. Steinbergh stated that she does not disagree with the Order itself, except she feels that it is too severe.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER BY REDUCING THE SUSPENSION TO THREE MONTHS, STAYING THE SUSPENSION, AND BY REDUCING THE PROBATION PERIOD TO A MINIMUM OF ONE YEAR.

Dr. Steinbergh stated that she doesn't think that there is any reason that Dr. Clemens needs to be under probation for any longer than that. The Board is demonstrating to him that his license should be suspended for certain actions. The Board is staying the suspension and imposing a short probationary period in order for Dr. Clemens to fulfill the probationary term and for the Board to monitor him for a year to see that he complies. She disagrees with the need for a course in controlled substance prescribing. The Board has no evidence that demonstrates that he wasn't prescribing appropriately. He pre-signed prescriptions, and she believes that he now understands what he's done.

DR. BUCHAN SECONDED THE MOTION.

Dr. Bhati stated that he believes that Dr. Clemens has recognized his problem, and he immediately corrected it. He asked what the Board would achieve by a one-year suspension and three years' probation. Dr. Bhati stated that the prescribing problem consisted of Dr. Clemens pre-signing prescriptions, and he doesn't believe that Dr. Clemens will ever do that again. Putting Dr. Clemens through a one-year suspension and three years' probation is not going to do a lot of good. He would be more inclined to go with six months' probation without suspension.

Dr. Steinbergh stated that her motion is to stay the suspension, which is appropriate in regards to the P.A. issue. Dr. Clemens' license will not be suspended, he has a stayed suspension with probation for a year.

Dr. Buchan stated that, as he read through this case, he had similar notes to Dr. Steinbergh's recommendation and he would support that amendment. Dr. Buchan stated that he read Dr. Clemens' deposition, and he feels that Dr. Clemens is an appropriate physician and an asset to the community that he serves. As things became a bit unraveled, some poor choices were made but, by the same token, Dr. Clemens recognized the problems and dealt with them. Anything longer than a year's probation is unnecessary. Dr. Buchan spoke in support of the amendment.

Dr. Egner stated that this case teaches physicians a couple of things: one in terms of whether the signatures were forged or not. Looking at those prescriptions, they could have been forged, but the reason that they could have been is that Dr. Clemens' signature was so poor on the prescription. She thinks it teaches all a lesson: write your name so that it is legible and it's probably harder to forge it. The other thing is to be very careful of the practices you pick up from other physicians. Dr. Egner stated that she sees where that happened here. Dr. Clemens came into a practice, he didn't have a lot of experience when he took over that practice, and he just took on some habits that another physician had without realizing the detriment of it. For those reasons, she considered a reprimand when she read this case.

Dr. Steinbergh stated that she disagrees with Dr. Egner's statement somewhat because she does believe that young physicians are properly educated in how to manage their prescriptions, and to simply sign a prescription pad and allow someone else to fill it out is inappropriate. Students are not taught in medical school or residency about prescription writing. Students are taught appropriately. Although the habits of the physician before him may have been poor, he had to make that choice also. She believes Dr. Clemens made an inappropriate choice, and she does not think it was because of lack of education.

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

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- abstain
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF PETER CONOVER CLEMENS, D.O. DR. BHATI SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert	- abstain
Dr. Bhati	- aye
Dr. Talmage	- aye
Dr. Buchan	- aye
Mr. Browning	- aye
Ms. Noble	- aye
Dr. Stienecker	- abstain
Dr. Agresta	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

August 11, 1999

Peter Conover Clemens, D.O.
830 West High Street, #307
Lima, Ohio 45801

Dear Doctor Clemens:

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) From on or about July 29, 1996, to at least December 16, 1996, on at least sixteen (16) different occasions, you signed an otherwise blank prescription without ensuring that the prescription was completed and without ensuring that it was provided to the patient for whom it was intended. Your office protocol allowed for such signed prescriptions to be out of your control and authority.

(2) On or about October 15, 1996, a physician assistant in your employ admitted to you that at her request her boyfriend called prescriptions to pharmacies while using your name. She also admitted that she was stealing narcotics from your office. You failed to report these admissions to the State Medical Board of Ohio.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 3719.99(E), Ohio Revised Code (as in effect prior to March 31, 1997), "Penalties," to wit: Section 3719.06(A), Ohio Revised Code (as in effect prior to July 22, 1998), "Prescribing, dispensing and administering by dentist, physician, veterinarian or advanced practice nurse."

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any

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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 (as in effect prior to March 9, 1999), to wit: Section 4731.224(B), Ohio Revised Code (as in effect prior to March 9, 1999), "Health Care Facilities, Licensees, Professional Associations, and Insurers to Report Misconduct."

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 4731.99(E), Ohio Revised Code (as in effect prior to March 9, 1999), "Penalties," to wit: Section 4731.224(B), Ohio Revised Code (as in effect prior to March 9, 1999).

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code (as in effect prior to March 9, 1999), to wit: Section 4730.99(B), Ohio Revised Code, "Penalties," to wit: Section 4730.32(B), Ohio Revised Code (as in effect prior to March 9, 1999), "Health Care Facility of Professional Society To Report Disciplinary Proceeding; Persons And Organizations Obliged To Report Suspected Violation; Report By Liability Insurer."

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[v]iolating 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) (as in effect prior to March 9, 1999), Ohio Revised Code, to wit: Rule 4731-15-01, Ohio Administrative Code, "Licensee Reporting Requirement; Exceptions."

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, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

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/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 246
RETURN RECEIPT REQUESTED

cc: Jerry M. Johnson, Esq.
CERTIFIED MAIL #Z 395 591 245
RETURN RECEIPT REQUESTED