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CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Roy William Harris, D.O., | : | |
| Appellant-Appellant, | : | |
| | | No. 11AP-671 |
| v. | : | (C.P.C. No. 10CVF-12344) |
| State Medical Board of Ohio, | : | (REGULAR CALENDAR) |
| Appellee-Appellee. | : | |

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on September 4, 2012, appellant's two assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs are assessed against appellant.

BROWN, P.J., BRYANT, and CONNOR, JJ.

Judge Susan Brown, P.J.

20885 - Q64

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FRANKLIN COUNTY, OHIO
2012 SEP -4 PM 12:47
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Roy William Harris, D.O., | : | |
| Appellant-Appellant, | : | |
| | | No. 11AP-671 |
| v. | : | (C.P.C. No. 10CVF-12344) |
| State Medical Board of Ohio, | : | (REGULAR CALENDAR) |
| Appellee-Appellee. | : | |

D E C I S I O N

Rendered on September 4, 2012

*Brouse Law Office*, and *Karen H. Brouse*, for appellant.

*Michael DeWine*, Attorney General, and *Kyle C. Wilcox*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶1} Roy William Harris, D.O., appellant, appeals a July 29, 2011 judgment of the Franklin County Court of Common Pleas, in which the court affirmed the August 13, 2010 order of the State Medical Board of Ohio ("board"), appellee.

{¶2} Appellant obtained his osteopathic medical degree in 1992 and completed his residency in internal medicine in 1995. At all times relevant, appellant maintained his own internal medicine practice in Bucyrus, Ohio, and also provided various services to a local hospital, including emergency room services and electrocardiogram ("EKG") readings. He also served as the medical director of several local nursing homes.

{¶3} The present matter pertains to allegations against appellant relating to two persons, referred to by the board as "Patient 1" and "Patient 2." Patient 1, a female born in 1983, saw appellant for medical care once in December 2000 and once in January 2001. When she became pregnant, she began seeing another doctor. In the fall of 2003, appellant asked Patient 1 if she was interested in cleaning his medical office, as she also cleaned at the local hospital, and she agreed to do so. In September 2003, appellant and Patient 1 began a sexual relationship. On October 7 and 21, 2003, appellant saw Patient 1 in his office for complaints regarding a sore throat and chest congestion, after which he prescribed her medications and gave her a birth-control injection on both occasions. On November 24, 2003, appellant ordered a pregnancy test for Patient 1, the results of which were negative. Sometime in 2004, Patient 1 told appellant that she had been his patient in 2000 and 2001, and appellant testified he had not remembered treating her. Appellant next saw Patient 1 in his office on February 25, 2005, because Patient 1 needed a physical examination to enter nursing school in a few days, and her primary-care physician was out of town. Appellant performed a physical examination and ordered a blood test. On February 27, 2005, appellant saw the test results indicated Patient 1 was anemic, and he wrote her two prescriptions to treat such. Appellant also ordered a pregnancy test for Patient 1 on February 27, 2005, the results of which showed her to be pregnant. Appellant was found to be the father of that child in September 2006. Appellant and Patient 1's sexual relationship ended in February 2005.

{¶4} Patient 2 is a female born in 1966. In 2000, appellant read Patient 2's EKG when she went to the emergency room at a local hospital, and he billed her for the service. Appellant never saw Patient 2 at that time but only read her EKG as part of his duties at

the hospital. Appellant first met Patient 2 sometime in early 2001 because she was a nurse at a nursing home for which he was the medical director. Appellant and Patient 2 began a sexual relationship sometime between February and April 2002, and appellant testified he did not remember that he had read her EKG in 2000 until the board subpoenaed his records in November 2005. On February 16, February 25, and July 1, 2003, appellant prescribed Prozac for Patient 2 for anxiety, Diovan HCT for hypertension, and Zyprexa for bipolar disorder, respectively, with each prescription being for 90 days with three refills. The medications were originally prescribed by Patient 2's primary physician, but Patient 2 had been unable to see her primary physician to get new prescriptions so appellant continued the medications without any examination or diagnoses. Appellant and Patient 2 ended their sexual relationship sometime in February 2005. On March 11, 2005, Patient 2 called the local hospital because she was having anxiety over her father's recent death. The hospital directed her to another doctor in the same building where appellant was working. That doctor was busy but suggested to appellant that Patient 2 be prescribed Xanax so appellant wrote a prescription for Xanax for Patient 2 without ever speaking directly to her.

{¶5} After an anonymous tip, the board began investigating appellant regarding his care of Patients 1 and 2. The board's investigator interviewed appellant, during which appellant denied he had ever engaged in sexual activity with "Patient 1." On May 13, 2009, the board notified appellant that it proposed to take disciplinary action against him based upon the allegations that he had sexual contact with Patients 1 and 2 while they were involved in a physician-patient relationship, and that appellant gave deceptive information to the board during its investigation when he said he never had sexual contact with

"Patient 1." Specifically, the board alleged claims for: (1) false, fraudulent, deceptive, or misleading statements in the solicitation or advertising for patients or in securing or attempting to secure any certificate issued by the board pursuant to R.C. 4731.22(B)(5), (2) commission of an act that constitutes a felony, pursuant to R.C. 4731.22(B)(10), to wit: perjury pursuant to R.C. 2921.11, (3) departure from the minimal standards of care pursuant to R.C. 4731.22(B)(6), (4) violation of any provision of a code of ethics, pursuant to R.C. 4731.22(B)(18), to wit: American Osteopathic Associates ("AOA"), Code of Ethics, Section 15, and/or (5) failure to cooperate in an investigation conducted by the board pursuant to R.C. 4731.22(B)(34). On June 8, 2009, the board received appellant's request for a hearing on the matter.

{¶6} A hearing was held before the board's hearing examiner on November 9 and 10, 2009. On July 28, 2010, the hearing examiner issued a report and recommendation. The hearing examiner found appellant had violated R.C. 4731.22(B)(5), (6), (10), (18), and (34). Specifically, the hearing examiner found a physician-patient relationship was formed with Patient 1 in 2001, and there had been a physician-patient relationship when the sexual relationship began in 2003; even if no physician-patient relationship was formed with Patient 1 in 2001, a physician-patient relationship was established by the medical services appellant provided in 2003 and 2005, while appellant and Patient 1 were involved in a sexual relationship; no physician-patient relationship was established between appellant and Patient 2 when appellant read Patient 2's EKG in 2000; appellant and Patient 2 established a physician-patient relationship in February and July 2003, while appellant and Patient 2 were involved in a sexual relationship; and appellant's

denial that he never had sexual contact with Patient 1 was misleading, dishonest, and not reasonable.

{¶7} On August 11, 2010, the board issued an order adopting the report and recommendation of the hearing examiner. The board indefinitely suspended appellant's medical license for a minimum of six months, with conditions for reinstatement and probation for three years. On August 20, 2010, appellant appealed the order to the common pleas court. On July 29, 2011, the common pleas court affirmed the board's order. Appellant has appealed the decision of the common pleas court, and we have stayed the board's order pending appeal. In his appeal, appellant asserts the following assignments of error:

> [I.] The Franklin County Court of Common Pleas committed err[or] in upholding the decision of State Medical Board of Ohio (hereinafter "OSMB"). The OSMB, in the Entry of Order, Case No. 09-CRF-059, indefinitely suspended Dr. Harris' license to practice medicine based upon the findings that Dr. Harris' acts or conduct departed from, or failed to conform to, the minimum standard of care in that Dr. Harris had engaged in sexual contact with two women despite an "ongoing physician/patient relations during the time of sexual contact" in violation of R.C. § 4731.22(B)(6) and § 4731.22[B](18).
>
> [II.] The Franklin County Court of Common Pleas committed err[or] in upholding the decision of the OSMB to suspend Dr. Harris' license to practice medicine based upon a finding that Dr. Harris had provided deceptive information during the OSMB investigation. The OSMB specifically said Dr. Harris' actions violated several sections of the Ohio Revised Code, to wit: R.C. § 4731.22(B)(5), R.C. § 4731.22(B)(10), R.C. § 4731.22(B)(34), and R.C. § 2921.11.

{¶8} Appellant argues in his assignments of error that the common pleas court erred when it affirmed the board's order. In an appeal from a board order, a reviewing trial court is bound to uphold the order if it is supported by reliable, probative, and substantial

evidence, and is in accordance with law. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993); R.C. 119.12. On questions of law, however, the common pleas court does not exercise discretion and this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339 (1992), paragraph one of the syllabus. Reliable, probative, and substantial evidence has been defined as follows:

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

*Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992). Upon further appeal to this court, however, our review is more limited than that of the court of common pleas. *Pons* at 621. While it is incumbent on the court of common pleas to examine the evidence, the court of appeals must determine only if the lower court abused its discretion in finding that the board's order was supported by reliable, probative, and substantial evidence and in accordance with law. *Id.* Moreover, when reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. *Pons* at 621-22. "The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [people] equipped with the necessary knowledge and experience pertaining to a particular field." *Farrand v. State Med. Bd.*, 151 Ohio St. 222, 224 (1949). On questions of law, however, our review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine* at paragraph one of the syllabus.

{¶9} As related to the violations in this case, R.C. 4731.22(B) provides, in pertinent part:

> (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:
>
> * * *
>
> (5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.
>
> As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
>
> (6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;
>
> * * *
>
> (10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;
>
> * * *
>
> (18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the

American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

* * *

(34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue.

{¶10} Section 15 of the AOA Code of Ethics provides:

It is considered sexual misconduct for a physician to have sexual contact with any current patient whom the physician has interviewed and/or upon whom a medical or surgical procedure has been performed.

{¶11} R.C. 2921.11, detailing the offense of perjury, provides:

> (A) No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.
>
> (B) A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial.
>
> (C) It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.
>
> (D) Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.
>
> (E) No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.
>
> (F) Whoever violates this section is guilty of perjury, a felony of the third degree.

{¶12} Appellant argues in his first assignment of error that the common pleas court erred when it affirmed the board's order regarding its finding that his acts or conduct departed from the minimum standard of care in that he engaged in sexual contact with two women despite an ongoing physician-patient relationship, in violation of R.C. 4731.22(B)(6) and (18).

{¶13} With regard to Patient 1, appellant asserts that, during the entire course of their sexual relationship from September 2003 to February 2005, Patient 1 was seeing a different primary-care physician; thus, she was not his current patient. Appellant also

contends that the fact that he treated Patient 1 in 2000 and 2001 did not make her a current or ongoing patient when their sexual relationship began in September 2003, especially since Patient 1 began seeing another physician when she became pregnant, and he does not treat pregnant women. He also contends his treatment of her twice in October 2003, once in November 2003, and twice in February 2005, were merely "episodic" treatments when she was unable to see her primary physician, and these did not establish her as his patient.

{¶14} We find the trial court did not abuse its discretion when it found the board's order was supported by reliable, probative, and substantial evidence and in accordance with law. Dr. Marc L. Carroll provided testimony to support violations with respect to Patient 1. Dr. Carroll opined that appellant and Patient 1 had a physician-patient relationship. Dr. Carroll testified that the first contact with someone who comes to a doctor's office for treatment establishes the physician-patient relationship; thus, a physician-patient relationship was established in 2000 and 2001 when Patient 1 consulted with appellant. Dr. Carroll stated there was no evidence that appellant had discharged Patient 1 from his practice at any time. Although appellant contends that any relationship was severed because Patient 1 became pregnant and began seeing another doctor, and any treatment or prescriptions thereafter were only "episodic" treatment, we disagree. Patient 1 did not receive patient care from appellant for over two years after the initial consultations; however, Dr. Carroll stated there was no evidence that Patient 1 intended to leave appellant's practice permanently. In fact, Patient 1 returned to appellant for treatment on October, 7 and 21, November 24, 2003, February 25 and 27, 2005. He also testified that it was not uncommon for young patients like Patient 1 to see a doctor very

infrequently, even several years between appointments; yet, these individuals would remain the doctor's patients the entire time.

{¶15} Dr. Carroll's testimony also established that appellant engaged in a sexual relationship with a current patient when Patient 1 returned to appellant for treatment on October 7 and 21, November 24, 2003, February 25, and 27, 2005, all of which established physician-patient relationships. Dr. Carroll further stated that, if a doctor prescribes a controlled substance like appellant did during these appointments, a physician-patient relationship is created. Dr. Carroll explained that a physician-patient relationship is created if an examination, treatment, and diagnosis takes place, and, here, appellant ordered a lab test, compiled a diagnosis based on the lab test, and subsequently treated Patient 1 by giving her prescriptions based upon the lab test.

{¶16} Furthermore, despite appellant's argument that Dr. Carroll admitted there is no stated period to determine when a patient is no longer a patient, and what defines a current patient varies from doctor to doctor, the board could still rely upon Dr. Carroll's expert testimony to support the conclusion that appellant's interactions with Patient 1 in this particular case placed her within the definition of a current patient. Dr. Carroll said that, in his own and most others' practices, there is no amount of time that would pass that would automatically classify someone an ex-patient, and a patient remains a patient forever, unless the patient contacts the doctor for a records transfer or the doctor discharges the patient, neither of which occurred here. This testimony adds further support to the board's conclusion that Patient 1 remained a current and ongoing patient of appellant's throughout their sexual relationship. For these reasons, we cannot disagree that appellant and Patient 1 established a physician-patient relationship in 2000 and 2001,

after which appellant began a sexual relationship with her, and continued to have a sexual relationship throughout 2003 to 2005 while still providing her medical services. The fact that Patient 1 saw another physician during this period did nothing to alter the physician-patient relationship established between her and appellant.

{¶17} Appellant also argues that, pursuant to Ohio Adm.Code 4731-27-01(B)(1), a physician providing "episodic" care is not required to provide any notice of termination; thus, when Patient 1 began seeing another doctor after having become pregnant, she ceased being his patient. Ohio Adm.Code 4731-27-01(A) indicates that, except as provided in paragraph (B), in order to terminate a physician-patient relationship, a physician must mail to the patient via regular mail and certified mail a letter stating such. Ohio Adm.Code 4731-27-01(B)(1) provides:

> (B) The requirements of paragraph (A) of this rule do not apply in the following circumstances:
>
> (1) The physician rendered medical service to the person on an episodic basis or in an emergency setting and the physician should not reasonably expect that related medical service will be rendered to the patient in the future.

{¶18} Ohio Adm.Code 4731-27-01(B)(1) does indicate that a doctor is not required to comply with the stated requirements for termination of a physician-patient relationship if the doctor renders service to the person on an episodic basis; however, this section also requires that the physician not reasonably expect that related medical service will be rendered to the patient in the future. Patient 1 saw appellant once in December 2000 and once in January 2001, thereby clearly establishing a physician-patient relationship. Although appellant argues that Patient 1 left his practice for another physician because she was pregnant, and he does not treat pregnant patients, there is nothing in the record to

indicate that she was leaving his practice for all future care, as the above rule requires. In fact, she did return for significant future care, which included tests, lab work, and prescriptions for medications, even though she had another physician she saw regularly.

{¶19} In addition, we note that appellant confuses the issue by referring to the appointments in October 2003, November 2003, and February 2005 as "episodic" care and suggesting no physician-patient relationship is established for episodic care. Insofar as Ohio Adm.Code 4731-27-01(B)(1) is concerned, whether the October 2003, November 2003, and February 2005 interactions constituted episodic care is immaterial to whether Patient 1 was a current patient at the time the sexual relationship began, as well as whether a physician-patient relationship was established by these interactions. Ohio Adm.Code 4731-27-01(B)(1) only provides that the subsection (A) notice-of-termination requirements do not apply to episodic care; the rule does not provide that no physician-patient relationship is established when episodic care has been rendered. Instead, Ohio Adm.Code 4731-27-01 clearly indicates that "[a] physician-patient relationship is established when the physician provides service to a person to address medical needs." For all of the above reasons, we find the trial court did not err when it found reliable, probative, and substantial evidence to support the board's findings relating to Patient 1.

{¶20} With regard to Patient 2, the facts reveal that, on February 16 and 25, and July 1, 2003, appellant prescribed medications to Patient 2, each being 90-day prescriptions with three refills. The medications were originally prescribed by Patient 2's primary physician, but Patient 2 had been unable to see her primary physician to obtain another prescription. It is undisputed that appellant and Patient 2 were having a sexual relationship during this time.

{¶21} Appellant counters that the three times he wrote the prescriptions in February and July 2003 were only "episodic" treatments when Patient 2 was unable to see her normal primary-care physician. Appellant also asserts that he issued the 90-day prescriptions with three refills so that Patient 2's insurance would allow her to receive them for free, and that no current physician-patient relationship was established by his doing so.

{¶22} To the contrary, Dr. Carroll testified that appellant had a physician-patient relationship with Patient 2 because he diagnosed her, prescribed medication for her, and then treated her. He opined that appellant violated Section 15 of the AOA Code of Ethics because he was sexually involved with Patient 2 at the same time he was having a physician-patient relationship. He also stated that, if appellant were merely sustaining Patient 2's prescriptions for another doctor, he would not have written one-year prescriptions.

{¶23} We agree that the record supports the board's finding that appellant was having a sexual relationship with Patient 2 while she was his current patient. Dr. Carroll testified that the first contact with someone for treatment establishes the physician-patient relationship. We agree that appellant's treating Patient 2 three times within six months and prescribing her medications during each interaction established a physician-patient relationship. Furthermore, as explained above, Ohio Adm.Code 4731-27-01(B)(1) does not provide that no physician-patient relationship is established when episodic care is rendered. Rather, Ohio Adm.Code 4731-27-01 provides that "[a] physician-patient relationship is established when the physician provides service to a person to address medical needs." Thus, even if Patient 2 was still seeing another doctor whom Patient 2

considered her primary physician during the course of the sexual relationship, such does not detract from the fact that appellant provided her services to address her medical needs, thereby establishing a physician-patient relationship. *See* Ohio Adm.Code 4731-27-01.

{¶24} As for appellant's contention that he prescribed the medication for such a long period so Patient 2's medication would be covered under her insurance, this allegation does not nullify Dr. Carroll's opinion that if a doctor prescribes a controlled substance, a physician-patient relationship is created. Because appellant could be accountable for any necessary follow-up care or problems that arose from the prescriptions he wrote for Patient 2, regardless of his underlying motivation, appellant cannot discharge his long-term physician-patient responsibilities by claiming Patient 2's other doctor is her primary physician.

{¶25} With regard to both Patients 1 and 2, appellant also argues that Ohio Adm.Code 4731-11-08(B) and (C) permitted him to treat and prescribe medications for Patients 1 and 2, as they were "family member[s]." Ohio Adm.Code 4731-11-08(B) and (C) provide:

> (B) Accepted and prevailing standards of care require that a physician maintain detached professional judgment when utilizing controlled substances in the treatment of family members. A physician shall utilize controlled substances when treating a family member only in an emergency situation which shall be documented in the patient's record.
>
> (C) For purposes of this rule, "family member" means a spouse, parent, child, sibling or other individual in relation to whom a physician's personal or emotional involvement may render that physician unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

{¶26} However, even assuming Patients 1 and 2 constituted "family member[s]" for purposes of this rule, the rule limits the use of controlled substances to "emergency"

situations. The record reveals no emergency situations here. Appellant maintains only that the patients' regular doctors were unavailable for some indeterminate amount of time. Furthermore, prescribing medications for one year goes beyond the period of any emergency. As Dr. Carroll noted, even if some of the situations could be termed "emergency," appellant could have referred the patients to an urgent care center or emergency room instead of prescribing medications to persons with which he was engaging in sexual relations. The record is devoid of evidence that the circumstances here amounted to emergency situations. In addition, despite appellant's claims that Ohio Adm.Code 4731-11-08(B) and (C) sanction his sexual relationships with Patients 1 and 2 because these sections contemplate medical treatment will be given to individuals with whom a physician has a personal or emotional involvement, because these sections pertain solely to the prescribing of controlled substances, we refuse to apply them to the present circumstances to endorse appellant's conduct.

{¶27} We also note that appellant argues it is an important distinction that he did not provide medical care to Patients 1 and 2 and then solicit a sexual relationship with them in connection with that medical care. However, that distinction only partially addresses the harm of having a sexual relationship with a patient. Here, as Dr. Carroll noted in his testimony, the danger is that appellant's care of the women would be compromised by his own self-interest. Furthermore, a danger that arises when a physician has sexual relations with a patient is that the patient may be psychologically vulnerable during times of illness, allowing for manipulation by the physician. Thus, appellant's argument, in this respect, is of little persuasion. For all of these reasons, we find the common pleas court did not abuse its discretion when it found reliable, probative, and

substantial evidence supported the board's determinations with respect to Patient 2. Therefore, appellant's first assignment of error is overruled.

{¶28} Appellant argues in his second assignment of error that the common pleas court erred when it upheld the board's finding that he provided deceptive information during the board investigation by denying that he had sex with "Patient 1," violations of R.C. 4731.22(B)(5), (10), and (34), and R.C. 2921.11. Appellant contends that he did not provide false information to the board when asked if he had sex with "Patient 1" because he did not consider the person identified as Patient 1 to be a "patient." Appellant asserts the investigator's asking whether he had sex with "Patient 1" was a "loaded" question because he would be admitting that the woman was actually a "patient." Appellant claims he was "taking care" with his answers to the board and trying to be as accurate and complete as possible in his responses. Appellant asserts the board created a "big part of the problem," and the problem would have been lessened if the board would have simply chosen a different fictitious name, and the use of "patient" to label the women was an "illogical choice." Appellant also suggests that, if he would have been represented by counsel from the outset, an experienced attorney would have recognized these misperceptions and ambiguities created by the board's questions.

{¶29} This issue centers on credibility. The board's hearing examiner found appellant's claims were not persuasive. The hearing examiner explained that, if appellant truly objected to the characterization of Patient 1 as a "patient," then he should have stated so during the interview, and to simply deny he had sexual contact with Patient 1 based upon the use of "patient" was misleading, dishonest, and not reasonable. The hearing

examiner reasoned that appellant is an intelligent and highly educated person, and he had the responsibility to provide truthful responses to the questions posed to him.

{¶30} We concur with the hearing examiner's reasoning. Appellant's explanation was not reasonable. A reasonable person facing this type of questioning under these circumstances would either explain his semantics-based objection or ask for further clarification of the wording. Although the hearing examiner was in the best position to determine appellant's credibility, as he was able to view appellant during his testimony, from the record we cannot disagree that appellant's rationalization was not credible. Therefore, appellant's second assignment of error is overruled.

{¶31} Accordingly, appellant's first and second assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BRYANT and CONNOR, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Roy William Harris, D.O., | : | |
| Appellant-Appellant, | : | |
| v. | : | No. 11AP-671 |
| State Medical Board of Ohio, | : | (REGULAR CALENDAR) |
| Appellee-Appellee. | : | |

JOURNAL ENTRY

Appellant's August 17, 2011 motion to stay the decision of the Franklin County Court of Common Pleas affirming the State Medical Board's June 9, 2010 order indefinitely suspending appellant's certificate to practice medicine and surgery in Ohio for a period of at least six (6) months with conditions for reinstatement and a three (3) year probationary period is granted during the pendency of this appeal.

Judge Susan Brown

Judge John A. Connor

ORIGINAL

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

| | | |
|---|---|---|
| **Roy William Harris, D.O.**<br>**Plaintiff/Appellant,** | : | **Case No. 10CVH-08-12344** |
| | : | **Judge Richard A. Frye** |
| **v.** | : | |
| | : | **ORAL ARGUMENT REQUESTED** |
| **State Medical Board of Ohio**<br>**Defendant/ Appellee** | : | **NOTICE OF APPEAL and REQUEST FOR REVIEW OF ALL EXHIBITS, DOCUMENTS, AND MOTIONS REVIEWED BY THE LOWER COURT** |

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FRANKLIN CO. OHIO

Now comes the Plaintiff/Appellant, Roy William Harris, by and through the undersigned counsel, and hereby notifies the court of his intent to appeal the order of this court issued in the above referenced case on July 29, 2011 to the Tenth District Court of Appeals. Plaintiff requests that all exhibits, documents and motions reviewed by the lower court be provided to, and reviewed by, the Court of Appeals. Plaintiff requests that oral arguments be heard in this matter.

11APE08 --671

Respectfully submitted,

Karen H. Brouse #0074809
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Cellular: (330) 322-7427
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khbrouse@sbcglobal.net

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CLERK OF COURTS

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to: Kyle C. Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26th Floor, Columbus, OH 43215-3400 on this 22nd day of October, 2010.

Karen H. Brouse #0074809
Attorney for Plaintiff/Appellant

**TENTH DISTRICT COURT OF APPEALS**
**DOCKETING STATEMENT**

COC-AP-35

Roy William Harris, D.O.

Vs.

Case No. 10CVH-08-12344

State Medical Board of OHIO

**THIS APPEAL SHOULD BE ASSIGNED TO:** 11APE08--671

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2011 AUG 19 PM 5:56
CLERK OF COURTS

✓ The regular calendar.
___ The accelerated calendar for the reasons checked:

___ 1. No transcript required.
___ 2. Transcript consists of 50 or fewer pages, or it is of such length that its preparation and time will not be a source of delay.
___ 3. An agreed statement will be submitted within 20 days.
___ 4. Administrative hearing record was filed with the trial court.
___ 5. All parties to this appeal agree to an assignment to the accelerated calendar.

**********

Although the appeal meets one or more of the reasons for being assigned to the accelerated calendar, it should not be assigned to the accelerated calendar because:

✓ 1. Brief in excess of 15 pages (see Loc.R. 7(B)) is necessary to set forth adequately the facts and argue the issues in the case.
___ 2. Appeal concerns unique issue of law which will be of substantial precedential value in determination of similar cases.
___ 3. _____

**********

**(QUESTIONS 1 through 4 APPLY TO ALL APPEALS)**

1. Is this a "premature" appeal filed after the decision (or sentence) but before any entry of judgement? See App.R. 4(A) and (B). [ ] Yes [ ✓ ] No

2. Is a copy of an order of the transcript from the court reporter filed herewith? [ ✓ ] Yes [ ] No
[ ] An App.R 9(C) statement will be filed. [ ] An App.R. 9(D) statement will be filed.

3. Will the court reporter complete and file the transcript within 40 days? (20 days if on accelerated calendar?)
[ ✓ ] Yes [ ] No [ ] Not Applicable
If not, to what date is an extension requested?_____ Is a properly supported motion for extension being filed? [ ] Yes [ ] No

4. Will the appellant's brief be filed within 20 days after transmittal of record on appeal? (15 days if on accelerated calendar?) [ ] Yes [ ✓ ] No
If not, to what date is an extension requested? 40 days from transmittal of record Is a properly supported motion for extension being filed? [ ✓ ] Yes [ ] No

**********

(CONTINUED ON PAGE 2)

**(QUESTIONS 5 THROUGH 15 APPLY TO CIVIL AND ADMINISTRATIVE APPEALS ONLY)**

5. Did the judgement or order dispose of all claims by and against all parties? [✓] Yes [ ] No

   If not, does the judgement or order include an express determination that there is "no just reason for delay?" See Civ.R. 54(B). [ ] Yes [✓] No

6. Has an appeal in this trial court case been previously filed with this court? [ ] Yes [✓] No If yes, what is the prior appellate court case number? _____

7. Nature of Case:

| | | |
|---|---|---|
| [✓] Administrative Appeal | [ ] Domestic Relations | [ ] Personal Injury |
| [ ] Contract | [ ] Juvenile | [ ] Probate |
| [ ] Declaratory Judgement | [ ] Medical Malpractice | [ ] Other, please specify |

   _____

8. Is this appeal from an order of the trial court which grants or denies the adoption of a minor child or grants or denies termination of parental rights? [ ] Yes [✓] No

9. Has counsel for appellant changed on appeal? [ ] Yes [✓] No

10. Do you know of another case(s) pending before this court or recently decided by this court which raises the same issue or issue(s)? [ ] Yes [✓] No If yes, please cite the case number(s) _____

11. Have the parties to this appeal been parties to a previous appeal filed in this court? [ ] Yes [✓] No
    If yes, please cite the case number(s) _____

12. Does the appeal turn on an interpretation or application of a particular case(s) or statute(s)? [ ] Yes
    [✓] No If yes, please cite the case(s) or statute(s) _____

13. How would you characterize the extent of your settlement discussions prior to judgement? [ ] None
    [✓] Minimal [ ] Moderate [ ] Extensive

14. Have settlement discussions taken place since the judgement or order appealed from was entered?
    [ ] Yes [✓] No

15. Would a prehearing "settlement" conference be of any assistance to the resolution of this matter? *
    [✓] Yes [ ] No Please explain (optional) Dr Harris would like to engage in meaningful discussions to resolve this matter which would allow this patient to continue to receive care.

16. Briefly summarize the assignments of error presently anticipated to be raised on appeal, unless a statement of the assignments of error has been filed with the clerk of the trial court pursuant to App.R. 9(B). (Attach a separate sheet if necessary.) See attached sheet.

_____

Appellant or Attorney for Appellant

0074809

Supreme Court Registration Number

* Notice

THE PRIMARY PURPOSE OF A PREHEARING CONFERENCE IS TO ENCOURAGE THE PARTIES TO EXPLORE ANY POSSIBILITIES THERE MAY BE FOR SETTLEMENT OF THE CASE BEFORE INCURRING ADDITIONAL EXPENSES, OR, IF THAT IS NOT POSSIBLE, TO LIMIT THE ISSUES.

LOC.R. 4(F) PROVIDES THAT THIS COURT MAY ASSESS REASONABLE EXPENSES, INCLUDING ATTORNEY FEES, ASSESS ALL OR A PORTION OF THE APPELLATE COSTS, OR DISMISS THE APPEAL FOR FAILURE TO COMPLY WITH PROVISIONS OF THIS RULE.

## STATEMENT OF ASSIGNMENTS OF ERROR

**First Assignment of Error:** The State Medical Board of Ohio (hereinafter "Medical Board") Erred In Finding That Dr. Harris Violated R.C. § 4731.22(B)(5), R.C. § 4731.22(B)(10), and R.C. § 4731.22(B)(34) By Failing To Cooperate Or By Making False, Fraudulent, Deceptive, Or Misleading Statements In The Solicitation Of Or Advertising For Patients; In Relation To The Practice Of Medicine And Surgery, Osteopathic Medicine And Surgery; Or In Securing Or Attempting To Secure Any Certificate To Practice Or Certificate Of Registration Issued By The Medical Board And Said Finding Is Improper and Not In Accordance With The Law.

**Second Assignment of Error:** The Medical Board Erred In Concluding That Dr. Harris' Conduct During The Investigation Constituted A Violation Of R.C. § 2921.11, A Felony, To Wit: Perjury, As The Necessary Elements To Constitute Such Violation Are Not Satisfied.

**Third Assignment of Error:** The Medical Board Finding That Dr. Harris' Acts Or Conduct Departed From, Or Failed To Conform To, The Minimum Standard Of Care In Violation of R.C. § 4731.22(B)(6) and § 4731.22(B)(18) By Providing Episodic Medical Care To A Romantic Partner Is Arbitrary And Capricious Because OAC § 4731-11-08(B) And § 4731-11-08(C) Permits A Physician To Treat "Family Members."

**Fourth Assignment of Error:** The Medical Board Erred By Finding That Medical Treatment Provided During The Course Of A Romantic Relationship Constituted A Violation Of R.C. § 4731.22(B)(6), R.C. § 4731.22(B)(18), and Section 15 Of The American Osteopathic Association Code Of Ethics As It Is Not Supported By Reliable, Probative, and Substantial Evidence, Nor Is The Finding In Accordance With The Law Which Allows A Physician To Treat "Family Members" As Defined In OAC § 4731-11-08(B) & (C).

**Fifth Assignment of Error:** The Medical Board's Finding That Dr. Harris Violated Section 15 of the American Osteopathic Association Code Of Ethics Is Not In Accordance With The Law And Violates Dr. Harris' Equal Protection Rights As His Provision Of Medical Care To "Family Members" As Defined Is Allowed Under OAC § 4731-11-08(B) & (C).

TERMINATION NO: 15
BY: SL
FINAL APPEALABLE ORDER

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

ROY WILLIAM HARRIS, D.O.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

Case No. 10CVH-08-12344

(JUDGE FRYE)

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2011 JUL 29 PM 5:00
CLERK OF COURTS

**DECISION AND FINAL JUDGMENT**
**AFFIRMING THE STATE MEDICAL BOARD**
(Board Case No. 09-CRF-059)

***Introduction***

On August 13, 2010, the State Medical Board mailed a final Order in Case No. 09-CFR-059 to Roy William Harris, D.O. It suspended Dr. Harris' certificate to practice osteopathic medicine and surgery for an indefinite period, but not less than 180 days. That Order was stayed by this court on August 26, 2010.

Primarily the case addresses Dr. Harris' relationship with two women to whom he allegedly provided medical services while engaging in a sexual relationship. In the phrasing of the medical profession, these are termed "boundary issues." (Hearing Officer's Report and Recommendation, at p. 24.)

Over a period of several years during which his case was investigated, Dr. Harris denied that he had any physician-patient relationship with the women. Because the Board found otherwise, the Board also concluded that certain of the doctor's denials constituted perjury. (R. & R., Conclusion of Law 3.)

Dr. Harris maintained that his conduct in supplying medication and performing medical services for these two women did not constitute a sexual relationship with a "patient." To be sure, the conduct at issue falls somewhat in a gray area, but the doctor also conveniently minimizes evidence that he wrote prescriptions (some for a full year), and otherwise delivered true medical services (giving one of them a shot of a birth control drug). In this type of situation the Board's expertise in applying the applicable

statutes and administrative regulations, and more generally in evaluating the proper contours of professional practice must be afforded some deference. Determining the scope of a genuine physician-patient relationship is fundamental to the practice of medicine, and around the margins the views of this Board are sensibly respected.

Each sexual relationship with patients 1 and 2 lasted a significant period of time and apparently at times those relationships were simultaneous. Dr. Harris began a sexual relationship with Patient 1 in September 2003. By that time, he had already been having a sexual relationship with Patient 2 which began in 2002. Both relationships ended in early 2005. (The relationship with Patient 1 ended in February; that with Patient 2 ended March-April 2005.) Complicating this further, Dr. Harris has been confirmed to be the father of a child born to Patient 1 as a result of their relationship while she was his patient. Dr. Harris initially denied it, but the results of a court ordered paternity test (in an action for child support) persuaded him to concede the point before the Board's Hearing Examiner. (Tr. Vol. I, p. 99 -100).

Dr. Harris assigns as error that he did not make false or misleading statements in relation to the practice of medicine (First Assignment of Error) and that the statements did not constitute perjury (Second Assignment of Error). Dr. Harris assigns an additional three errors around the theme that his treatment of the patients with whom he was having these sexual relationships was in conformity with and protected by OAC regulations allowing him to "utilize controlled substances when treating a family members only in an emergency situation which shall be documented in the patients records." OAC § 4731-11-08. The Hearing Examiner, the Board did not view this conduct as falling within the "family member" safe harbor, as no demonstrable emergency existed, no documentation of an emergency was ever made in the patients' medical records. Paramours are not family members.

In considering Dr. Harris' assignments of error numbers 1 and 2 will be discussed together as they share facts in common and errors 3, 4, and 5 will be likewise be discussed together.

***Standard of Review***

Decisions of administrative agencies are subject to a "hybrid form of review" in which a common pleas court must give deference to the findings of an agency, but those

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

The common pleas court conducts a de novo review of questions of law, exercising independent judgment to determine whether an administrative order is "in accordance with law." *Ohio Historical Soc. V. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591.

In considering this case the court has attempted to guard against any findings against Dr. Harris resting on no more than hindsight (i.e., changing his testimony after the paternity test, for example), and attributes no weight to lifestyle choices or social misconduct not truly related to matters impacting upon good medical practice.

**Assignment of Errors.**

Due to their length, the court takes the liberty of copying the Assignments of Error from Appellant's Brief.

**First Assignment of Error:** The State Medical Board of Ohio (hereinafter "Medical Board") Erred In Finding That Dr. Harris Violated R.C. § 4731.22(B)(5), R.C. § 4731.22(B)(10), and R.C. § 4731.22(B)(34) By Failing To Cooperate Or By Making False, Fraudulent, Deceptive, Or Misleading Statements In The Solicitation Of Or Advertising For Patients; In Relation To The Practice Of Medicine And Surgery, Osteopathic Medicine And Surgery; Or In Securing Or Attempting To Secure Any Certificate To Practice Or Certificate Of Registration Issued By The Medical Board And Said Finding Is Improper and Not In Accordance With The Law.

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**Fourth Assignment of Error:** The Medical Board Erred By Finding That Medical Treatment Provided During The Course Of A Romantic Relationship Constituted A Violation Of R.C. § 4731.22(B)(6), R.C. § 4731.22(B)(18), and Section 15 Of The American Osteopathic Association Code Of Ethics As It Is Not Supported By Reliable, Probative, and Substantial Evidence, Nor Is The Finding In Accordance With The Law Which Allows A Physician To Treat "Family Members" As Defined In OAC § 4731-11-08(B) & (C).

**Fifth Assignment of Error:** The Medical Board's Finding That Dr. Harris Violated Section 15 of the American Osteopathic Association Code Of Ethics Is Not In Accordance With The Law And Violates Dr. Harris' Equal Protection Rights As His Provision Of Medical Care To "Family Members" As Defined Is Allowed Under OAC § 4731-11-08(B) & (C).

## Discussion of Errors 1 & 2.

As a preliminary matter the court makes clear as to all Assignments of Error that it finds the facts found by the Hearing Examiner (and adopted by the Board) are supported by reliable, probative and substantial evidence contained in the record.

Dr. Harris maintains that both Patient 1 and Patient 2 were not in physician-patient relationships with him while he was in a sexual relationship with them. The

Board's evidence is addressed in the record by Dr. Carroll, an expert witness, and summarized in many findings of the Hearing Examiner.

The Hearing Examiner set forth a useful synopsis of each witness' testimony following which he made his first finding of fact (at page 18 of the Report and Recommendation): "From September 2003 until February 2005, Roy William Harris, D.O., engaged in a sexual relationship with Patient 1 *** despite having an ongoing physician/patient relationship with her. Dr. Harris first saw and provided medical services to Patient 1 in January 2001." The Hearing Examiner then set forth the evidence underlying Dr. Harris' medical treatment of Patient 1 while he was sexually involved with her. Dr. Harris treated Patient 1 – after a nearly three year break – beginning October 7, 2003, continuing October 21, 2003, November 24, 2003 and again in late February 2005. (R & R, p. 19)

Recognizing Dr. Carroll's concern over the difficulty of universally gauging start-and-stop dates for a physician-patient relationship,[1] the Hearing Examiner nevertheless had difficulty accepting Dr. Harris' assertion that between January 2001 and September 2003 (when the sexual relationship is conceded to have begun) Dr. Harris had no physician-patient relationship with Patient 1. (R. & R. at p. 19). However, that is really not too germane. The larger problem for Dr. Harris is that it is essentially undisputed that he began a sexual relationship by September 2003, and then saw Patient 1 professionally twice within the following month. (Id.) The court agrees that "Dr. Harris' assertion that no physician/patient relationship was created (or continued) by the

[1] Dr. Carroll's view on why he considered Patient 1 to continue to be a "patient" of Dr. Harris during several years of no visits or treatment, summarized in the R. & R. at ¶ 21 on page 6 (citing Tr. 124-25) seems very practical, and the court intends no criticism of it.

medical services he provided in 2003 is unreasonable, not credible, and is rejected." (R. & R. at p. 19)

The record thus supports the Board's conclusion that Dr. Harris had a physician-patient relationship with Patient 1 while having a sexual relationship with her. Factual matters, supported by the record, are given deference by the common pleas court. *Conrad,* supra; *Strausbaugh,* supra. The Court is also mindful that the Board's interpretation of the legal and ethical requirements of the profession is – at least in gray areas like this one – appropriately determined by "board members [who] possess the specialized knowledge needed to determine the acceptable standard of general medical practice." *Pons v. Ohio State Medical Bd.* (1993), 66 Ohio St.3d 619, 623.

As to Patient 2, the Hearing Examiner disbelieved Dr. Harris' assertion that he did not have a physician-patient relationship while he was also having a sexual relationship. In Finding of Fact 11 he concluded that "Dr. Harris' assertions are unconvincing. As Dr. Carroll persuasively testified, if Dr. Harris had simply wanted to maintain Patient 2 on her medications until her primary care physician became available, then Dr. Harris should have prescribed much smaller quantities of medications. Furthermore, providing long-term prescriptions to an individual does not constitute episodic or emergent care. Accordingly, a physician/patient relationship was created when Dr. Harris provided long-term prescriptions to Patient 2 in February and July 2003, and there is no documentation that the physician/patient relationship was ever terminated." (R. & R. at page 21). As with Patient 1, the Hearing Examiner's finding was adopted by the Board. The Hearing Examiner's finding is amply supported by the factual record.

There were a number of confusing issues presented because Dr. Harris had made multiple statements about his relationships during the investigatory stage of this case. In his "Rebuttal Brief" filed Dec. 28, 2011, Dr. Harris argues (at p. 3) that half a dozen points in the record show Harris was "guessing at the dates and also [was] answering without benefit of his medical records." In the absence of more conclusive medical records kept with care by a doctor, however, the Board was required to evaluate Dr. Harris' various statements for credibility and consistency, as does any fact-finder in any legal proceeding. The Board can hardly be faulted for doing so to the best of its ability given the limitations on the factual evidence and the span of years considered.

The Hearing Examiner observed in this regard that "[o]n September 20, 2005, in the course of a Board investigation, Dr. Harris *** told the investigator that he had never had sexual contact with Patient 1." (Finding of Fact 2, at p. 19); "during an April 26, 2006, Board investigatory deposition *** Dr . Harris stated that: a) he had answered all of the investigator's questions truthfully during the interview, b) he had never engaged in sexual contact with Patient 1, and c) Patient 1 had not been his patient since approximately the late 1990's." (Finding of Fact 4, at p. 19); "during the April 2005 Deposition, Dr. Harris denied under oath that he was the father of the baby delivered by Patient 1 on October 24, 2005." (Finding of Fact 5, p. 19). The Hearing Examiner was understandably skeptical that Dr. Harris' assertion that his responses were then-truthful was knowingly false. What he claims to have believed at the time to justify his failure to respond more accurately and candidly is now irrelevant.

After considering the entire record the Hearing Examiner observed that "Dr. Harris is an intelligent and highly-educated person. The absence of counsel did not absolve Dr. Harris of the responsibility to provide truthful responses to the questions

posed to him." (Finding of Fact 6, at p. 20.) Of course, there is now no doubt that Dr. Harris was having a sexual relationship with Patient 1: a September 28, 2006 Judgment in the Crawford County Court of Common Pleas determined that he was the father of Patient 1's second child by genetic testing. (Finding of Fact 7, p. 20.)

Likewise as to Patient 2 the Hearing Examiner found that "[d]uring the 2005 Interview with the Board Investigator, Dr. Harris informed the Board investigator that, although Dr. Harris had engaged in sexual contact with Patient 2, he had never treated her as a patient." (Finding of Fact 12, at p. 22.) He also found, that "[s]ubsequently, during the Deposition, Dr. Harris stated that Patient 2 was never his patient, although Dr. Harris indicated that he had prescribed medication to her on one occasion when he was on call for another physician." (Finding of Fact 13) In fact, Dr. Harris' medical services to Patient 2 were significantly broader. (See Findings 9, 10, 11, at p. 21, which are amply supported in the record.) As with Patient 1, Dr. Harris' relationship with Patient 2 was that of a physician and patient while simultaneously sexual. It avails Dr. Harris not at all to claim he failed to appreciate that a medical role existed with individuals for whom he was providing prescriptions and medical care. The doctor responds that there is really no harm, because no one suggests his actual treatment of these women fell into the category of malpractice, and below accepted standards of care. (Rebuttal Brief, at 3.) Such a veneer is too thin to obscure the truth.

The record supports the finding that Dr. Harris made a series of "false, fraudulent, deceptive, or misleading statement(s) *** in relation to the practice *** osteopathic medicine and surgery *** or in securing or attempting to secure and certificate to practice or certificate of registration issued by the board." as that clause is used in Section 4731.22(B)(5). Additionally, the Hearing Examiner's legal conclusion is

correct that Dr. Harris' under-oath responses as detailed in "[F]indings of Fact, 1, 4, 6, 9, 11, and 13, individually and/or collectively, constitute '[c]omission of an act that constitutes a felony in this state ***' as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Perjury, Section 2921.11, Ohio Revised Code." (Conclusion of Law 3, at p. 22.)

The same analysis applies to the Hearing Examiner's finding that Dr. Harris violated R.C. 4731.22(B)(34). Dr. Harris failure to answer truthfully, as set forth in Finding of Fact 1, 2, 4, 6, 9, 11, 12, and 13, individually and/or collectively, constitutes a "failure to cooperate in an investigation conducted by the board under division (F) of this section, including *** failure to answer truthfully or question presented by the board at a deposition or in written interrogatories ***" as that clause is used in Section 4731.22(B)(34). Again, Dr. Harris' assertion that he had no physician-patient relationship with Patients 1 and 2 when he provided medical services while also sharing a sexual relationship with them is meritless.

**Discussion of Assignments of Error 3, 4, & 5.**

Dr. Harris maintains in these assignments of Error that "[T]here appears to be a conflict between the American Osteopathic Code of Ethics and the Ohio Administrative Code." (App. Br. p. 20, ARGUMENT, 1st sentence). Dr. Harris appears to concede that "[T]he Code of Ethics indicates it is sexual misconduct for a physician to have sexual relations with a current patient." (see OAC § 4731-26-01 (defining sexual misconduct), American Osteopathic Association Code 15 (misconduct for physician to have sexual conduct with any current patient *** whom the physician has interview or upon whom a medical or surgical procedure has been performed.). That such conduct violates

minimum practice standards because the conduct is unethical. See. Ohio Revise Code § 4731.22(B)(6) (departure from, or failure to conform to minimum standards of care of similar practitioners), and § 4731.22(B)(18) (violation of any provision of a code of ethics of the *** American Osteopathic Association).

Dr. Harris finds the current law in conflict with Ohio Administrative Code § 4731-11-08, arguing that that section "allows a physician to treat 'family members' specifically defined to include spouse and/or romantic partners. As such, under the Code of Ethics any physician who ever provided a prescription for birth control or an antibiotic for a cold to their spouse would be committing an ethics violation. It seems illogical, arbitrary and capricious that this was the intended result."

But, Dr. Harris' asserted conduct does not fit his case, or the text of OAC 4731-11-08 for a number of reasons. As Appellee aptly points out, this section requires that there be an "emergency" before the physician may utilize controlled substances when treating a family member. Furthermore, the use of the controlled substance "shall be documented in the patient's record." It is unclear whether the "emergency" of the patient must also be documented in the patient's record. Nor is it clear that OAC 4731-11-08 definition of "family members" is sufficiently large to admit protection for emergency treatment for romantic partners when the medical doctor simultaneously has a spouse.

The Hearing Examiner's Report sets forth (at ¶ 55, pages 15-16) a "Timeline Summary" for Dr. Harris' interactions over some seven years with Patients 1 & 2. The summary is substantially accurate and derived from probative, reliable and substantial evidence. Dr. Harris saw Patient 1 for the first time on January 11, 2001, he next saw her for medical reasons in October 2003. However, in September 2002, Dr. Harris

hired patient 1 to work in his office and he commenced a sexual relationship with her. After that he provided medical services to patient 1 on October 7, 2003, October 21, 2003, November 24, 2003, February 25, 2005, and February 27, 2005. Dr. Harris ended his sexual relationship with patient 1 in February 2005. By that time, Dr. Harris had provided medical services to her five (5) times over a period of over a year.

The Timeline Summary for treatment of patient 2 begins with reading her EKG in 2000. To be fair, Dr. Harris did not actually see patient 2 in person at that time. However, in September 2001, Dr. Harris became personally acquainted with Patient 2. At that time, Dr. Harris was the medical director of a facility where patient 2 was employed as a nurse. By April 2002, Dr. Harris began a sexual relationship with Patient 2. That ended, but not until in February 2005. While the sexual relationship with Patient 2 was occurring, Dr. Harris prescribed medication for her on February 16, 2003 (Prozac), February 25, 2006 (Diovan HCT), and July 1, 2003 (Zyprexa). Dr. Harris' prescription, in at least one instance, was for an entire years worth of medication.

The Board's administrative rule speaks of helping a family member in an emergency, a word that contemplates exigent circumstances, or a situation demanding unusual or immediate action and justifies circumventing usual procedures. In common parlance exigent circumstances exist when a person's life or safety is threatened. Morereover, a true emergency should be documented in the patients' medical records and that was never done here. Applying the regulation in a manner that would tolerate emergency treatment without contemporaneous medical recording of it would be wholly at odds with good medical practice, as the Board no doubt fully recognized.

The facts here do not support finding any "emergency" as to either patient 1 or patient 2. Dr. Harris did circumvent the usual procedures as established by OAC 4731-

26-01. His failure to follow recognized procedures was not in response to exigent circumstances demanding immediate action to protect the life or safety of either patient. Drugs prescribed for Patient 2 had previously been prescribed; her life was not threatened if she did not get those drugs immediately; and the prescription length greatly exceeded the time needed to address any emergency. As to Patient 1, the November 24, 2003 and February 27, 2005 pregnancy tests had no true emergency immediacy; nothing suggests that her life was threatened by not getting the test a day or two later from another physician. Dr. Harris' actions were in contravention of OAC 4731-26-01. Because his conduct violated that section, Dr. Harris failed to conform to the minimum standards of care for similar practitioners in violation of Ohio Revise Code § 4731.22(B)(6). Likewise, Dr. Harris conduct violated the Code of Ethics of the American Osteopathic Association in violation of Ohio Revised Code § 4731.22(B)(18).

Because the Board's Conclusions of Law are proper and supported by reliable, probative, and substantial evidence in the record, Assignments of Error 3 & 4 are overruled. Dr. Harris' final Constitutional argument also plainly fails. His right to Equal Protection was not violated under either the state or federal constitutions. Assignment of Error 5 is overruled.

# FINAL JUDGMENT

The Order of the State Medical Board of Ohio regarding Roy W. Harris, D.O. is **AFFIRMED** in all respects. Costs taxed against the Appellant.

The Court previously issued a stay in this matter. Pursuant to R.C. 199.12, it is terminated.

This is a FINAL APPEALABLE ORDER.

**IT IS SO ORDERED.**

RICHARD A. FRYE, JUDGE

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*Counsel for Appellee*

TERMINATION NO. 17
BY: SL

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

**ROY WILLIAM HARRIS DO,**

**Appellant,**

**v**

**Case No. 10-CVF-08-12344**
**Judge Richard Frye**

**STATE MEDICAL BOARD OF OHIO,**

**Appellee.**

## ENTRY GRANTING CONDITIONAL STAY

Upon motion of Appellant and for good cause shown, it is hereby **ORDERED** that Roy William Harris, DO's motion to suspend the State Medical Board's August 11, 2010 Order pursuant to R.C. 119.12 is **GRANTED** subject to the following condition. Dr. Harris must within 60 days of this order, complete at a minimum, a two day course approved by the State Medical Board of Ohio ("Board") on maintaining physician/patient boundaries as referenced in paragraph three of the Board's August 11, 2010 order. Should Dr. Harris fail to complete this course within the 60 day timeframe, the stay shall expire.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2010 AUG 26 PM 4:19
CLERK OF COURTS

Judge Richard Frye

Approved By:

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Counsel for the State Medical Board of Ohio

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

| | | |
|---|---|---|
| Roy William Harris, D.O.<br>510 Hill Street<br>Bucyrus, Ohio 44820 | : | 10 CVF 12344<br>Case No. |
| Appellant, | : | Judge |
| v. | : | |
| State Medical Board of Ohio<br>30 E. Broad Street, 3rd Floor<br>Columbus, Ohio 43215 | : | Appeal from the Entry of Order of August 11, 2010, mailed August 13, 2010 |
| Appellee. | : | Board Case No. 09-CRF-059 |

2010 AUG 20 PM 3:25
STATE MEDICAL BOARD OF OHIO

**APPELLANT'S NOTICE OF APPEAL**

Appellant, Roy William Harris, D.O. pursuant to Ohio Revised Code Section 119.12, hereby gives notice of his appeal of the Entry of Order of the Appellee, State Medical Board of Ohio ("Board"), which found that the conduct of Appellant violated various sections of the Medical Practices Act (R.C. 4731.22). The Board's Entry of Order[1] is dated August 11, 2010 and was mailed on August 13, 2010. The Board's Entry of Order is not supported by reliable, probative, and substantial evidence, nor is it in accordance with the law. Dr. Harris appeals based upon the following grounds:

1. The Board's finding that Appellant failed to conform to minimal standards of care in violation of R.C. 4731.22(B)(6) is not supported by reliable, probative and substantial evidence, nor is it in accordance with the law because Dr. Carroll's testimony conflicts with OAC 4731-11-08(B) and OAC 4731-11-08(C) which permit physicians to treat "family members."

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2010 AUG 20 PM 3:38
CLERK OF COURTS

[1] August 11, 2010 Order, attached as Ex. A.

STATE MEDICAL BOARD OF OHIO
2010 AUG 20 PM 2:07

2. The Board's finding that Appellant failed to conform to minimal standards of care in violation of R.C. 4731.22(B)(18) is not supported by reliable, probative and substantial evidence, nor is it in accordance with the law because Dr. Carroll's testimony conflicts with OAC 4731-11-08(B) and OAC 4731-11-08(C) which permit physicians to treat "family members."
3. The Board's finding that Appellant violated R.C. 4731.22(B)(6) and R.C. 4731.22(B)(18) is not in accordance with the law and violates Appellant's equal protection rights because OAC 4731-11-08(B) and OAC 4731-11-08(C) permits physicians to treat "family members."
4. The Board's finding that Appellant violated R.C. 4731.22(B)(6) and R.C. 4731.22(B)(18) is arbitrary and capricious because OAC 4731-11-08(B) and OAC 4731-11-08(C) permits physicians to treat "family members."
5. The Board's finding that Appellant violated R.C. 4731.22(B)(5) is not in accordance with the law because Appellant did not have the requisite intent to support such a finding.
6. Because Appellant did not have the requisite intent to satisfy R.C. 4731.22(B)(5), the Board's derivative findings that Appellant violated R.C. 4731.22(B)(34) and R.C. 4731.22(B)(10) is improper and not in accordance with the law.
7. The Board's finding that Appellant violated R.C. 4731.22(B)(10) is not in accordance with the law as the elements necessary for violation of R.C. 2921.11 is not satisfied.

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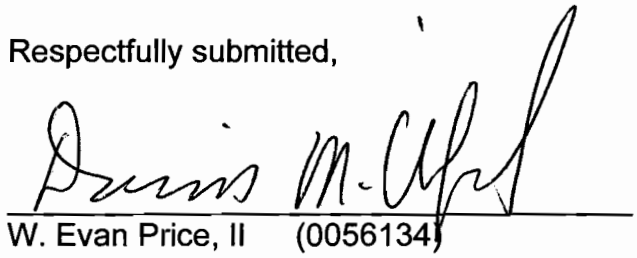
STATE MEDICAL BOARD
OF OHIO

Respectfully submitted,



W. Evan Price, II (0056134)
Damion M. Clifford (0077777)

JAMES E. ARNOLD & ASSOCIATES, LPA
115 W. Main St., Fourth Floor
Columbus, Ohio 43215
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dclifford@arnlaw.com

*Attorneys for Appellant*
*Roy William Harris, D.O.*

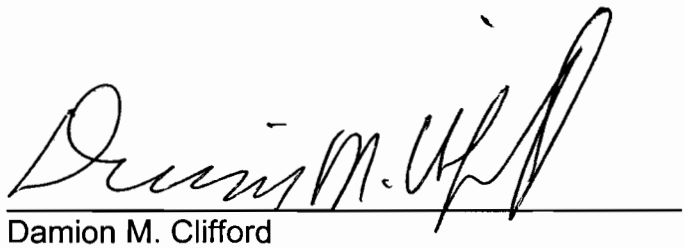
STATE MEDICAL BOARD
OHIO
2007 NOV 30 PM 2:07

## CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2010, the foregoing Appellant's Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, then was filed via hand delivery with the Court of Common Pleas of Franklin County, Ohio, and that a copy was served by regular U.S. mail upon the following:

Kyle C. Wilcox, Esq.
Assistant Attorney General,
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400

*Counsel for State Medical Board of Ohio*



Damion M. Clifford

STATE MEDICAL BOARD
OF OHIO
2010 AUG 20 PM 2:07

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

August 11, 2010

Roy William Harris, D.O.
510 Hill Street
Bucyrus, OH 44820

RE: Case No. 09-CRF-059

Dear Doctor Harris:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 11, 2010, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7436
RETURN RECEIPT REQUESTED

Cc: W. Evan Price, II, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7443
RETURN RECEIPT REQUESTED

Mailed 8-13-10

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 11, 2010, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Roy William Harris, D.O., Case No. 09-CRF-059, as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

August 11, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

| | | |
|---|---|---|
| IN THE MATTER OF | * | |
| | * | CASE NO. 09-CRF-059 |
| ROY WILLIAM HARRIS, D.O. | * | |

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 11, 2010.

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

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE; NO NEW PATIENTS DURING THIRTY-DAY INTERIM PERIOD**: Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Roy William Harris, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days. During the thirty-day interim, Dr. Harris shall not undertake the care of any patient not already under his care.

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

1. **Application for Reinstatement or Restoration**: Dr. Harris shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Personal/Professional Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, Dr. Harris shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and

the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

3. **Course(s) Concerning Physician/Patient Boundaries**: At the time he submits his application for reinstatement or restoration, Dr. Harris shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Harris submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

4. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Harris has not been engaged in the active practice of osteopathic medicine for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

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

1. **Obey the Law**: Dr. Harris shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.

2. **Declarations of Compliance**: Dr. Harris shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the

conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Harris' certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances**: Dr. Harris shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Harris' certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every **six** months thereafter, and/or as otherwise directed 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.

4. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Harris is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

5. **Required Reporting of Change of Address**: Dr. Harris shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Harris certificate will be fully restored.

E. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Harris violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Harris shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Harris shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training,

and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. Harris provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Harris receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Harris shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any professional license or certificate. Also, Dr. Harris shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Harris receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph F**: Dr. Harris shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

August 11, 2010
Date

STATE MEDICAL BOARD
OF OHIO
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**BEFORE THE STATE MEDICAL BOARD OF OHIO**

| | | |
|---|---|---|
| **In the Matter of** | * | |
| | | **Case No. 09-CRF-059** |
| **Roy William Harris, D.O.,** | * | |
| | | **Hearing Examiner Porter** |
| **Respondent.** | * | |

**REPORT AND RECOMMENDATION**

Basis for Hearing

By letter dated May 13, 2009, the State Medical Board of Ohio [Board] notified Roy William Harris, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on allegations including that Dr. Harris had engaged in sexual contact with two patients despite ongoing physician/patient relations during the time of sexual contact; and that, during a Board investigation, he had provided deceptive information concerning his sexual contact with those two patients. The Board further alleged that Dr. Harris' acts, conduct and/or omissions constitute:

- "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
- "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Perjury, Section 2921.11, Ohio Revised Code.
- "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code;
- "[v]iolation of any provision of a code of ethics of the * * * American osteopathic association," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: American Osteopathic Association, Code of Ethics, Section 15; and/or
- "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

Accordingly, the Board advised Dr. Harris of his right to request a hearing in this matter, and received his written request on June 8, 2009. (State's Exhibits [St. Exs.] 12A, 12B)

Appearances

Richard Cordray, Attorney General, and Karen A. Unver, Assistant Attorney General, for the State of Ohio. W. Evan Price II, Esq., for Dr. Harris.

Hearing Dates: November 9 and 10, 2009.

## PROCEDURAL MATTER

Following the hearing, and in order to protect patient confidentiality, the Hearing Examiner redacted additional names, Social Security numbers, addresses, and dates of birth from State's Exhibit 7.

## SUMMARY OF THE EVIDENCE

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

### Background

1. Roy William Harris, D.O., obtained his osteopathic medical degree in 1992 from the Ohio University College of Osteopathic Medicine in Athens, Ohio. From 1992 through 1995, Dr. Harris completed a residency in internal medicine at Doctors Hospital in Columbus, Ohio. In July 1995, Dr. Harris began working as an employee of Bucyrus Community Hospital [BCH] in Bucyrus, Ohio. In 1999, he left BCH to start his own internal medicine practice in Bucyrus, where he continues to work. (Tr. at 29-30)

   Dr. Harris testified that he is board-certified by the American Osteopathic Board of Internal Medicine. (Tr. at 33)

2. Dr. Harris is licensed to practice osteopathic medicine in Ohio and Alabama. Both licenses are current and active. (Tr. at 27)

3. Dr. Harris has full privileges at BCH and honorary privileges at Doctors Hospital in Columbus. (Tr. at 33)

4. Dr. Harris testified that he is engaged in the practice of internal medicine at Bucyrus Internal Medicine, Inc., where he is the sole owner and sole physician. Dr. Harris further testified that he is a primary care physician whose patient population ranges from 14 years of age to senior citizens, and that about 65 percent of his patients receive Medicare. He

estimated that he has about 4,000 current patients and that he sees 150 patients per week. Moreover, Dr. Harris testified that he provides various services to BCH, including emergency room [ER] backup and reading electrocardiograms [EKGs]. Finally, Dr. Harris testified that he serves as the medical director of several nursing homes in the Bucyrus area. (Tr. at 31-32, 183-186)

**Dr. Harris' Relationship with Patient 1**

5. Dr. Harris first met Patient 1, a female born in 1983, when she came to him for medical care in January 2001. (Tr. at 204; St. Ex. 1A at 155-157)

*2001 and 2003*

6. Dr. Harris' medical records indicate that he had first seen and examined Patient 1 on January 11, 2001. Patient 1 did not return to Dr. Harris' office until October 2003. (St. Ex. 1A at 155-157, 161; Resp. Ex. C)

7. In September 2003, Dr. Harris began a sexual relationship with Patient 1. Dr. Harris testified concerning the circumstances:

> Along about in the fall of 2003, I had lost my cleaning lady at my office, it was a pretty good size, and so I had asked [Patient 1]—she was working at the hospital, and I asked her if she wanted to pick up some extra money on the side to help clean my office.

(Tr. at 208-209)

Dr. Harris further testified that, in September 2003: "I had a fight with my wife and I was pretty distraught. I went to my office to do some work, and Patient 1 was there working in my office. One thing led to another, and we became involved." (Tr. at 210-211)

8. Dr. Harris testified that, at the time his sexual relationship with Patient 1 began, she had not been an active patient in his practice. Dr. Harris further testified that he did not recall at that time that she had been a patient. (Tr. at 211-212)

9. Dr. Harris provided medical services to Patient 1 again in October 2003. When asked why he had seen her again professionally, Dr. Harris replied, "I guess she just came in." (Tr. at 209)

10. Dr. Harris' medical records document the following medical services provided by Dr. Harris to Patient 1 in 2003:

- On October 7, 2003, Patient 1 saw Dr. Harris for chief complaints of sore throat and chest congestion. Dr. Harris examined her and diagnosed acute sinusitis, allergies, otitis media, and pharyngitis. He prescribed Prednisone, Allegra-D, Pancof PD, and

Amoxicillin. Patient 1 also received a Depo-Provera injection. (St. Ex. 1A at 5, 154, 159; Resp. Exs. D, E)

- On October 21, 2003, Patient 1 saw Dr. Harris for a follow-up visit. His assessment was acute sinusitis, allergies, and pharyngitis, and he noted that the otitis media had resolved. He prescribed Allegra-D. Patient 1 also received a Depo-Provera injection. (Tr. at 50; St. Ex. 1A at 3, 153; Resp. Exs. D, E)

- On November 24, 2003, Dr. Harris ordered a pregnancy test for Patient 1. The results were negative. (St. Ex. 1A at 15; Resp. Ex. D)

11. Dr. Harris denied that the physician services he provided in 2003 had resulted in any lasting physician/patient relationship between him and Patient 1. However, Dr. Harris testified that it would be "hard to say" when the physician/patient relationship ended following the 2003 services. (Tr. at 50-51)

*2005*

12. Dr. Harris next provided medical services to Patient 1 on Friday, February 25, 2005. He testified that Patient 1 had "begged" him to see her that day because she needed a physical examination to enter nursing school the following Monday. Dr. Harris further testified that Patient 1's primary care physician had not been able to see her that day. Dr. Harris performed a physical examination and ordered a blood test. Dr. Harris acknowledged that he was still in a sexual relationship with Patient 1 at that time. (Tr. at 45-46, 54, 214-217; St. Ex. 1 at 143-147; St. Ex. 1A at 9-13, 145-149; Resp. Ex. F)

13. Dr. Harris testified that he had seen the results of Patient 1's blood test on Sunday, February 27, 2005, which indicated that she was anemic. Dr. Harris stated that, when he received the results, he had not contacted Patient 1's primary care physician because her primary care physician was out of town. (Tr. at 70, 218; St. Ex. 1A at 11)

    Pharmacy records indicate that, on February 27, 2005, Dr. Harris issued to Patient 1 a prescription for ferrous sulfate 325 (85) mg #90 with instructions to take one tablet three times per day, and a prescription for Provera 10 mg #14 with instructions to take one tablet each day. In addition, Dr. Harris ordered a pregnancy test to which Patient 1 submitted on February 27, 2005. The results of the test revealed that Patient 1 was pregnant. (St. Ex. 1 at 141; St. Ex. 3 at 3; Resp. Ex. G)

14. Dr. Harris acknowledged that, at the time he had ordered the blood tests, he had been acting as Patient 1's physician. However, Dr. Harris denied that he had had a physician/patient relationship with Patient 1 other than on February 25, 2005, because Patient 1 had her own primary care physician. (Tr. at 49) Dr. Harris further testified that he did not view the nursing school physical examination, prescriptions, and pregnancy test as establishing a physician/patient relationship between him and Patient 1 "[b]ecause she had a primary-care

physician to follow up with. I was just doing it as a favor to her so she could get into nursing school." (Tr. at 220)

15. Dr. Harris presented a collection of medical records that show that another physician had been Patient 1's primary care physician in February 2005. (Resp. Ex. H)

16. Dr. Harris acknowledged that there is nothing in the medical records for Patient 1 indicating that either he or Patient 1 had terminated the physician/patient relationship. However, he testified that that does not mean that the relationship did not terminate: "If somebody tells me they don't want to be my patient anymore, I don't write in my chart, 'Patient doesn't want me to be their physician anymore. Relationship terminated.' You just transfer the records to whoever they want [them] to go to."[1] (Tr. at 51-53)

17. Dr. Harris testified that, when he terminates a patient from his practice, he sends the patient a notice that he will continue to provide services to the patient for 30 days, after which he will no longer provide services. No such document is included in Dr. Harris' medical record for Patient 1. (Tr. at 53-54; St. Ex. 1A)

18. Dr. Harris testified that he had maintained a sexual relationship with Patient 1 from September 2003 through February 2005. (Tr. at 75-76)

**Testimony of Dr. Carroll concerning Patient 1**

19. Marc L. Carroll, D.O., testified as an expert witness on behalf of the State. Dr. Carroll obtained two Bachelor of Science degrees from The Ohio State University, one in microbiology in 1973, and the other in pharmacy in 1976. Dr. Carroll practiced as a pharmacist from 1976 until 1978. In 1981, Dr. Carroll obtained his osteopathic medical degree from the College of Osteopathic Medicine and Surgery in Des Moines, Iowa. He entered a rotating internship at Doctors Hospital in Columbus, Ohio, which he completed in 1982. Dr. Carroll then entered a family-practice residency at Ohio State University Family Practice, which he completed in 1984. Dr. Carroll was certified by the American Board of Family Practice in 1984, and last recertified in 2006. (Tr. at 105-108; St. Ex. 11)

    Dr. Carroll has been engaged in the practice of family medicine in central Ohio since 1984. Dr. Carroll testified that his practice is 100 percent clinical and that he treats patients for a wide variety of illnesses from infancy through old age. Dr. Carroll also holds faculty appointments as an Associate Clinical Professor with the medical schools at Ohio University and Ohio State University. (Tr. at 108-113)

    Dr. Carroll testified that he holds privileges at Mt. Carmel East Hospital in Columbus, and courtesy privileges at Grant Hospital and Ohio State University Medical Center. (Tr. at 111)

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[1] The Hearing Examiner did not find documentation in Dr. Harris' medical record for Patient 1 that her medical records had been transferred to another physician. (St. Ex. 1A)

20. Dr. Carroll testified that, in his opinion, a physician/patient relationship existed between Dr. Harris and Patient 1. Dr. Carroll further testified that, in 2005, Dr. Harris had written two prescriptions for Patient 1 based upon the results of a lab test that he had ordered. Dr. Carroll noted that the test indicated, among other things, that Patient 1 suffered from microcytic hyperchromic anemia, and that Dr. Harris had prescribed ferrous sulfate to treat that condition. Dr. Carroll further testified that Dr. Harris had prescribed Provera to treat Patient 1's amenorrhea. Dr. Carroll opined that such activity is "definitely part of a physician/patient relationship." (Tr. at 119-122)

21. Dr. Carroll testified that he could find nothing in Dr. Harris' medical records for Patient 1 that documents the termination of their physician/patient relationship. Moreover, Dr. Carroll testified that it is not uncommon for some individuals, especially young people such as Patient 1, to see their physicians only for sick care and to not see their physicians for years at a time. That does not mean that the individual ceases to be the physician's patient. When asked how one can determine whether someone is a physician's patient, Dr. Carroll replied that physicians are required to keep their medical records for at least seven years. Dr. Carroll testified: "I guess that's an arbitrary figure that's been made by the powers that make that. But basically, unless the patient contacts you for records transfer, or you discharge the patient from your practice, that patient is still considered your patient." (Tr. at 124-125)

22. Section 15 of the American Osteopathic Association [AOA] Code of Ethics states: "It is considered sexual misconduct for a physician to have sexual contact with any current patient whom the physician has interviewed and/or upon whom a medical or surgical procedure has been performed." (St. Ex. 10)

    Dr. Carroll explained that "[a] medical procedure could be anything from writing a prescription to formulating a treatment plan, to doing a whole history and physical on a patient." (Tr. at 142)

23. Dr. Carroll testified that Dr. Harris' conduct with respect to Patient 1 failed to comply with Section 15 of the AOA Code of Ethics. (Tr. at 126-127)

24. Dr. Carroll further testified that Dr. Harris' treatment of Patient 1 failed to conform to the minimal standard of care "based on the fact that he was having a sexual relationship with an ongoing patient." (Tr. at 128)

25. On cross-examination, Dr. Carroll opined that, if a physician had seen a patient on one or two occasions, and then three or five years later meets that patient, doesn't remember the patient, and begins a sexual relationship with the patient, then there would not be an ethical violation. (Tr. at 171)

**Dr. Harris' Relationship with Patient 2**

26. Patient 2 is a female born in 1966. Dr. Harris testified that he had first become acquainted with Patient 2 sometime in 2001, and that she was a nurse at one of the nursing homes

where Dr. Harris is the medical director. He further testified that they began a sexual relationship sometime between February and April 2002. (Tr. at 37-38, 189-192; St. Ex. 2; St. Ex. 5 at 17)

27. In 2000, Dr. Harris read an EKG for Patient 2 and billed her for that service. However, Dr. Harris testified that he never saw Patient 2 on that occasion. He stated that she had come through the ER at BCH, the ER physician ordered an EKG, and Dr. Harris read the EKG. Dr. Harris further testified that he and other physicians take turns reading EKGs for the emergency department at BCH. Dr. Harris denied that his reading and billing for the EKG had created a patient/physician relationship with Patient 2. (Tr. at 77-79, 191-193)

28. Dr. Harris testified that, when he had first become acquainted with Patient 2, he had been unaware that he had read an EKG for her in 2000. Moreover, Dr. Harris testified that he did not become aware of that prior medical service until November 2005, when the Board subpoenaed his medical records. In complying with the Board's subpoena, no medical records for Patient 2 were found except for a billing record for the 2000 EKG reading. (Tr. at 189-192)

*2003*

29. Pharmacy records indicate that Dr. Harris issued the following prescriptions to Patient 2 in 2003:

    - February 16, 2003: Prozac Weekly Caps 4's 90 mg #6 with instructions to take two capsules each week. Three refills were authorized.

    - February 25, 2003: Diovan HCT 160/12.5 mg #90 with instructions to take one tablet daily. Three refills were authorized.

    - July 1, 2003: Zyprexa 10 mg #90 with instructions to take one tablet at bedtime. Three refills were authorized.

    (St. Ex. 4)

30. Dr. Harris testified that Prozac is used to treat anxiety, Diovan HCT is used to treat hypertension, and Zyprexa is used to treat bipolar disorder or schizophrenia. (Tr. at 88-90)

31. Dr. Harris acknowledged that he had been involved in a sexual relationship with Patient 2 during the time he issued the 2003 prescriptions. However, Dr. Harris denied that he had had a physician/patient relationship with Patient 2 in 2003. (Tr. at 90-91) Whereupon the following exchange took place:

    Q. [By Mr. Wilcox] Can you please describe or explain to the Board how you can prescribe, in this case, almost a year's worth of medications to a patient and not have a physician/patient relationship with her?

A. [By Dr. Harris] She was out of her medications. She had been unable to see her primary care physician, which was Dr. Siddiqui—I have no idea how to spell that—and she wanted the cheaper scripts; that's what I gave her.

These are a lot less costly than if you buy them locally. But again, I never examined her, I never came up with these diagnoses. She was already on these medications. These aren't medicines you want to run out of.

Q. Shouldn't you at least document an examination or document a medical record if you're going to prescribe one year's worth of medication?

A. It was probably done at the nursing home. She was probably at work and she didn't have—I'm being very speculative because I don't know.

There's no documentation to say that, can't really say that. If she was already on these medications, then I have no reason to believe or no reason to change them if her primary-care physician was already prescribing these medications. She's already getting appropriate care, she just couldn't get in to see him.

Q. Let me ask you to explain a little bit, because I'm a little confused. What do you mean about the nursing home? Explain what that means.

A. She works at the nursing home. That's how I met her. She was a night-shift nurse. And I mean, I can't recollect this, but I can—she's never come into my office. That's probably where she would have gotten it.

And, actually, it's pretty common practice for the medical directors to give prescriptions to individuals if there's awkward moments where they can't get in to see staff.

Q. Again, these are a year's supply for all these medications?

A. Generally should have been a year. She wanted them cheaper. She had been on them a long time and she wanted the cheaper way to go. If you ordered it through Medco with her insurance, she got this free.

Q. Are you in the habit of prescribing large amounts of medications to individuals who you don't consider to be patients?

A. No, sir.

Q. Well, besides this individual, have you done—prescribed a year's supply of medications to individuals who aren't your patients?

A. Absolutely not. No, sir. I think this is a special request she had.

Q. Now, did she receive special treatment because she was involved in a sexual relationship with you, Doctor?

A. No, she didn't.

Q. Even though you have never done this with another patient?

A. That did not influence me at all. She said she wanted cheap meds and she—it was hard for her to get in to see her doctor. That's, again, all speculative, because I can't remember.

(Tr. at 91-93)

32. Dr. Harris testified that he cannot recall the circumstances under which he had written the 2003 prescriptions for Patient 2. Dr. Harris thought that Patient 2's primary care physician might have been writing her prescriptions for 30-day supplies, and that Patient 2 had wanted longer-term prescriptions to save money. (Tr. at 194-195)

33. Dr. Harris testified that he had not believed that writing the 2003 prescriptions for Patient 2 would be a problem: "I didn't think—I did not assess the patient. I did not come up with a diagnosis of the patient, nor did I come up with a treatment of the patient. I was just fulfilling a treatment that had already been there." Moreover, Dr. Harris testified that his sexual relationship with Patient 2 had no effect on his decision to write those prescriptions. Finally, Dr. Harris testified that, following the issuance of the 2003 prescriptions, he did not view any future sexual contact with Patient 2 as having sex with a patient. (Tr. at 196-197)

*2005*

34. On March 11, 2005, Dr. Harris issued a prescription to Patient 2 for Xanax 0.25 mg #45 with instructions to take one tablet every eight hours as needed for anxiety. (St. Ex. 2)

35. Dr. Harris initially testified that he had issued the Xanax prescription to Patient 2 while he was on call for another physician because she was upset over the death of her father. He further testified that he had diagnosed Patient 2 with anxiety. (Tr. at 85; See, also, St. Ex. 5 at 64-67)

Dr. Harris later testified concerning the circumstances that led him to issue that prescription:

> Well, her father had recently died and she was having problems dealing with that. She had called the hospital and the hospital had referred her to—or actually got a hold of Dr. Landes' office.

> Dr. Landes was there; however, he was not at an ability where he could call a script in. He was preoccupied, as he should be. I'm on call for him.
>
> He said, "I'd probably give her some Xanax", so I went upstairs and sent the electronic prescribing of Xanax through as obvious—as documented.[2]

(Tr. at 199-200; See, also, St. Ex. 5 at 102-104)

Dr. Harris denied that his issuance of the Xanax prescription to Patient 2 had created a physician/patient relationship. (Tr. at 81-84) Dr. Harris testified: "[T]here's no physical examination, there's no history of present illness, all there was was the knowledge that her father had passed away, and the good—the insightfulness of Dr. Landes to say, 'I'd probably give her Xanax.' I didn't even talk to her." (Tr. at 200)

36. When asked if he would agree that, after making a diagnosis for a person and issuing that person a prescription, he had formed a physician/patient relationship with that person, Dr. Harris testified: "No, sir, I would not. You're saying every doctor on call has a physician/patient relationship with every patient that calls them. That would be an incorrect statement." (Tr. at 85)

37. Dr. Harris testified that he and Patient 2 had ended their sexual relationship about one month prior to his issuing the March 11, 2005, prescription for Xanax. Dr. Harris further testified that, considering the medical services he had provided to Patient 2, he does not believe that he had had a physician/patient relationship with Patient 2. (Tr. at 86, 199, 204)

**Testimony of Dr. Carroll regarding Patient 2**

38. Dr. Carroll testified that, in his opinion, Dr. Harris had had a physician/patient relationship with Patient 2. Dr. Carroll testified that Dr. Harris had reviewed an EKG, prescribed medication, and made a new diagnosis of Patient 2's medical condition. (Tr. at 129)

39. Dr. Carroll explained the reason for his opinion that Dr. Harris' reading of Patient 2's EKG in 2000 had established a physician/patient relationship. Dr. Carroll testified that, first, when Dr. Harris read the EKG on Patient 2 from the ER at BCH, he became legally liable for his findings. Second, Dr. Harris billed Patient 2 for his reading of the EKG. (Tr. at 130)

    On cross-examination, however, Dr. Carroll was asked to assume that a physician who does not know a particular person reads an EKG for that person and bills that person for the service. Six months later, the physician and the person meet. The physician does not remember reading the EKG or billing for it, and the person does not remember the physician. They begin a sexual relationship. Dr. Carroll testified that, under those circumstances, there would be no violation. (Tr. at 146-147)

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[2] Dr. Landes leased space in Dr. Harris' office building. Dr. Harris testified during a deposition that Dr. Landes had been in the basement and Dr. Harris had been upstairs when Dr. Landes got the call from Patient 2. (St. Ex. 5 at 101-104)

40. In addition, with respect to Dr. Harris' 2003 prescriptions to Patient 2 for Prozac, Diovan HCT, and Zyprexa, Dr. Carroll testified that, if Dr. Harris had really intended to maintain Patient 2's prescriptions until she could see her primary care physician, Dr. Harris should have written the prescriptions for smaller quantities. Instead, Dr. Harris prescribed a year's supply of each. Dr. Carroll added:

> I cannot see how anyone, just to keep somebody on medication, would give them a year's supply. So this definitely constitutes a doctor/patient relationship by writing a prescription, rather than to keep them on the medicine so they don't run out.
>
> There's a difference between that and prescribing a year's supply of medicine.

(Tr. at 134-135)

41. Further, with respect to Dr. Harris' March 2005 prescription of Xanax to Patient 2, Dr. Carroll noted that Dr. Harris had prescribed the medication after being informed that Patient 2's father had died. Dr. Harris diagnosed anxiety and prescribed Xanax based on that diagnosis. Dr. Carroll further testified that, whether or not Dr. Harris had been on call for another physician, "this was a new prescription and he was treating a new disease entity, which definitely has a doctor/patient relationship." (Tr. at 131-132)

42. Dr. Carroll testified that, because Dr. Harris was sexually involved with Patient 2 at the same time he was carrying on a physician/patient relationship, Dr. Harris' conduct failed to comply with Section 15 of the AOA Code of Ethics. Moreover, Dr. Harris' treatment of Patient 2 failed to meet the minimal standard of care because of the concurrent sexual relationship and physician/patient relationship. (Tr. at 135-136)

**Dr. Harris' September 20, 2005, Interview with Board Investigator Clark**

43. Dr. Harris testified that, on September 20, 2005, Board Investigator Charlie Clark visited him at his office. Dr. Harris further testified that, during the course of their conversation, Investigator Clark had asked him whether he had had a sexual relationship with Patient 1, and Dr. Harris denied that he had. (Tr. at 34-37)

44. At hearing, Dr. Harris denied that he had had sex with *Patient* 1, but acknowledged that he had had sex with the *person* identified as Patient 1. Dr. Harris further acknowledged that he had denied having had sex with *Patient* 1 to Investigator Clark. Dr. Harris testified:

> A. [By Dr. Harris] Well, I looked at the Ohio Revised Code, and I also looked at the website, because I had already been notified by an anonymous phone call that I was being investigated by the State Medical Board, and so I did my own research.

> And I was not going to admit to the Board investigator something that wasn't true. I did not think they were my patient, so I said no. And he said "patient," I said no. If he would have said individual, he would have got a totally different answer.
>
> Q. [By Mr. Wilcox] So instead of cooperating with the Board, you wanted to parse words with them?
>
> A. I wasn't parsing words. It's a serious difference between "patient HR" and "individual HR." That's not parsing words. It's a totally different conclusion.
>
> Q. Okay.
>
> A. Number one, that's admitting they were my patient, and I didn't think they were my patient.
>
> Q. Okay. So you're telling the Board again today under oath that you were honest and you answered Mr. Clark's questions truthfully?
>
> A. Yes, sir. I did.
>
> (Tr. at 43-44)

45. Dr. Harris further testified that he could not recall whether he had answered questions during the Interview concerning the paternity of Patient 1's then-unborn second child.[3] No further evidence was presented concerning the allegation that, during the *Interview*, Dr. Harris had "specifically denied that [he] had impregnated Patient 1." (Tr. at 35-36; St. Ex. 12A)

46. With respect to Patient 2, Dr. Harris admitted to Investigator Clark that he had had a sexual relationship with Patient 2 but denied to Investigator Clark that he had treated her as a patient. (Tr. at 37, 76-77)

**Dr. Harris' April 25, 2006, Investigatory Deposition**

*With Respect to Patient 1*

47. On April 25, 2006, Dr. Harris participated in a Board investigatory deposition in which he answered questions under oath. The questions largely concerned his relationships with Patient 1 and Patient 2. (St. Ex. 5) During the deposition, Dr. Harris made the following statements with respect to Patient 1:

    a. Dr. Harris stated that he had answered all of Investigator Clark's questions truthfully during the 2005 Interview. (St. Ex. 5 at 21)

[3] Patient 1's first child was born in 2001. (St. Ex. 1 at 317)

b. Dr. Harris stated that Patient 1 had been his patient in the mid to late 1990s but that she was no longer his patient. (St. Ex. 5 at 44)

c. Dr. Harris denied having had sexual relations or engaging in sexual activity or contact with Patient 1. (St. Ex. 5 at 54)

d. Dr. Harris denied that he is the father of Patient 1's second child, who had been born on October 24, 2005. (St. Ex. 5 at 59; St. Ex. 7)

48. Dr. Harris testified that, having had an opportunity prior to the hearing to review the transcript of his deposition, he believes that his deposition testimony was accurate at the time he gave it. However, Dr. Harris testified that he no longer believes that all of his testimony was accurate, and can see how some of his answers could be considered misleading. (Tr. at 228-229) Moreover, Dr. Harris testified:

> I really wish I would have had counsel there with me, because I didn't really know how to answer it.
>
> When I saw the patient key, that put me in Never Neverland, because as I said, I didn't think these people were my patients, so then every question involved the patient key, which gives you the assumption that I am allowing for these people—that I'm already identifying and agreeing that they were a patient.
>
> That made it very difficult to answer the questions * * *.

(Tr. at 229)

49. When asked at hearing whether he would be willing to acknowledge that he had falsely answered questions with respect to having had a sexual relationship with Patient 1, Dr. Harris declined to do so on the basis that, at the time of the deposition, he did not believe that Patient 1 had been his patient. (Tr. at 71-72)

When asked what has changed since that time, Dr. Harris testified:

> A. [By Dr. Harris] Well, a couple things. Number one, after I did the deposition, I got on the site and looked up what a patient was. I never knew what the definition of a patient was. And now I know what the definition of a patient is.
>
> But when I answered this deposition, I answered it as truthfully as possible at the time I was deposed.
>
> Q. [By Mr. Wilcox] Okay. So you're telling us you didn't know what the definition of a patient was in 2006?

A. I didn't know what constituted a physician/patient relationship according to the Ohio Revised Code. No, sir, I didn't.

(Tr. at 74-75)

*With Respect to Patient 2*

50. During the Deposition, Dr. Harris acknowledged that he had had a sexual relationship with Patient 2 beginning in 2002 and ending about one month before he issued a prescription to her for Xanax in March 2005. However, Dr. Harris stated that the March 2005 prescription for Xanax had not established a physician/patient relationship between him and Patient 2 because he had issued the prescription to her while he was on-call for another physician. (St. Ex. 5 at 68, 93-96)

*With Respect to Both Patients*

51. Dr. Harris testified that he had not reviewed any of his medical records for Patient 1 or Patient 2 prior to the deposition, and had not had those records available to him. Dr. Harris testified that those records had been sent to the Board for copying in November 2005 pursuant to subpoena and, as of the date of the hearing, have not been returned. Dr. Harris further testified that he had not reviewed the hospital records for Patient 1, or any other documents, in advance of his deposition. (Tr. at 225-226)

52. When asked whether his memory was clearer at the hearing or at the April 2006 deposition, Dr. Harris testified that his memory was much clearer at the hearing because he had had a chance to review the records prior to the hearing. (Tr. at 225-227)

**Court Action concerning Patient 1's Second Child**

53. On September 28, 2006, a judgment entry was filed in the Crawford County Court of Common Pleas, Juvenile Division, establishing that Dr. Harris is the father of Patient 1's second child. Dr. Harris' paternity was determined via genetic testing. Tissue specimens used for the genetic testing had been collected on July 19, 2006, from Patient 1, Patient 1's second child, and Dr. Harris. (Tr. at 55-56; St. Ex. 7)

**Dr. Harris' July 2007 Responses to Board Interrogatories**

54. On July 13, 2007, Dr. Harris filed written responses to Board interrogatories, and swore that those responses were true and accurate to the best of his knowledge. (St. Ex. 9) In his responses, Dr. Harris provided the following information:

- Dr. Harris stated that he did not appeal the court's judgment identifying him as the father of Patient 1's second child. Dr. Harris acknowledged that the court's judgment remains in full force and effect, and that he signed a form filed with the court that concerns custody, support, and other issues. (St. Ex. 9 at 3; see also St. Ex. 7 at 1-9)

- When asked about his sexual contact with Patient 1, Dr. Harris responded:

> Dr. Harris objects to the characterization of "Patient 1" as a "patient" because Dr. Harris did not have a physician/patient relationship with that individual when their sexual contact began. Without waiving that objection, Dr. Harris states that he had had an intimate relationship and engaged in sexual activity including sexual intercourse and other sexual contact with "Patient 1" during the approximate time frame of September, 2004 through January, 2005 but Dr. Harris does not recall the precise dates that he engaged in sexual activity with Patient 1 or the exact types of sexual activity and/or contact that occurred on those dates.

(St. Ex. 9 at 4)

- In question 2 of the interrogatories, Dr. Harris was asked: "During your deposition that was taken on or about April 25, 2006 by a representative of the State Medical Board * * *, did you answer all questions truthfully and accurately?" Dr. Harris responded:

> Dr. Harris objects to this interrogatory on the grounds that he has not been allowed to review the transcript of the deposition in question that was taken more than fourteen months ago. Without waiving this objection, Dr. Harris states that to the best of his recollection and belief, he answered all questions truthfully based on the information that was available to him on April 25, 2006 and because Dr. Harris did not have a physician/patient relationship with the individuals identified as "Patient 1" and "Patient 2" when their sexual contact occurred. Without the opportunity to actually review the transcript, Dr. Harris cannot state that all of his answers were accurate either at that time or based on information that has become available since April 25, 2006.

(St. Ex. 9 at 2)

**Timeline Summary**

55. The following chart summarizes in chronological order some of the events addressed above:

| Date(s) | Event(s) | ¶(s)[4] |
|---|---|---|
| | | |
| Sometime in 2000 | Patient 2 is seen in the ER by another physician, Dr. Harris reads the EKG ordered by the other physician and bills Patient 2 for that service. | 27 |
| Sometime in 2001 | Dr. Harris becomes personally acquainted with Patient 2, a nurse at a facility where he is medical director. | 26 |

[4] This column references the paragraphs of the Summary of the Evidence where the events are discussed.

| Date(s) | Event(s) | ¶(s)[4] |
|---|---|---|
| | | |
| January 11, 2001 | Patient 1 is seen for first time by Dr. Harris. She does not see him again professionally until October 2003. | 6 |
| Sometime around February to April 2002 | Dr. Harris begins a sexual relationship with Patient 2. | 26 |
| February 16, 2003 | Dr. Harris gives Patient 2 prescription for Prozac. | 29 |
| February 25, 2003 | Dr. Harris gives Patient 2 prescription for Diovan HCT. | 29 |
| July 1, 2003 | Dr. Harris gives Patient 2 prescription for Zyprexa. | 29 |
| Fall 2003 (approx.) | Dr. Harris employs Patient 1 to clean his office. | 7 |
| September 2003 | Dr. Harris begins a sexual relationship with Patient 1. She is employed by him at this time. | 7 |
| October 7, 2003 | Patient 1 is seen and treated by Dr. Harris at his office. | 10 |
| October 21, 2003 | Patient 1 is seen and treated by Dr. Harris at his office. | 10 |
| November 24, 2003 | Dr. Harris orders pregnancy test for Patient 1. The results of the pregnancy are negative. | 10 |
| February 25, 2005 | Dr. Harris performs physical examination on Patient 1 and orders blood tests. At this time he is still engaged in a sexual relationship with Patient 1. | 12 |
| February 27, 2005 | Dr. Harris reviews results of Patient 1's blood tests, diagnoses anemia, prescribes ferrous sulfate and Provera, and orders pregnancy test. The results of the pregnancy test are positive. | 13 |
| February 2005 | Dr. Harris and Patient 1 end their sexual relationship. | 18 |
| February 2005 | Dr. Harris and Patient 2 end their sexual relationship. | 37 |
| March 11, 2005 | Dr. Harris prescribes Xanax to Patient 2. | 34 |
| September 20, 2005 | Dr. Harris interviewed by Board investigator. | 43 |
| October 24, 2005 | Patient 1 gives birth to second child. | 47d |
| April 25, 2006 | Dr. Harris submits to Board investigatory deposition. | 47 |
| July 19, 2006 | Specimens for genetic testing collected from Patient 1, Patient 1's second child, and Dr. Harris. | 53 |
| September 28, 2006 | Court entry filed establishing Dr. Harris' paternity of Patient 1's second child. | 53 |
| July 13, 2007 | Dr. Harris files his responses to Board interrogatories. | 54 |

**Additional Information**

*Testimony of Dr. Carroll*

56. Dr. Carroll testified that, since the days of Hippocrates, the medical profession has considered it taboo for a physician to have a sexual relationship with his or her patients. Dr. Carroll further testified: "The trust of the patient is compromised. The objectivity of the doctor is compromised. The patient's feelings for the doctor may change the doctor's

treatment plan for the patient." Dr. Carroll added that "nothing good can come out of this type of relationship, as we can see with this proceeding." (Tr. at 137)

*Testimony of Mr. Klein*

57. Gerard D. Klein testified on behalf of Dr. Harris. Mr. Klein is the President and CEO of BCH, where he has worked since 1999. (Tr. at 264-265)

58. Mr. Klein testified that he has known Dr. Harris since Mr. Klein came to Bucyrus in 1999. Mr. Klein described his relationship with Dr. Harris as a "collegial working relationship." (Tr. at 266)

59. Mr. Klein testified that Dr. Harris has "considerable" involvement with BCH. Mr. Klein testified that Dr. Harris performs procedures such as stress tests, covers on-call duties, reads EKGs, and provides ER room backup. With respect to reading EKGs, Mr. Klein testified that Dr. Harris is one of three physicians who read EKGs for BCH, and he does most of the readings on weekends and holidays because of his proximity to the hospital. With respect to ER backup, Mr. Klein testified that Dr. Harris is one of three local physicians who are on call for occasions when the ER gets too busy or if some unfortunate event should occur. (Tr. at 267-268)

60. Mr. Klein testified that, should Dr. Harris be suspended for more than a few weeks, it would have a serious impact on BCH and the community. Mr. Klein testified that Bucyrus has historically had five independent primary care physicians and five primary care physicians employed by BCH. Mr. Klein stated that they are already short two of the BCH-employed primary care physicians and are having difficulty filling those positions. Mr. Klein further testified: "There's a lot of hubbub in the community about being short and a lot of displeasure from patients not being able to get in in what they would perceive as a timely fashion." He noted that Dr. Harris has helped respond to that shortage by keeping his practice open to new patients. (Tr. at 268-270)

*Testimony of Dr. Harris*

61. Dr. Harris testified that he has had no prior disciplinary contact with the Board. (Tr. at 183)

62. Dr. Harris testified that he is an important member of the Bucyrus medical community. Dr. Harris testified that he has more than 4,000 patients, and treats everybody regardless of their ability to pay. (Tr. at 235)

63. Dr. Harris believes that he is a good physician. He stated that the American Osteopathic Foundation awarded him the Clinical Assessment Program Physician of the Year for diabetes in 2007 and hypertension and stroke in 2008, which Dr. Harris described as Excellence in Care awards. Dr. Harris further testified that he is an Auxiliary Clinical Professor at the Ohio State University College of Medicine and that he works with medical

students. Dr. Harris testified that he earned the Star Preceptor of the Year award about two years ago. (Tr. at 231-232)

64. Dr. Harris testified that his primary area of focus is the care of patients with diabetes. Dr. Harris further testified that other physicians in the area refer their patients to him for diabetes care. Dr. Harris stated that, if he were to leave practice, his diabetes patients would have to seek care elsewhere in the state because there is no one in his area who has his level of expertise treating diabetic patients. (Tr. at 233-235)

65. Dr. Harris testified that his sexual relationships with Patients 1 and 2 have had a "[t]remendous impact" on him and his family. Dr. Harris further testified that he has changed his behavior as a result:

> I became better acquainted with the Ohio Revised Code, and now I follow it to the "T". I've rebuilt a relationship with my wife again, and my kids, which is important to me, regardless of what happens here.
>
> I lost a lot of patients as a result of the turmoil because it wasn't a very confidential investigation, in my opinion. It got out there and patients found out about it and they left me.
>
> I've rebuilt that to the point where I'm now building a practice. I think the community has forgiven me for my adulterous affairs.

(Tr. at 237-238)

66. With respect to the effect on his practice, Dr. Harris testified:

> One month ago, when I met with Group of Ohio, which is an independent physicians association located here in Columbus, Ohio, they terminated my membership with them, and as a result, I lost the ability to bill over 25 health maintenance organizations, as well as several big insurers, Aetna, Sigma, Aetna Medicare, and Humana. So I can no longer bill for those insurance companies.
>
> It doesn't mean I lost the patients, but the patients aren't going to come to me if their insurance doesn't cover me.

(Tr. at 238)

## FINDINGS OF FACT

1. From September 2003 until February 2005, Roy William Harris, D.O., engaged in a sexual relationship with Patient 1, as identified on a confidential Patient Key, despite having an

ongoing physician/patient relationship with her. Dr. Harris first saw and provided medical services to Patient 1 in January 2001.

Dr. Harris asserted that, at the time his sexual relationship with Patient 1 began in September 2003, there had been no ongoing physician/patient relationship. However, Dr. Carroll provided convincing testimony that patients who see their physicians only for sick care may go years between visits, and this is particularly likely in the case of young patients (Patient 1 was 17 when Dr. Harris first saw her).

Further, even if one were to accept Dr. Harris' assertion that any physician/patient relationship that was formed in January 2001 had ended by September 2003 due to the passage of time (there is no documentation that the physician/patient relationship was ever terminated), the evidence establishes that on October 7, 2003, within about one month of becoming sexually involved with Patient 1, Dr. Harris saw Patient 1 professionally and provided medical treatment for her. He saw and treated her again on October 21, 2003, and ordered a pregnancy test for her on November 24, 2003. Dr. Harris' assertion that no physician/patient relationship was created (or continued) by the medical services he provided in 2003 is unreasonable, not credible, and is rejected.

Moreover, Dr. Harris admitted that, in late February 2005 when he provided further medical services to Patient 1 including a physical examination, diagnosis of anemia, prescriptions, and a pregnancy test, he was still engaged in a sexual relationship with her. His assertion that no physician/patient relationship existed in 2005 because he had been on call for another physician is unpersuasive. Accordingly, the evidence supports a finding that, from September 2003 until February 2005, Dr. Harris engaged in a sexual relationship with Patient 1 despite an ongoing physician/patient relationship with her.

2. On September 20, 2005, in the course of a Board investigation, Dr. Harris was interviewed by a Board investigator. During the Interview, Dr. Harris told the investigator that he had never had sexual contact with Patient 1.

3. No evidence was presented to support a finding that, during the Interview, Dr. Harris specifically denied that he had impregnated Patient 1.

4. Subsequently, during an April 25, 2006, Board investigatory deposition [Deposition] in which Dr. Harris answered questions while under oath, Dr. Harris stated that: a) he had answered all of the investigator's questions truthfully during the interview, b) he had never engaged in sexual contact with Patient 1, and c) Patient 1 had not been his patient since approximately the late 1990's.

5. Further, during the April 2006 Deposition, Dr. Harris denied under oath that he was the father of the baby delivered by Patient 1 on October 24, 2005 [Patient 1's second child].

6. At hearing, Dr. Harris testified that he had disagreed with the characterization of Patient 1 as a "patient" during the Interview and the Deposition, because he had believed at those

times that Patient 1 had not been his patient when the sexual relationship occurred. He asserted that he had then believed that, if he admitted to having a sexual relationship with "Patient" 1, it would have constituted an admission that she was, in fact, his patient when the sexual relationship occurred. Dr. Harris was not represented by counsel during the Interview or Deposition.

These assertions are not persuasive. If Dr. Harris had objected to the characterization of Patient 1 as a patient, he could have stated that position during the Interview and/or Deposition. To simply deny that he had had sexual contact with Patient 1 because she was being referred to as a "patient" was misleading and dishonest, and was not reasonable under the circumstances. It is possible that, if Dr. Harris had been represented by an attorney during the deposition, this issue could have been avoided. However, Dr. Harris is an intelligent and highly-educated person. The absence of counsel did not absolve Dr. Harris of the responsibility to provide truthful responses to the questions posed to him.

7. By judgment entry filed on September 28, 2006, in the Crawford County Court of Common Pleas, Dr. Harris was determined by genetic testing to be the father of Patient 1's second child. The tissue specimens used for genetic testing were collected on July 19, 2006, from Patient 1, Patient 1's second child, and Dr. Harris.

8. On July 13, 2007, Dr. Harris filed written responses to Board interrogatories [Responses], and swore that those responses were true and accurate to the best of his knowledge. In his Responses, Dr. Harris acknowledged indirectly that he is the father Patient 1's second child, and admitted that he had engaged in sexual contact with Patient 1 from September 2004 through January 2005, but objected to the characterization of Patient 1 as a "patient" because he asserted that he had not had a physician/patient relationship with her when the sexual contact occurred. Dr. Harris also stated in his Responses that, to the best of his recollection and belief, he had answered all questions truthfully during the Deposition based on the information that was available to him at that time.

   a. In fact, when asked during the Deposition whether he ever engaged in sexual contact with Patient 1, Dr. Harris:

      i. Had denied that he ever had sexual contact with her.

      ii. Had specifically denied that he is the father of Patient 1's second child.

   b. In fact, as described above in Finding of Fact 1, Dr. Harris had treated Patient 1 before and after the September 2004 through January 2005 time period, and his patient chart for Patient 1 does not include any letter or documentation terminating the physician-patient relationship.

The Hearing Examiner does not agree with Dr. Harris' Responses that he had not had a physician/patient relationship with Patient 1 when their sexual relationship occurred. Nevertheless, the evidence is insufficient to support a finding that Dr. Harris' Responses

were intentionally misleading or deceptive inasmuch as they were made in the course of objections. Further, Dr. Harris stated that he could not specifically recall the dates of his sexual relationship with Patient 1. Moreover, with respect to the interrogatory question that asked whether he had truthfully answered all questions during his Deposition, Dr. Harris responded that he could not accurately recall statements that he had made more than a year earlier during the Deposition without benefit of a review of his Deposition transcript.

9. The evidence establishes that Dr. Harris engaged in a sexual relationship with Patient 2, as identified on a confidential Patient Key, beginning sometime between February and April 2002, and ending in February 2005.

10. Pursuant to a subpoena that requested Dr. Harris' medical records for Patient 2, his office found a billing record for a 2000 EKG that Dr. Harris had read in connection with his duties at Bucyrus Community Hospital. Nevertheless, the evidence presented, including the testimony of Dr. Carroll during cross-examination, does not support a finding that a lasting physician/patient relationship was created when Dr. Harris read the EKG for Patient 2 in 2000. The evidence establishes the following: Dr. Harris and Patient 2 did not know each other at the time the service was performed, Patient 2 was seen in the ER by another physician, the EKG was ordered by another physician, Dr. Harris never saw or communicated with Patient 2 at that time, and Dr. Harris simply read the EKG printout, recorded his findings on the printout, and sent it back to the ER.

    The medical service Dr. Harris provided to Patient 2 in 2000 was episodic in nature, was performed in an emergency setting, and there was no reasonable expectation that Dr. Harris would render related medical service to Patient 2 in the future. Accordingly, there was no necessity for Dr. Harris to terminate a physician/patient relationship with Patient 2 before they became sexually involved in 2002.

11. Despite Findings of Fact 9 and 10, the evidence establishes that Dr. Harris prescribed medication to Patient 2 in February and July 2003, including one-year supplies of Prozac, Diovan HCT, and Zyprexa. Dr. Harris asserted that these prescriptions had not created a physician/patient relationship because Patient 2 had her own primary care physician, she had already been taking the same medications that Dr. Harris prescribed, and her physician was out of town (although Dr. Harris was not on call for that physician).

    Dr. Harris' assertions are unconvincing. As Dr. Carroll persuasively testified, if Dr. Harris had simply wanted to maintain Patient 2 on her medications until her primary care physician became available, then Dr. Harris should have prescribed much smaller quantities of medications. Furthermore, providing long-term prescriptions to an individual does not constitute episodic or emergent care. Accordingly, a physician/patient relationship was created when Dr. Harris provided long-term prescriptions to Patient 2 in February and July 2003, and there is no documentation that that physician/patient relationship was ever terminated.

Therefore, the evidence establishes that, from February 2003 through February 2005, Dr. Harris engaged in sexual contact with Patient 2 while he was in a physician/patient relationship with her.

12. During the 2005 Interview with the Board investigator, Dr. Harris informed the Board investigator that, although Dr. Harris had engaged in sexual contact with Patient 2, he had had never treated her as a patient.

13. Subsequently, during the Deposition, Dr. Harris stated that Patient 2 was never his patient, although Dr. Harris indicated that he had prescribed medication to her on one occasion when he was on call for another physician.

## CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Roy William Harris, D.O., as set forth in Findings of Fact 1, 2, 4, 6, 9, 11, 12, and 13, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

2. As set forth in Finding of Fact 3, there was no evidence presented that, during a September 2005, Interview with a Board investigator, Dr. Harris has specifically denied that he had impregnated Patient 1. Further, as set forth in Finding of Fact 7, at the time of Dr. Harris' April 25, 2006, deposition, Dr. Harris' paternity with respect to Patient 1's second child had not been established. Moreover, as set forth in Findings of Fact 8, the evidence is insufficient to support a finding that Dr. Harris gave misleading or deceptive responses to the Board's interrogatories in July 2007. Accordingly, the evidence does not support a conclusion that Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 5 and 8, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

3. Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 1, 4, 6, 9, 11, and 13, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Perjury, Section 2921.11, Ohio Revised Code.

4. As set forth in Finding of Fact 7, at the time of Dr. Harris' April 25, 2006, deposition, Dr. Harris' paternity with respect to Patient 1's second child had not been established. Moreover, as set forth in Finding of Fact 8, the evidence is insufficient to support a finding that Dr. Harris gave misleading or deceptive responses to the Board's interrogatories in July 2007. Accordingly, the evidence does not support a conclusion that Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 5 and 8, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Perjury, Section 2921.11, Ohio Revised Code.

5. Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 1, 9, and 11, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

6. Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 1, 9, and 11, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: American Osteopathic Association, Code of Ethics, Section 15.

7. Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 1, 2, 4, 6, 9, 11, 12, and 13, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

8. As set forth in Finding of Fact 3, there was no evidence presented that, during a September 2005, Interview with a Board investigator, Dr. Harris has specifically denied that he had impregnated Patient 1. Further, as set forth in Finding of Fact 7, at the time of Dr. Harris' April 25, 2006, deposition, Dr. Harris' paternity with respect to Patient 1's second child had not been established. Moreover, as set forth in Finding of Fact 8, the evidence is insufficient to support a finding that Dr. Harris gave misleading or deceptive responses to the Board's interrogatories in July 2007. Accordingly, the evidence does not support a conclusion that Dr. Harris' acts, conduct, and/or omissions as set forth in Findings of Fact 5 and 8, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented

by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

## RATIONALE FOR THE PROPOSED ORDER

Dr. Harris' boundary violations with Patients 1 and 2 and his subsequent false statements during a Board investigation warrant a suspension during which he must complete courses dealing with personal/professional ethics and boundary issues, followed by probationary monitoring.

## PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE; NO NEW PATIENTS DURING THIRTY-DAY INTERIM PERIOD**: Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Roy William Harris, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days. During the thirty-day interim, Dr. Harris shall not undertake the care of any patient not already under his care.

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

1. **Application for Reinstatement or Restoration**: Dr. Harris shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Personal/Professional Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, Dr. Harris shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Harris submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he

learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

3. **Course(s) Concerning Physician/Patient Boundaries**: At the time he submits his application for reinstatement or restoration, Dr. Harris shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Harris submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

4. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Harris has not been engaged in the active practice of osteopathic medicine for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

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

1. **Obey the Law**: Dr. Harris shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.

2. **Declarations of Compliance**: Dr. Harris shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Harris' certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances**: Dr. Harris shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Harris' certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every **six** months thereafter, and/or as otherwise directed 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.

4. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Harris is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

5. **Required Reporting of Change of Address**: Dr. Harris shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Harris certificate will be fully restored.

E. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Harris violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Harris shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Harris shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

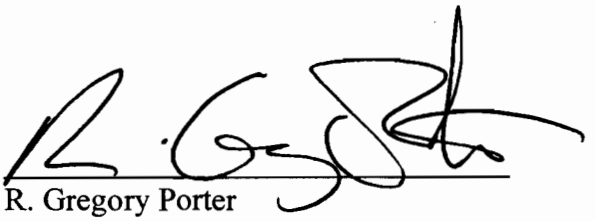
   In the event that Dr. Harris provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

   This requirement shall continue until Dr. Harris receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Harris shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any professional license or certificate. Also, Dr. Harris shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Harris receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph F**: Dr. Harris shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



R. Gregory Porter
Hearing Examiner

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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med.ohio.gov


EXCERPT FROM THE DRAFT MINUTES OF AUGUST 11, 2010

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Amato asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Constance E. Ange, D.O.; Robert Edward Barkett, Jr., M.D.; Thomas Michael Bender; James A. Handley, L.M.T.; Roy William Harris, D.O.; Harold M. Jones, D.P.M.; Sarah Ann Lewis, M.D.; Christopher Allan Rice, M.D.; and Richard Joseph Sievers, II, D.O. A roll call was taken:

| | | |
|---|---|---|
| ROLL CALL: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - aye |
| | Mr. Albert | - aye |
| | Dr. Madia | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Mr. Morris | - aye |
| | Dr. Ramprasad | - aye |

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

| | | |
|---|---|---|
| ROLL CALL: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - aye |
| | Mr. Albert | - aye |
| | Dr. Madia | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Mr. Morris | - aye |
| | Dr. Ramprasad | - aye |

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

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

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

.....

ROY WILLIAM HARRIS, D.O.

.....

**Dr. Mahajan moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Roy William Harris, D.O. Mr. Hairston seconded the motion.**

.....

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

| | | |
|---|---|---|
| ROLL CALL: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - abstain |
| | Mr. Albert | - abstain |
| | Dr. Madia | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Mr. Morris | - aye |
| | Dr. Ramprasad | - aye |

The motion carried.

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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May 13, 2009

Case number: 09-CRF- 059

Roy William Harris, D.O.
510 Hill Street
Bucyrus, Ohio 44820

Dear Doctor Harris:

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

(1) In the course of an investigation by the Board, you were interviewed by a Board investigator on or about September 20, 2005 [September 2005 interview], concerning your relationship with Patients 1 and 2, identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure). You informed the investigator that you had never had sexual contact with Patient 1, and you specifically denied that you had impregnated Patient 1. You subsequently stated, under oath, to a representative of the Board on or about April 25, 2006, that you had answered all of the investigator's questions truthfully; you denied ever engaging in sexual contact with Patient 1; you testified that you were not the father of Patient 1's baby; and you indicated that she had not been your patient since approximately the late 1990's.

In fact, despite your ongoing physician-patient relationship with Patient 1 (which included the rendering of medical treatment and prescribing of medications through, at least, the end of February 2005), you engaged in sexual contact with her.

Further, in fact, you were determined by genetic testing to be the father of the baby Patient 1 delivered on or about October 24, 2005.

mailed 5-14-09

(2) You informed the Board investigator during your September 2005 interview that while you had engaged in sexual contact with Patient 2, a woman who you indicated was a former friend, you claimed that you had never treated her as a patient. Pursuant to a subpoena that requested your medical records for this woman, your office advised the Board that you had no medical records for her, and the only service that you had provided to her in the past was an EKG reading through a hospital back in 2000. You subsequently stated, under oath, to a representative of the Board on or about April 25, 2006, that this woman was never your patient, although you then indicated that you had prescribed medication to her one occasion when you were "on call" for another physician.

In fact, you engaged in sexual contact with Patient 2 while you were in a physician-patient relationship with her.

(3) After first providing certain information under oath to a representative of the Board in or around April 2006, you later admitted, under oath, in or around July 2007 that you were the father of the baby Patient 1 had delivered in October 2005 and that you had engaged in sexual contact with her from September 2004 through January 2005; however, you objected to the characterization of Patient 1 as a "patient" because you asserted that you did not have a physician-patient relationship with her when the sexual contact occurred. You also stated under oath in July 2007 that to the best of your recollection and belief, you answered all questions truthfully when you previously answered certain questions under oath in April 2006, based on the information that was available to you at that time.

In fact, when you were asked by a representative of the Board in April 2006 whether you ever engaged in sexual contact with Patient 1, you denied under oath that you ever had sexual contact with her, and you also specifically denied that you were the father of her baby.

Further, in fact, you had treated Patient 1 before and after the September 2004 through January 2005 time frame, and your patient chart for Patient 1 does not include any letter or documentation terminating the physician-patient relationship.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1), (2) and (3) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Perjury, Section 2921.11, Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: American Osteopathic Association, Code of Ethics, Section 15.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

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

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

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3068 6434
RETURN RECEIPT REQUESTED

cc: W. Evan Price II, Esq.
Bailey Cavalieri LLC
One Columbus
10 West Broad Street, Suite 2100
Columbus, OH 43215

CERTIFIED MAIL #91 7108 2133 3936 3068 6427
RETURN RECEIPT REQUESTED

# IN THE MATTER OF
# ROY WILLIAM HARRIS, D.O.

**09-CRF-059**

**MAY 13, 2009 NOTICE OF OPPORTUNITY FOR HEARING**
**PATIENT KEY**

# SEALED TO PROTECT PATIENT CONFIDENTIALITY AND MAINTAINED IN CASE RECORD FILE.