

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

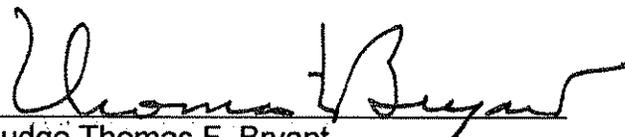
FILED
COURT OF APPEALS
FRANKLIN CO OHIO
2009 DEC 23 PM 4:34
CLERK OF COURTS

Robert C. Gross, D.O., :
Appellant-Appellant, :
v. : No. 08AP-437
Ohio State Medical Board, : (C.P.C. No. 07CVF08-11594)
Appellee-Appellee. : (REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on December 23, 2008, and having overruled appellant's two assignments of error, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs to appellant.

T. BRYANT, KLATT & TYACK, JJ.

By 
Judge Thomas F. Bryant

T. BRYANT, J., retired of the Third Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

Counsel

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2008 DEC 23 PM 12:10
CLERK OF COURTS

Robert C. Gross, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 08AP-437 (C.P.C. No. 07CVF08-11594)
Ohio State Medical Board,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

O P I N I O N

Rendered on December 23, 2008

Kevin P. Byers Co., LPA, and Kevin P. Byers, for appellant.

Nancy H. Rogers, Attorney General, and Kyle C. Wilcox, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

T. BRYANT, J.

{¶1} Appellant, Robert C. Gross, D.O. ("appellant" or "Dr. Gross"), appeals from a judgment of the Franklin County Court of Common Pleas affirming an order of appellee, the Ohio State Medical Board ("board" or "Ohio board"), which limited Dr. Gross' certificate to practice osteopathic medicine and surgery in Ohio. Because the common pleas court did not abuse its discretion by affirming the board's order, we affirm the judgment of the common pleas court.

{¶2} Dr. Gross is a general surgeon in solo practice in Michigan. Besides holding medical licensure in Michigan, Dr. Gross also holds medical licenses in New

Mexico and Ohio. Dr. Gross previously held an active medical license in Colorado; however, in September 2006, this medical license was placed on permanent inactive status.

{¶3} By notice dated December 14, 2006, the Ohio board informed Dr. Gross that it intended to determine (1) whether to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice osteopathic medicine and surgery in Ohio, or (2) whether to place Dr. Gross on probation. Claiming that Dr. Gross violated former R.C. 4731.22(B)(22),¹ the board alleged:

On or about September 21, 2006, the Colorado State Board of Medical Examiners [Colorado Board] approved a stipulation and Final Agency Order wherein * * * you agreed to have your license to practice medicine in the State of Colorado [Colorado license] placed on inactive status. You further agreed that said inactivation shall be permanent and that you shall not apply to reactivate your Colorado license at any time in the future. * * *

{¶4} Dr. Gross requested an administrative hearing pursuant to R.C. Chapter 119. After an evidentiary hearing, a hearing examiner issued a report and recommendation wherein she rendered findings of fact, a conclusion of law, and a proposed order. In her conclusion of law, the hearing examiner found that the action of the Colorado State Board of Medical Examiners ("Colorado board") constituted grounds for the Ohio board to render discipline against Dr. Gross under former R.C. 4731.22(B)(22). Accordingly, the hearing examiner issued a proposed order for the board's consideration.

¹ Since December 2006, R.C. 4731.22 has been amended several times. See (2007) Am.Sub.H.B. No. 119, effective September 29, 2007; (2008) Am.H.B. No. 314, effective June 20, 2008; (2008) Sub.S.B. No. 229, effective September 11, 2008. Division (B)(22) of R.C. 4731.22 was unaffected by these amendments.

{¶5} Dr. Gross filed objections to the hearing examiner's report and recommendation. Upon filing a timely request, Dr. Gross was granted permission to address board members. Confirming in part and amending in part the hearing examiner's report and recommendation, including the proposed order, the board issued an order wherein it temporarily limited and restricted Dr. Gross' certificate to practice osteopathic medicine and surgery, and imposed probationary conditions. By this order, the board required Dr. Gross (1) to refrain from practicing in Ohio without prior approval by the board; (2) to notify the board if he intended to begin practicing in Ohio; and (3) to submit a plan of practice if he were to begin practice in Ohio. By its order, the board also imposed probationary conditions upon Dr. Gross if he were to practice in Ohio, and the board required Dr. Gross to provide a copy of the board's order to employers and hospitals where Dr. Gross held privileges or appointments, and to other state licensing authorities.

{¶6} Claiming that the board's order was not supported by reliable, probative, and substantial evidence, and that the board's order was not in accordance with law, Dr. Gross appealed from the board's order to the Franklin County Court of Common Pleas. Besides appealing from the board's order, Dr. Gross contemporaneously moved the common pleas court to stay execution of the board's order.

{¶7} The common pleas court granted Dr. Gross' motion for a stay provided that during the pending appeal Dr. Gross did not practice medicine or surgery in Ohio, and if Dr. Gross were to practice in Ohio during this time, any such practice would be considered practicing osteopathy without a certificate, a violation of R.C. 4731.43. Finding that the board's order, which limited Dr. Gross' certificate to practice osteopathic medicine and surgery was supported by reliable, probative, and substantial evidence, and was in accordance with law, the common pleas court later affirmed the board's order.

{¶8} From the common pleas court's judgment affirming the board's order, Dr. Gross now appeals. Dr. Gross advances two errors for our consideration:

- I. FIRST ASSIGNMENT OF ERROR: THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IN ACCORDANCE WITH LAW.
- II. SECOND ASSIGNMENT OF ERROR: THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IS SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE.

{¶9} Because Dr. Gross' assignments of error are interrelated, we shall jointly consider them. By his assignments of error, Dr. Gross contends that (1) the board's action violated Dr. Gross' right to procedural due process because the board purportedly disciplined Dr. Gross for presumed standard of care violations under division (B)(6) of former R.C. 4731.22, rather than for a violation of division (B)(22) under former R.C. 4731.22, as stated in its notice to Dr. Gross; and (2) the Colorado board's action did not constitute a cognizable basis under former R.C. 4731.22(B)(22) to support the Ohio board's action.

{¶10} Claiming that Dr. Gross challenges for the first time in this appeal whether the Colorado board's action constitutes a cognizable basis to support discipline under former R.C. 4731.22(B)(22), the board asserts Dr. Gross has waived this issue for purposes of appeal. Accordingly, the board urges us to disregard this argument by Dr. Gross.

{¶11} As a general rule, an appellate court will not consider arguments that were not raised in a court below. *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark*

Cos., Inc. (1993), 67 Ohio St.3d 274, 279, modified on other grounds by *Dombroski v. WellPoint, Inc.*, 119 Ohio St.3d 506, 2008-Ohio-4827, citing *State v. 1981 Dodge Ram Van* (1988), 36 Ohio St.3d 168. This waiver doctrine, however, is not absolute. *Belvedere Condominium Unit Owners' Assn.*, at 279. (Citations omitted.) "When an issue of law that was not argued below is implicit in another issue that was argued and is presented by an appeal, [an appellate court] may consider and resolve that implicit issue. To put it another way, if [an appellate court] must resolve a legal issue that was not raised below in order to reach a legal issue that was raised, [it] will do so." *Id.*

{¶12} Here, in his appeal to the common pleas court, Dr. Gross claimed, among other things, that the board's action was not in accordance with law. Dr. Gross' claim that the board lacked a cognizable basis to support an order disciplining Dr. Gross is implicit in a claim that the board failed to act in accordance with law. Thus, to the extent that Dr. Gross' claim that the board lacked a cognizable basis to support an order disciplining Dr. Gross is implicit in his claim that the board failed to act in accordance with law, we shall consider Dr. Gross' argument in this appeal.

{¶13} Under R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record to determine whether the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111; *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280. See, also, *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571 (defining reliable, probative, and substantial evidence).

{¶14} A common pleas court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court

'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " *Lies v. Ohio Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews*, at 280. In its review, a common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Conrad*, at 111.

{¶15} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, rehearing denied, 67 Ohio St.3d 1439. In *Pons*, the Supreme Court of Ohio explained:

* * * While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, i.e., being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for [that of an administrative agency] or a trial court. Instead, the appellate court must affirm the trial court's judgment. * * *

Id. at 621. But, see, *Smith v. Ohio Liquor Control Comm.* (Dec. 10, 1998), Athens App. No. 98CA03, at fn. 1.²

{¶16} Although in reviewing an administrative decision it is incumbent upon an appellate court to determine only if a common pleas court has abused its discretion, *Pons*, at 621, an appellate court does, however, have plenary review of questions of law.

² In *Smith*, the Fourth District Court of Appeals observed that in *Brown v. Ohio Bur. of Emp. Servs.* (1994), 70 Ohio St.3d 1, reconsideration denied, 70 Ohio St.3d 1448, "the Ohio Supreme Court inexplicably deviated from its prior course by phrasing the standard of review facing the court of appeals as being whether the *common pleas court's* decision was supported by reliable, probative and substantial evidence." (Emphasis sic.) Id. at fn. 1. See, also, *In re Jack Fish & Sons, Inc.*, 159 Ohio App.3d 649, 2005-Ohio-545, at ¶7, fn. 2.

Chirila v. Ohio State Chiropractic Bd. (2001), 145 Ohio App.3d 589, 592, citing *Steinfels v. Ohio Dept. of Commerce, Div. of Sec.* (1998), 129 Ohio App.3d 800, 803, appeal not allowed (1999), 84 Ohio St.3d 1488.

{¶17} Dr. Gross first asserts that the board violated his right to procedural due process because it purportedly disciplined Dr. Gross for violations not stated in its notice to him.

{¶18} "Due process contains two components: procedural due process and substantive due process." *State v. Pennington* (Jan. 29, 2002), Franklin App. No. 01AP-657, 2002-Ohio-296, appeal not allowed, 95 Ohio St.3d 1460, 2002-Ohio-2230. See, generally, *Cleveland Bd. of Edn. v. Loudermill* (1985), 470 U.S. 532, 541, 105 S.Ct. 1487 (stating that " * * * the Due Process Clause provides that certain substantive rights--life, liberty, and property--cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct"); *Pennington*, supra.

{¶19} "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Bd. of Regents of State Colleges v. Roth* (1972), 408 U.S. 564, 569, 92 S.Ct. 2701. See, also, *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 422-423, citing *Direct Plumbing Supply Co. v. Dayton* (1941), 138 Ohio St. 540, 544 (stating that "[t]he 'due course of law' provision [in Section 16, Article I of the Ohio Constitution] is the equivalent of the 'due process of law' provision in the Fourteenth Amendment to the United States Constitution"); *Chirila*, supra, at 593, citing *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App.3d 680, 688 (stating that "[d]ue process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings").

{¶20} "For all its consequences, 'due process' has never been, and perhaps can never be, precisely defined. '[U]nlike some legal rules, '* * * due process 'is not a technical conception with a fixed content unrelated to time, place and circumstances.' * * * Rather, the phrase expresses the requirement of 'fundamental fairness,' a requirement whose meaning can be as opaque as its importance is lofty." *Lassiter v. Dept. of Social Servs. of Durham Cty., N. Carolina* (1981), 452 U.S. 18, 24, 101 S.Ct. 2153, rehearing denied, 453 U.S. 927, 102 S.Ct. 889. (Citation omitted.) "In defining the process necessary to ensure 'fundamental fairness,' [the Supreme Court of the United States] [has] recognized that the Clause does not require that 'the procedures used to guard against an erroneous deprivation ... be so comprehensive as to preclude any possibility of error,' * * * and in addition [the Supreme Court of the United States] [has] emphasized that the marginal gains from affording an additional procedural safeguard often may be outweighed by the societal cost of providing such a safeguard." *Walters v. Natl. Assn. of Radiation Survivors* (1985), 473 U.S. 305, 320-321, 105 S.Ct. 3180, superseded by statute as stated in *Beamon v. Brown* (C.A.6, 1997), 125 F.3d 965. (Citations omitted.)

{¶21} "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314, 70 S.Ct. 652. (Citations omitted.)

{¶22} In *LTV Steel Co.*, *supra*, this court also explained:

The United States Supreme Court and Ohio Supreme Court both use the test expressed in *Mathews v. Eldridge* (1976), 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33-34, as the basis for due process analysis in administrative hearings. * * * Under that test, the court must weigh the

following three factors to determine whether the process granted in the administrative proceeding is constitutionally adequate (1) the private interest at stake, (2) the risk of an erroneous deprivation of that interest and the probable value of additional procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. *Mathews*, at 335, 96 S.Ct. at 903, 47 L.Ed.2d at 33-34.

Id. at 689.

{¶23} Here, after having acquired a certificate to practice osteopathic medicine and surgery in Ohio, Dr. Gross had a protected property interest in the practice of osteopathic medicine and surgery. *Haj-Hamed v. State Med. Bd. of Ohio*, Franklin App. No. 06AP-351, 2007-Ohio-2521, at ¶53; see, also, *Haver v. Accountancy Bd. of Ohio*, Franklin App. No. 05AP-280, 2006-Ohio-1162, at ¶47, appeal not allowed, 110 Ohio St.3d 1440, 2006-Ohio-3862; *Althof v. Ohio State Bd. of Psychology*, Franklin App. No. 05AP-1169, 2007-Ohio-1010, at ¶17, appeal not allowed, 114 Ohio St.3d 1510, 2007-Ohio-4285. Accord *Carothers v. Ohio Bd. of Speech-Language Pathology & Audiology*, Geauga App. No. 2004-G-2559, 2004-Ohio-6695, at ¶10 (acknowledging that a person has a protected property interest in a professional license).

{¶24} As to the threatened deprivation of this protected property interest, however, Dr. Gross was not deprived of adequate notice and an opportunity to present his objections, as required by procedural due process. Specifically, the board's notice informed Dr. Gross of (1) the allegation against him; (2) the statute directly involved, namely, former R.C. 4731.22(B)(22); and (3) reasons for the board's proposed action. The board's notice also provided Dr. Gross with an opportunity to request a hearing. Cf. R.C. 119.07.

{¶25} Moreover, at an administrative hearing, Dr. Gross was provided with a full opportunity to offer evidence on his behalf and to rebut the state's evidence. And, after the evidentiary hearing, Dr. Gross had an opportunity to directly address the board. See, generally, *Clayman v. State Med. Bd. of Ohio* (1999), 133 Ohio App.3d 122, 127, dismissed, appeal not allowed, 87 Ohio St.3d 1459, quoting *State ex rel. Ormet Corp. v. Indus. Comm.* (1990), 54 Ohio St.3d 102, 104 (Bryant, J., dissenting with opinion) (observing that "[t]he crux of such a right to due process in an administrative proceeding is that 'statutory procedural provisions aside, a requirement to conduct a "hearing" implies a "fair hearing" ' ").

{¶26} Balancing (1) Dr. Gross' protected property interest, (2) the risk of an erroneous deprivation of that interest and the probable value of additional procedural safeguards, and (3) the government's interest, i.e., regulating medical practice in Ohio, we cannot conclude that, under the circumstances of this case, Dr. Gross was deprived of procedural due process.

{¶27} Equally unconvincing is Dr. Gross' claim that the Colorado board's action failed to constitute a cognizable basis under former R.C. 4731.22(B)(22) to support the Ohio board's action.

{¶28} Dr. Gross' claim that the Ohio board lacked a cognizable basis to render discipline against his Ohio certificate to practice osteopathic medicine and surgery resolves to this issue: whether under former R.C. 4731.22(B)(22) the Colorado board's action constitutes a "limitation" of Dr. Gross' license to practice in Colorado.

{¶29} Former R.C. 4731.22, which was in effect at all times pertinent to the proceedings, provided in 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:

* * *

(22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand[.]

{¶30} Here, on September 21, 2006, the Colorado State Board of Medical Examiners issued a "Stipulation and Final Agency Order" as to Dr. Gross' license to practice medicine in Colorado. In this stipulation and final order, wherein the Colorado board and Dr. Gross mutually negotiated and determined the terms of the order, the Colorado board stated, among other things, that:

The Panel has reviewed seven of Respondent's surgical cases and has found that Respondent failed to meet generally accepted standards of medical practice with regard to several cases. Respondent does not admit and specifically denies all allegations of unprofessional conduct. In order to resolve the differences between the parties and avoid the expense and uncertainty of litigation, the parties have agreed to the terms of this Order.

Id. at paragraph 6.

{¶31} By its order, the Colorado board placed Dr. Gross' medical license on "inactive status." Id. at paragraph 8. The Colorado board's order further provided that "[r]espondent agrees that the inactivation of his license shall be permanent and

Respondent shall not apply to reactivate his license at any time in the future." *Id.* at paragraph 10. And, the Colorado board's order also provided that the board's action against Dr. Gross would be reported to, among other things, a practitioner data bank. *Id.* at paragraph 18.

{¶32} "The polestar of construction and interpretation of statutory language is legislative intention." *State ex rel Francis v. Sours* (1944), 143 Ohio St. 120, 124. "In determining the legislative intent of a statute 'it is the duty of this court to give effect to the words used [in a statute], not to delete words used *or to insert words not used.*' " (Emphasis sic.) *Wheeling Steel Corp. v. Porterfield* (1970), 24 Ohio St.2d 24, 28, quoting *Columbus-Suburban Coach Lines v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127.

{¶33} "[C]ourts do not have authority to ignore the plain and unambiguous language under the guise of judicial interpretation, but rather in such situations the courts must give effect to the words used." *In re Burchfield* (1988), 51 Ohio App.3d 148, 152, citing *Dougherty v. Torrence* (1982), 2 Ohio St.3d 69, 70; *Ohio Dental Hygienists Assn. v. Ohio State Dental Bd.* (1986), 21 Ohio St.3d 21, 23; *State v. Krutz* (1986), 28 Ohio St.3d 36, 38, certiorari denied (1987), 481 U.S. 1028, 107 S.Ct. 1953. "Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer* (1944), 143 Ohio St. 312, paragraph five of the syllabus.

{¶34} "No clear standard has evolved to determine the level of lucidity necessary for a writing to be unambiguous." *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, at ¶11. "When confronted with allegations of ambiguity, a court is to objectively and thoroughly examine the writing to attempt to ascertain its meaning." *Id.*, citing *Westfield*

Ins. Co. v. Galatis, 100 Ohio St.3d 216, 2003-Ohio-5849, at ¶11, reconsideration denied, 100 Ohio St.3d 1548, 2003-Ohio-6789. "Only when a definitive meaning proves elusive should rules for construing ambiguous language be employed. Otherwise, allegations of ambiguity become self-fulfilling." *Porterfield*, at ¶11.

{¶35} Although the General Assembly did not define "limitation" for purposes of former R.C. 4731.22(B)(22), we cannot conclude that a definitive meaning of this term proves elusive. In *State v. Dorso* (1983), 4 Ohio St.3d 60, the Supreme Court of Ohio explained that "[a] legislative body need not define every word it uses in an enactment. * * * [A]ny term left undefined by statute is to be accorded its common, everyday meaning. * * * 'Words in common use will be construed in their ordinary acceptance and significance and with the meaning commonly attributed to them.' " *Id.* at 62, quoting *Eastman v. State* (1936), 131 Ohio St. 1, paragraph five of the syllabus, appeal dismissed, 299 U.S. 505, 57 S.Ct. 21. Cf. R.C. 1.42 (providing that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly").

{¶36} The term "limitation" in common usage is characterized by enforceable restrictions imposed upon the scope or exercise of a privilege or power. Thus, in the context of former R.C. 4731.22(B)(22), the term "limitation" reasonably may be construed as referencing an action taken by a medical licensing agency in another jurisdiction that imposed an enforceable restriction upon the scope or exercise of a person's medical license.

{¶37} In the present case, by placing Dr. Gross' medical license on permanent inactive status and prohibiting Dr. Gross from reapplying to reactivate his license at any

time in the future, the Colorado board imposed enforceable restrictions upon Dr. Gross' ability to practice medicine in Colorado.

{¶38} Accordingly, we find that the Ohio board reasonably could have construed the Colorado board's action as a "limitation" as that term is used in former R.C. 4731.22(B)(22). Moreover, such an interpretation comports with the Ohio board's charge of regulating the practice of physicians under R.C. Chapter 4731. See, e.g., *Farrand v. State Med. Bd.* (1949), 151 Ohio St. 222, 224 (stating that "[t]he purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the necessary knowledge and experience pertaining to a particular field"); *Pons*, at 621.

{¶39} Besides claiming that the Colorado board's action failed to constitute a cognizable basis to support the Ohio board's order under former R.C. 4371.22(B)(22), Dr. Gross also claims that the Ohio board's limitations and restrictions to Dr. Gross' certificate to practice osteopathic medicine and surgery lack any foundation in reliable, probative, and substantial evidence, and these restrictions are fundamentally unfair. We cannot agree.

{¶40} First, Dr. Gross' claim that he simply inactivated his Colorado license in an administrative, ministerial manner is belied by the Colorado board's finding that Dr. Gross failed to meet generally accepted standards of medical practices with regard to several cases that it reviewed.

{¶41} Second, at the Ohio administrative hearing, Dr. Gross admitted that at two Michigan hospitals he was practicing under restricted privileges, and he did not have full privileges at these facilities. (Tr. 35-36.)

{¶42} Third, in a March 2007 letter to the board, which Dr. Gross submitted into evidence, Steven B. Calkin, D.O., FACOI, Vice President for Medical Affairs at a hospital in Michigan, corroborated Dr. Gross' admission that he was practicing under restricted privileges. In this letter, Dr. Calkin stated in part:

* * * Due to past licensure issues in Colorado prior to joining [the hospital's] staff Dr. Gross was granted privileges with restriction for supervision by a more experienced surgeon, with the intent to release him from such restrictions after members of the Section of Surgery were comfortable in his abilities.

Due to the low volume of complicated surgical cases, the requirement for Dr. Gross to continue to discuss upcoming cases with a more experienced surgeon prior to surgical boarding is still in effect. * * *

{¶43} Accordingly, Dr. Gross' own testimony, the Colorado board's order, and Dr. Calkin's letter constitute some reliable, probative, and substantial evidence to support the board's view that temporary limitations and restrictions upon Dr. Gross' certificate to practice osteopathic medicine and surgery were necessary under the circumstances of this case.

{¶44} Dr. Gross' suggestion that the common pleas court erred by failing to modify the board's order also lacks merit.

{¶45} In *Henry's Cafe, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233, the Supreme Court of Ohio held in part:

2. On appeal from an order of an agency (as defined in Section 119.01, Revised Code) to the Court of Common Pleas, the power of the court to modify such order is limited to the ground set forth in Section 119.12, Revised Code, i. e., the absence of a finding that the order is supported by reliable, probative, and substantial evidence.

3. On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized

to and did impose, on the ground that the agency abused its discretion.

Id. at paragraphs two and three of the syllabus.

{¶46} "In the context of cases which originated before the State Medical Board of Ohio, the edicts of *Henry's Cafe* have been reinforced by *Pons*, supra." *Coniglio v. State Med. Bd. of Ohio*, Franklin App. No. 07AP-298, 2007-Ohio-5018, at ¶9, appeal not allowed (2008), 117 Ohio St.3d 1407, 2008-Ohio-565. See *Pons*, at syllabus (holding that "[w]hen reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession").

{¶47} Here, having properly found that the board's order was supported by reliable, probative, and substantial evidence, and having found that the board's order was in accordance with law, the common pleas court lacked authority to modify the penalty lawfully imposed by the board. See, e.g., *Coniglio*, supra.

{¶48} Lastly, we cannot agree with Dr. Gross' claim that the Ohio board's order was an improper and sub silentio collateral attack on the Colorado board's order. An Ohio administrative proceeding cannot be used as a means of conducting a collateral attack on the Colorado board's decision. See, e.g., *Coniglio*, supra. Here, there is no doubt that the Colorado board took action against Dr. Gross' medical license by permanently inactivating his medical license and prohibiting Dr. Gross from applying to reactivate his Colorado license in the future. The Colorado board's action served as a sufficient basis for the Ohio board to take action of its own. Reliable, probative, and substantial evidence therefore demonstrates the fact of the Colorado board's action. See *Coniglio*, supra.

{¶49} Accordingly, finding that the common pleas court did not abuse its discretion by affirming an order of the State Medical Board of Ohio that placed limitations upon appellant's certificate to practice osteopathic medicine and surgery, we overrule appellant's first and second assignments of error. Having overruled all of appellant's assignments of error, we therefore affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and TYACK, JJ., concur.

T. BRYANT, J., retired of the Third Appellate District,
assigned to active duty under authority of Section
6(C), Article IV, Ohio Constitution.

HEALTH & HUMAN

DEC 26 2008

SERVICES SECTION

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

08 A P E O 5 - - - 437

Robert C. Gross, D.O.
54641 Four Seasons Drive
Shelby Twp., Michigan 48316
Appellant-Appellant,

v.

State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
Appellee-Appellee.

:
: Case No. 07CVF08-11594
:
: Court of Appeals
: Case No. _____
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FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2008 MAY 23 AM 9:30
CLERK OF COURTS

Appeal from the Common Pleas Court of Franklin County, Ohio

NOTICE OF APPEAL

Notice is hereby given that Appellant, Robert C. Gross, D.O., hereby appeals to the Court of Appeals of Ohio, Tenth Appellate District for Franklin County, from the judgment entry and decision (attached hereto) filed in this action by the lower court on April 29, 2008.

Respectfully submitted,

KEVIN P. BYERS CO., LPA

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FRANKLIN CO. OHIO
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HEALTH & HUMAN

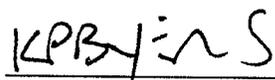
Attorney for Appellant,
Robert C. Gross, D.O.

MAY 29 2008

SERVICES SECTION

Certificate of Service

I certify that a true copy of the foregoing Notice of Appeal was deposited in first class
US mail this 23rd day of May, 2008, addressed to AAG Kyle C. Wilcox,
Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio
43215-3428.



Kevin P. Byers

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

Robert C. Gross, D.O.,

Appellant,

-vs-

Ohio State Medical Board,

Appellee.

:

:

:

:

:

CASE NO. 07CVF08-11594

JUDGE JOHN A. CONNOR

FINAL APPEALABLE ORDER

FILED
COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
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**DECISION AND ENTRY ON MERITS
OF APPEAL**

Rendered this 28th day of April, 2008.

TERMINATION NO. B
BY JA 42808

CONNOR, JUDGE

I. INTRODUCTION

This appeal was filed August 29, 2007. Appellant Robert C. Gross, D.O. (hereinafter "Appellant") has appealed an Order of the Ohio State Medical Board (hereinafter "Board" or "Ohio Board"), dated July 11, 2007. The Order placed various restrictions and limitations on Appellant's certificate to practice osteopathic medicine and surgery in Ohio. Appellant has brought this matter pursuant to the provisions of R.C. 119.12. Legal argument has been submitted and the administrative record has been filed.

II. PROCEDURAL HISTORY & FACTUAL BACKGROUND

Appellant was given notice December 14, 2006 that the Board was considering disciplinary action based upon a stipulation of September 21, 2006 by Appellant with the Colorado State Board of Medical Examiners to have his Colorado license placed on permanent inactive status. The Ohio Board, under R.C. 4731.22(B)(22), may consider and take action when there are adverse actions taken in another state. A hearing before a hearing examiner for the Board was conducted on March 6, 2007. The hearing examiner

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SERVICES SECTION

issued her report and recommendation on June 12, 2007, and the Board adopted the recommendation at its July 11, 2007 meeting.

III. STANDARD OF REVIEW

Pursuant to R.C. 119.12, a reviewing trial court must affirm the order of the State Medical Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621; *Landefeld v. State Med. Bd.* (Jun. 15, 2000), Franklin App. No. 99AP-612, unreported; See also *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111; *Henry's Cafe, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233.

That quality of proof was articulated by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St.3d 570 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. *Id.* at 571

In conducting its review, the trial court must give due deference to the agency's resolution of evidentiary conflicts in its factual findings. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 687. To a limited extent, the court may substitute its judgment for that of the administrative agency in making factual findings. *Columbia Gas Transmission Corp. v. Ohio Dept. of Transportation* (1995), 104 Ohio App.3d 1, 4. The court may further consider the credibility of witnesses as well as the weight and probative character of the evidence. *Univ. of Cincinnati v. Conrad, supra* at 110. However, the

court is obligated to accord due deference to the agency's interpretation of the technical and ethical requirements of its profession. *Pons v. Ohio State Med. Bd, supra* at 621.

IV. ANALYSIS AND FINDINGS OF THE COURT

Appellant maintains that the Board's Order is not supported by reliable, probative or substantial evidence. Appellant states in his legal argument that "there is not a scintilla of evidence in the record which supports an action against Dr. Gross because of clinical issues." While Appellant admits that the Colorado documentation references review of several cases, Appellant points out that there was no finding of substandard care. Since Appellant chose to agree to permanently inactivate his Colorado license, any issue of care will not be determined. Appellee has cited the case of *Coniglio v. State Medical Board of Ohio* (2007), Franklin App. No. 07AP-298, 2007-Ohio-5018, as an apposite holding as to the same statutory provision.

Both the trial and appellate courts in *Coniglio* offered that they were constrained to uphold the Board as to its order under R.C. 4731.22(B)(22), even where the motivation for another state medical board's actions were not known. As the Court remarked "[t]he fact that the action was taken is all that the State Medical Board of Ohio needs in order to take action of its own." *Id.* at ¶ 10.

Appellant contends that the Ohio Board had no evidence to consider as to imposition of the conditions and restrictions placed upon any attempt to engage in practice in this state. However, it is the action of the other state that prompts the Ohio Board to act, not the substance upon which the other state's action is based. Furthermore, the type and amount of restriction imposed by the Board is subject to even greater latitude. The *Coniglio* opinion referenced case precedent, specifically *Henry's Cafe, Inc.*

v. Bd. of Liquor Control, supra, which denies the Court discretion to modify a lawfully imposed penalty. See also *Pons v. Ohio State Med. Bd., supra* at 621. Such authority is equally controlling in this matter.

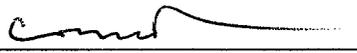
Appellant's final argument is that the order denies him due process. This argument is premised upon the contention that the Board punished Appellant for standard of care issues. A review of the Hearing Examiner's Report and Recommendation and the Board minutes does not support this argument.

Upon full consideration of the evidence, argument, and applicable law, the Court finds that there is reliable, probative, and substantial evidence to support the Board's action. Accordingly, the Court hereby **AFFIRMS** the Board's Order.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

The Court finds that there is no just reason for delay. This is a final appealable order. The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.



JOHN A. CONNOR, JUDGE

COPIES TO:

Kevin P Byers
107 South High Street
Suite 400
Columbus, OH 43215-3456
Attorney for Appellant

Kyle C. Wilcox
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428
Attorney for Appellee

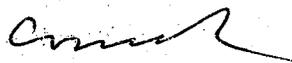
**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

Robert C. Gross, D.O., :
Plaintiff, : CASE NO. 07CVF08-11594
-vs- : **JUDGE JOHN A. CONNOR**
The State Medical Board of Ohio, :
Defendant. :

**ENTRY PROVISIONALLY GRANTING APPELLANT'S STAY MOTION AND
EXPEDITING THE BRIEFING SCHEDULE**

For good cause, Appellant's August 29, 2007 stay motion is GRANTED provided that during the pendency of the appeal Appellant shall not practice medicine and surgery in the state of Ohio, and any such practice would be considered practicing osteopathy without a certificate as set forth in Ohio Revised Code § 4731.43.

Further, Appellant's brief shall be filed within thirty (30) days of this entry's journalization. Appellee's brief shall be filed within thirty (30) days after Appellant's brief is filed. Appellant may file a reply brief within fourteen (14) days after Appellee's brief is filed.



JOHN A. CONNOR, JUDGE

COPIES:
Kevin Byers
107 South High Street, Suite 400
Columbus, Ohio 43215

Kyle Wilcox
Karen Unver
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

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FRANKLIN CO. OHIO
2007 SEP 21 PM 3:06
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HEALTH & HUMAN

SEP 27 2007

SERVICES SECTION

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

Robert C. Gross, DO,
54641 Four Seasons Drive
Shelby Twp., Michigan 48316
Appellant,

v.

State Medical Board of Ohio,
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
Appellee.

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CASE NO. CV 08-11894

JUDGE _____

FILED
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FRANKLIN CO. OHIO
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Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC §119.12, notice is hereby given that Appellant, Robert C. Gross, DO, appeals the order of the State Medical Board dated July 11, 2007, and mailed August 22, 2007, (copy attached as *Exhibit A*.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYERS

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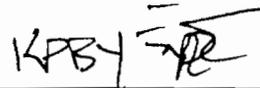
Attorney for Robert C. Gross, DO

FILED
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Certificate of Service

I certify that the original of the foregoing document was hand-filed this 29th day of August, 2007, at the State Medical Board, 30 East Broad Street, 3rd Floor, Columbus, Ohio 43215 with a copy filed this same date in the Court of Common Pleas of Franklin County in accord with RC §119.12 and Ohio caselaw¹, with a courtesy copy mailed to Assistant Attorney General Kyle C. Wilcox, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3426.



Kevin P. Byers

¹ Stultz v. Oh. Dept. of Admin. Svcs. 10th Dist. No. 04AP-602, 2005-Ohio-200

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

July 11, 2007

Robert Gross, D.O.
54641 Four Seasons Drive
Shelby Township, MI 48316

Dear Doctor Gross:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 11, 2007, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of 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

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", is written over the printed name.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3931 8317 3108
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3931 8317 3115
RETURN RECEIPT REQUESTED

Mailed 8.22.07

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 11, 2007, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Robert Gross, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

July 11, 2007
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

ROBERT GROSS, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 11, 2007.

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

It is hereby ORDERED that:

A. **LIMITATION AND RESTRICTION OF CERTIFICATE:** The certificate of Robert Gross, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be TEMPORARILY LIMITED and RESTRICTED as follows:

1. **Refrain from Commencing Practice in Ohio:** Dr. Gross shall not commence practice in Ohio without prior Board approval.
2. **Conditions for Approval of Commencement of Practice in Ohio:** The Board shall not consider granting approval for Dr. Gross to commence practice in Ohio unless all of the following minimum requirements have been met:
 - a. **Hold Current Certificate to Practice in Ohio:** Dr. Gross shall hold a current certificate to practice osteopathic medicine and surgery in the State of Ohio.

- b. **Notify Board in Writing**: Dr. Gross shall notify the Board in writing that he intends to commence practice in Ohio.
- c. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Gross has not been engaged in the active practice of osteopathic medicine and surgery 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 of the Revised Code to require additional evidence of his fitness to resume practice.
- d. **Reports to be Submitted**: At the time he submits his notice of intent to commence practice in Ohio, Dr. Gross shall provide the Board with the names and addresses of all hospitals at which he has held privileges from the effective date of this Order and cause to be submitted to the Board all monitoring and/or peer review reports for those hospitals.

Dr. Gross must also submit evidence that he has become board certified in surgery by either the A.O.A. or the A.B.M.S.

- e. **Practice Plan**: At the time he submits his notice of intent to commence practice in Ohio, Dr. Gross shall submit to the Board a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Gross' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Gross shall obtain the Board's prior approval of the plan and for any alteration to the practice plan approved pursuant to this Order.

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

The monitoring physician shall monitor Dr. Gross and his medical practice, shall personally observe surgeries being performed by Dr. Gross, and shall review Dr. Gross' patient charts. The observation of surgery and chart review may be done on a random basis, with the frequency and number of surgeries observed and charts reviewed to be determined by the Board.

- B. **PROBATIONARY CONDITIONS**: Upon commencing practice in Ohio, Dr. Gross' certificate to practice osteopathic medicine and surgery in the State of

Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey the Law**: Dr. Gross shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.
2. **Declarations of Compliance**: Dr. Gross 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. Gross commences practice in Ohio. 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. Gross 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. Gross commences practice in Ohio, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Comply with Practice Plan**: Dr. Gross shall practice in accordance with the plan of practice that was approved by the Board prior to his commencement of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Gross' activities will be directly supervised and overseen by a monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Gross and provide the Board with reports on the monitoring of Dr. Gross and his medical practice, observations of Dr. Gross's surgical skills, and review of Dr. Gross' patient charts. Dr. Gross shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Gross' quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Gross must immediately so notify the Board in writing. In addition, Dr. Gross shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Gross shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

5. **Additional Education Hours**: For each year of probation, or as otherwise approved by the Board, Dr. Gross shall provide acceptable documentation of his satisfactory completion of at least 10 credit hours of an education program dealing with conformance to the minimal standards of care in surgical cases. Such program shall be approved in advance by the Board or its designee. These credit hours shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which the credit hours are completed.
 6. **Absence from Ohio**: Dr. Gross shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 7. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Gross 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.
- C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Gross' certificate will be fully restored.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gross shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Gross shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Gross receives from the Board written notification of his successful completion of probation.
- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gross shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Gross shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he

applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Gross shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Gross receives from the Board written notification of his successful completion of probation.

- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Gross violates the terms of this Order in any respect, the Board, after giving his 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.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

July 11, 2007

Date

2007 JUN 12 P 1: 38

**REPORT AND RECOMMENDATION
IN THE MATTER OF ROBERT GROSS, D.O.**

The Matter of Robert Gross, D.O., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on March 6, 2007.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated December 14, 2006, the State Medical Board of Ohio [Board] notified Robert Gross, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board's action was based on the allegation that the Colorado State Board of Medical Examiners [Colorado Board] approved a "Stipulation and Final Agency Order" [Colorado Order] in which Dr. Gross agreed to have his Colorado medical license placed on inactive status permanently and agreed to not apply to reactivate that license in the future.

The Board further alleged that the Colorado Order constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that language is used in Section 4731.22(B)(22), Ohio Revised Code. (State's Exhibit 1A)

- B. On October 3, 2006, Dr. Gross requested a hearing. (State's Exhibit 1B)

II. Appearances at the Hearing

- A. On behalf of the State of Ohio: Marc E. Dann, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Robert Gross, D.O.

II. Exhibits Examined

A. State's Exhibits

State's Exhibits 1A through 1I: Procedural exhibits.

State's Exhibit 2: Certified copy of the September 21, 2006, Stipulation and Final Agency Order in the *Matter of the Disciplinary Proceeding Regarding the License to Practice Medicine in the State of Colorado of Robert C. Gross, D.O., License Number 39274, Respondent*.

B. Respondent's Exhibits

Respondent's Exhibit A: March 2, 2007, letter from Steven B. Calkin, D.O., to the Board.

Respondent's Exhibit B: March 2, 2007, letter from Louis Rondini, D.O., to the Board.

SUMMARY OF THE EVIDENCE

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

Background

1. Robert Gross, D.O., obtained his undergraduate degree in 1986 from the University of Colorado. A few years later, he entered the Michigan State University College of Osteopathic Medicine and obtained his medical degree in 1993. (Hearing Transcript [Tr.] at 11-12)
2. Between 1993 and 1994, Dr. Gross successfully participated in a "traditional, rotating internship" at Grandview Hospital in Dayton, Ohio. Between 1994 and 1998, he entered and completed a general surgery residency at Pontiac Osteopathic Hospital [POH] in Pontiac, Michigan. (Tr. at 12-13)
3. Dr. Gross accepted a general surgery position in 1998 at Mimbres Memorial Hospital near Las Cruces, New Mexico. He remained there for three years. Then, in 2001, he moved to Illinois, to work at Advocate Good Samaritan Hospital in Downers Grove, Illinois. While there, he conducted general and trauma surgeries. (Tr. at 13-14)

4. In May 2003, Dr. Gross moved to Colorado. Initially, he conducted general surgeries at St. Thomas More in Canyon City, Colorado. Dr. Gross also obtained privileges at Memorial Hospital in Colorado Springs and a surgery center in Pueblo, Colorado. He resigned his privileges at St. Thomas More in December 2004, but continued to work in Colorado until July 2005. In July 2005, he resigned his privileges at Memorial Hospital. (Tr. at 14-15, 28, 30)
5. In 2005, Dr. Gross left Colorado and returned to Michigan. Initially, Dr. Gross did locum tenens, emergency room work in smaller rural hospitals in Michigan. He currently has a solo general surgery practice in Sterling Heights, Michigan. Dr. Gross' current practice involves a full range of general surgeries, including endoscopies, hernia repairs, gallbladder removals, and colon resections. His current practice involves no trauma surgeries. Dr. Gross holds medical licenses in Michigan, New Mexico and Ohio. (Tr. at 19-20)
6. Dr. Gross has restricted privileges at two medical centers in the suburbs of Detroit, Michigan: Henry Ford Bi-County Hospital [Henry Ford] and POH. Dr. Gross testified that, in seeking privileges at both hospitals, he was very open about the events in Colorado and he provided documentation and answered questions. At these facilities, Dr. Gross is able to perform any general surgical procedure, but the hospitals have implemented safeguards so that Dr. Gross has appropriate personnel to turn to for help and to review the cases to "make sure that there are no issues with quality." At POH, he can handle cases only when other general surgeons are present in the surgery department; in other words, he has 100 percent peer review on his cases at that medical center. Additionally, Dr. Gross noted that he believes that, once he has performed a specific volume of cases at POH, that medical center is poised to lift his restrictions and to ask him to take on emergency room traumas. At Henry Ford, he has: (a) to speak with the chief of the department of surgery before taking on cases; (b) to work with an assistant, which can be another general surgeon, a resident or a registered nurse; and (c) peer review requirements. (Tr. at 10, 33-34, 36-37)

Colorado Board's 2006 Disciplinary Action

7. In the Colorado Order, Dr. Gross agreed to have his Colorado medical license placed on inactive status permanently and agreed to not apply to reactivate that license in the future.. The document recites that an Inquiry Panel reviewed seven of Dr. Gross' surgical cases and found that he had failed to meet generally accepted standards of medical practice with regard to several of those cases. Dr. Gross did not admit and specifically denied all allegations of unprofessional conduct but, in order to resolve the differences, Dr. Gross agreed to the terms of the Colorado Order. The Colorado Order was effective on September 21, 2006. (State's Exhibit [St. Ex.] 2)

Dr. Gross' Explanation

8. Dr. Gross explained that the surgical cases reviewed by the Inquiry Panel were cases in which he was involved while working at St. Thomas More and Memorial Hospitals, in Colorado. Dr. Gross is not aware which cases were the ones in which the Inquiry Panel concluded that he had failed to meet generally accepted standards of medical practice. He noted that he handled over 500 surgical cases while working in Colorado at St. Thomas More and Memorial hospitals. (Tr. 17-18, 34)

9. Dr. Gross explained that, while working in Colorado, he encountered several difficulties. First, Dr. Gross noted that, in his view, there were “a lot of problems with the department of surgery and quality of care” at St. Thomas More Hospital when he began working there in 2003. He stated that he was quite vocal about the problems and he tried to improve the quality of care at that hospital. He also testified that some individuals did not like his criticisms of the hospital and the department of surgery. (Tr. at 21)

Second, Dr. Gross recalled that, in January 2004, he was called to St. Thomas More Hospital to assist in a surgery. He testified that he found, upon arrival, that an obstetrician/gynecologist [OB/GYN] and a family practice physician had been performing a hysterectomy and had cut a large hole in the patient's colon. Dr. Gross stated that he repaired the colon and found no problems with the patient on the following morning. He further noted that he discussed the patient's care with the OB/GYN and advised against the use of Fleet enemas and other medications. Dr. Gross explained that he left for vacation later that afternoon, after making appropriate coverage arrangements with the other general surgeon who worked at St. Thomas More. He was called the next day and asked to return to the hospital. Dr. Gross testified that he returned the following day and found that the hysterectomy patient had been given Fleet enemas, had developed a fever and tender abdomen, and had been transferred to another hospital. Dr. Gross noted that the patient remained under watch for over a week and eventually, another operation was performed by another surgeon because she had developed a blockage at the anastomotic site. Dr. Gross stated that the patient had a colostomy and a wound infection, but eventually recovered in full. In May 2004, the patient complained to the Colorado Board and Dr. Gross testified that, from that point forward, St. Thomas More Hospital began examining all of his surgical cases. (Tr. at 23-24)

In addition, Dr. Gross testified:

The significance of that is these are just routine sort[s] of examination[s] of the cases, nothing that was reportable, no limitation of privileges or anything else. And so there was a lot of politics going on. And, finally, I was to the point where I just decided that I didn't want to fight with these people anymore so I resigned my privileges, because I had privileges at other hospitals, and I decided I would just practice out of these other hospitals.

While practicing at the other hospital[s], I came to find out that this St. Thomas More Hospital started communicating to these other hospitals telling them things, not through any sort of official channels or anything that was allowed under the law, but doing it from behind closed doors.

(Tr. at 25)

Fourth, Dr. Gross explained that, after he had resigned from St. Thomas More Hospital, the hospital claimed that he owed certain funds related to his recruitment agreement and the hospital reported to the National Practitioner Data Bank that he had resigned while under investigation or to avoid an investigation. Dr. Gross stated that the hospital later redefined the matter as an Adverse Action Report. The hospital also filed a lawsuit to recover the funds. Dr. Gross stated that these actions also prompted the Colorado Board to investigate. (Tr. at 26, 31)

Finally, Dr. Gross testified that, at Memorial Hospital, he had a “bad case where a patient had a bad outcome and died from a surgery.” Upon review of that case and two of Dr. Gross’ other cases at Memorial Hospital, Dr. Gross explained that Memorial Hospital suspended his privileges. He stated that he went through that hospital’s “fair hearing process” and his privileges were reinstated without limitations or restrictions. Dr. Gross testified that “they found that everything that I had done at Memorial Hospital was in keeping with the accepted practices and standards of general surgery, and there was no foundation for them to limit my privileges or take my privileges away.” However, Dr. Gross stated that it was a reportable event to the National Practitioner Data Bank, which further caught the attention of the Colorado Board. (Tr. at 25-26)

10. With respect to the settlement agreement with the Colorado Board, Dr. Gross testified as follows:

When I look retrospectively back at the agreement, I think it was a mistake to enter into it. However, at the time I was given advice that this was the right thing to do. * * * There are certainly -- I was led to believe that there were worse things that the Board could do. And since I did not wish to practice in Colorado anymore, I decided to enter into this agreement.

(Tr. at 27)

11. Dr. Gross noted that Michigan and New Mexico have not taken any action against his medical licenses in those states. (Tr. at 32)

Letters from Michigan Hospitals

12. Dr. Gross presented letters from two doctors who are familiar with him and his current practice of medicine in Michigan. The State did not have the opportunity to cross-examine either doctor.

13. Steven B. Calkin, D.O., Vice President for Medical Affairs at POH, noted that Dr. Gross holds “core privileges in his specialty” at POH. Of the cases that Dr. Gross has performed thus far, Dr. Calkin reported that there have been no quality issues. Specifically, he stated on March 2, 2007:

Dr. Gross has been on staff since March 28, 2006 and has recently had his membership renewed by the Board of Trustees. Due to past licensure issues in Colorado prior to joining POH staff[,] Dr. Gross was granted privileges with restriction[s] for supervision by a more experienced surgeon, with the intent to release him from such restrictions after members of the Section of Surgery were comfortable in his abilities.

Due to the low volume of complicated surgical cases, the requirement for Dr. Gross to continue to discuss upcoming cases with a more experienced surgeon prior to surgical boarding is still in effect.

* * *

I anticipate the Section of Surgery will continue to recommend close scrutiny of Dr. Gross until such time that the volume and variety of his case load gives them confidence to release him from these restrictions.

Dr. Gross has otherwise been very polite and respectful and displays no disruptive or untoward behavior.

(Resp. Ex. A)

14. Louis Rondini, D.O., Chairman of the Department of Surgery at Henry Ford Health System, stated that Dr. Gross has been a member of the staff at the Henry Ford since September 8, 2005. Dr. Rondini stated that, during this time, Dr. Gross

has acted in a prudent and ethical fashion. He has been respectful of his peers and para medical personnel. He has had no untoward surgical outcomes to my knowledge.

(Resp. Ex. B)

Dr. Gross' Position

15. Dr. Gross noted that he has had his Ohio certificate for over ten years and he is proud of it. He would like to keep it, since opportunities occasionally arise. However, at the present time, Dr. Gross does not plan to practice in Ohio. (Tr. at 38)

16. Dr. Gross testified that, if the Board were willing to maintain his certificate, he would be willing to: (a) report to the Board prior to actually practicing in Ohio; (b) meet with the Board or its designee; and/or (c) participate in a competency assessment before practicing in Ohio. (Tr. at 34-35)

FINDING OF FACT

Effective September 21, 2006, the Colorado Board approved a “Stipulation and Final Agency Order” in which Robert Gross, D.O., agreed to have his Colorado medical license placed on inactive status permanently and agreed to not apply to reactivate that license in the future. The Colorado Board took this action after an Inquiry Panel found that Dr. Gross failed to meet generally accepted standards of medical practice in several surgical cases. Dr. Gross denied all allegations of unprofessional conduct, but agreed to the terms of the order in order to settle the differences between the parties.

CONCLUSION OF LAW

The Colorado Board action constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

The Respondent points out that there is no information about the surgical cases that were investigated or the several cases in which Dr. Gross failed to meet generally accepted standards of medical practice. The Respondent contends that, therefore, there is no information upon which this Board can base an order or fashion an appropriate decision.

The Hearing Examiner concurs that there is no detail contained within the Colorado Board’s Order. There are no facts about the several cases in which the Inquiry Panel found Dr. Gross to have failed to meet generally accepted standards of medical practice. The record does not reflect whether one, repeated action/inaction was involved or whether multiple, different actions/inactions were involved. Even so, Section 4731.22(B)(22), Ohio Revised Code, authorizes the Board to take disciplinary action when another agency that regulates the practice of osteopathic medicine and surgery takes action, as was done by the Colorado Board. Thus, the Board has authority to take disciplinary action in this matter and the Hearing Examiner proposes that disciplinary action be taken.

In light of the lack of detail in the underlying matter and in light of the fact that Dr. Gross is not practicing in Ohio currently, the Hearing Examiner recommends that temporary limitations and restrictions, and probationary terms be imposed, all designed to ensure that, if Dr. Gross chooses to practice medicine and surgery in Ohio in the future, the public in Ohio is protected from harm. These proposed terms are similar to those imposed by the Board in the *Matter of Michael T. Salwitz, M.D.*, in April 2004. Furthermore, these proposed terms include the conditions that Dr. Gross stated were acceptable to him.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **LIMITATION AND RESTRICTION OF CERTIFICATE**: The certificate of Robert Gross, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be TEMPORARILY LIMITED and RESTRICTED as follows:
1. **Refrain from Commencing Practice in Ohio**: Dr. Gross shall not commence practice in Ohio without prior Board approval.
 2. **Conditions for Approval of Commencement of Practice in Ohio**: The Board shall not consider granting approval for Dr. Gross to commence practice in Ohio unless all of the following minimum requirements have been met:
 - a. **Hold Current Certificate to Practice in Ohio**: Dr. Gross shall hold a current certificate to practice osteopathic medicine and surgery in the State of Ohio.
 - b. **Notify Board in Writing**: Dr. Gross shall notify the Board in writing that he intends to commence practice in Ohio.
 - c. **Clinical Education Program**: At the time he submits his notice of intent to commence practice in Ohio, Dr. Gross shall provide acceptable documentation of satisfactory completion of a clinical education program, to be approved in advance by the Board or its designee. The clinical education program shall be related to conformance to the minimal standards of care in surgical cases. The exact number of hours and the specific content of the program shall be determined by the Board or its designee, but shall total not less than 10 hours, nor more than 40 hours, per year. The Board may require Dr. Gross to pass an examination related to the content of the program. This program shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which the program is completed.

In addition, at the time Dr. Gross submits the documentation of successful completion of the clinical education program, he shall also submit to the Board

a written report describing the program, setting forth what he learned from the program, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- d. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Gross has not been engaged in the active practice of osteopathic medicine and surgery 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 of the Revised Code to require additional evidence of his fitness to resume practice.
- e. **Practice Plan:** At the time he submits his notice of intent to commence practice in Ohio, Dr. Gross shall submit to the Board a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Gross' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Gross shall obtain the Board's prior approval of the plan and for any alteration to the practice plan approved pursuant to this Order.

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

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

B. **PROBATIONARY CONDITIONS:** Upon commencing practice in Ohio, Dr. Gross' certificate to practice osteopathic medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey the Law:** Dr. Gross shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.
2. **Declarations of Compliance:** Dr. Gross 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. Gross commences practice in Ohio.

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. Gross 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. Gross commences practice in Ohio, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Comply with Practice Plan:** Dr. Gross shall practice in accordance with the plan of practice that was approved by the Board period to his commencement of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Gross' activities will be directly supervised and overseen by a monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Gross and provide the Board with reports on the monitoring of Dr. Gross and his medical practice, and on the review of Dr. Gross' patient charts. Dr. Gross shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Gross' quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Gross must immediately so notify the Board in writing. In addition, Dr. Gross shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Gross shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

5. **Additional Education Hours:** For each year of probation, or as otherwise approved by the Board, Dr. Gross shall provide acceptable documentation of his satisfactory completion of at least 10 credit hours of an education program dealing with conformance to the minimal standards of care in surgical cases. Such program shall be approved in advance by the Board or its designee. These credit hours shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which the credit hours are completed.
6. **Absence from Ohio:** Dr. Gross shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

7. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Gross 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.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Gross' certificate will be fully restored.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gross shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Gross shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Gross receives from the Board written notification of his successful completion of probation.
- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Gross shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Gross shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Gross shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Gross receives from the Board written notification of his successful completion of probation.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Gross violates the terms of this Order in any respect, the Board, after giving his 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.

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



Gretchen L. Petrucci
Hearing Examiner



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EXCERPT FROM THE DRAFT MINUTES OF JULY 11, 2007

REPORTS AND RECOMMENDATIONS

Dr. Kumar announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Jabir Kamal Akhtar, M.D.; Robert Gross, D.O.; and Hans Hoffman Truong, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Kumar	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye

Dr. Kumar - aye

Dr. Kumar 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.

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

Dr. Talmage left the meeting at this time.

.....
ROBERT GROSS, D.O.

Dr. Kumar directed the Board's attention to the matter of Robert Gross, D.O. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

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

Dr. Gross was accompanied by his attorney, Kevin P. Byers, Esq.

Mr. Byers noted that, of the three cases before the Board, Dr. Gross is the only one not charged under Section 4731.22(B)(5), involving fraud, deception, or misrepresentation. Dr. Gross did renew his Ohio license after the event in Colorado, so he apparently disclosed appropriately since there was no allegation from this Board about the character of his disclosure to the Ohio Board. Mr. Byers stated that he hopes that the Board members have had a chance to look at his objections, and that they can appreciate the distinctions between Dr. Gross' evidentiary record from the hearing and that of Dr. Salwitz, which the Hearing Examiner used as a model in crafting the terms, restrictions and conditions in the Proposed Order for Dr. Gross.

Mr. Byers stated that he thinks it is also important that Dr. Gross is presently under, essentially, a 100% peer review process at Pontiac Osteopathic Hospital. The letters entered into the record reference that, but he wanted to make sure that it was clear. If the Board is concerned about his current clinical standards and what kind of process he's going through, the Pontiac Osteopathic Hospital is looking at him closely because he fully disclosed to them his Colorado situation. There have been no troubles according to Respondent's Exhibits A & B.

Mr. Byers stated that the Board should be aware that Dr. Gross also holds active licenses in the states of

Michigan and New Mexico. Neither state has initiated action there.

Dr. Gross thanked the Board for allowing him to address it. He stated that the Ohio process is very different from the process he experienced in Colorado. He added that the whole matter in Colorado came about because of some political infighting in the hospital in which he previously worked. It concerned a case in which he had become involved with a particular OB/GYN, who was a Medical Executive Committee Member and, later, the Chief of Staff. This other physician had some problems during a surgery, which Dr. Gross repaired. The other physician also did some things to the patient after the surgery that caused problems. Because of this, and with the other physician using his position at the hospital in Colorado, Dr. Gross contended that they were able to look at a lot of Dr. Gross' cases and eventually sent concerns to the Colorado State Board of Medical Examiners (Colorado Board). That board looked at the case and said that the Colorado hospital's Medical Executive Committee is an extension of the board, so they didn't know really who to believe. Dr. Gross stated that, now, the Colorado Board has taken action against this OB/GYN, and there's a 17-page document on their website that states specifically his misconduct in the case, which is in stark contrast to the stipulations to which he agreed.

Dr. Gross continued that, to this day, he still doesn't know what the Colorado Board considered to be unprofessional conduct. They never specifically spelled it out to him, and they don't spell it out in the stipulation. He expressly denied any wrongdoing. Dr. Gross added that he voluntarily inactivated his license; the Colorado Board didn't revoke it, suspend it or take it away.

Dr. Gross stated that he has to live with this for the rest of his career. He tries to be forthcoming and let people know that this Colorado action exists. The hospitals in which he is fortunate to currently have privileges are well aware of it, and they monitor what he does. Dr. Gross stated that he hopes that the Board will recognize that and see that he really hasn't done anything wrong and that patient safety is being addressed.

Dr. Gross again thanked the Board for allowing his appearance.

In response to Dr. Steinbergh's questions, Dr. Gross stated that he's currently Board eligible. He finished his residency in 1998. The American Board of Osteopathic Surgery sent representatives to observe a case that he had done. That was the final piece they had been wanting to do. His Board certification has been put on hold by all of this. He did not have a very busy practice. He did pass his written boards in 1998 or 1999. He passed his oral boards thereafter. Then he was selected for the Track 2, where they come out and do an on-site visit and chart reviews, etc.

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

Mr. Wilcox noted that Dr. Gross appears to imply today, as he did at the hearing, that he has no idea why the Colorado Board took action against him, and that, since there are no details in the Colorado Board Order, somehow the Ohio Board has nothing to base its Order upon. Mr. Wilcox stated that he doesn't believe that this argument has any merit. The Colorado Board Order specifically states that the basis for its

action was a review of seven surgical cases where the Colorado Board found that Dr. Gross failed to meet generally accepted standards of medical practice with regard to those cases.

Mr. Wilcox stated that he found it interesting that Dr. Gross claims to have somehow never been informed of the criticisms or facts surrounding the Colorado actions. Mr. Wilcox stated that he doesn't believe this statement, given the specific language in the Colorado Board Order itself. Mr. Wilcox referred to paragraph 5.c. of the Colorado Order, which states that, by entering into the Order, "Dr. Gross knowingly and voluntarily gave up the right to a hearing, agreed to the provisions contained in the Order and relieves the Panel of its burden of proving its case at hearing pursuant to the Colorado statutes." Mr. Wilcox continued, explaining that paragraph 5.d. states: "Dr. Gross knowingly and voluntarily gave up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel."

Mr. Wilcox stated that if Dr. Gross has no clue as to why Colorado wanted him permanently out of their state, he should have requested a hearing. Mr. Wilcox stated that he believes that it is a bit disingenuous for Dr. Gross to sign an Order in Colorado in which he agreed to permanently inactivate his license and never practice in Colorado again, and then say that it was based on no evidence. In Mr. Wilcox's view, Dr. Gross obviously did not want the evidence surrounding the charges to be released, and that could be a reason why he entered into the settlement agreement. To enter into such a deal that prevented the public dissemination of the evidence and then come here and claim that there is no evidence to discipline him shows that, basically, he lacks credibility. Mr. Wilcox stated that it is also worth noting that, according to the documentation from Colorado, Dr. Gross was represented by an attorney, and therefore Dr. Gross' claims about being uninformed about the charges against him in Colorado lose even more credibility.

Mr. Wilcox stated that the Report and Recommendation in this case seems to back up what Dr. Gross is saying, that there's, somehow, a lack of information about the Colorado action in the record, but this case is not about what factually occurred in Colorado. It's about the Order itself. The Ohio Board is not in a position, and has no ability, to give Dr. Gross the hearing in Colorado that he declined to request. The Ohio Board is simply charged with determining whether Dr. Gross violated Section 4731.22 (B)(22). The Ohio Board has the ability, based on that finding, to assess any penalty from reprimand to permanent revocation of his license. Mr. Wilcox asked that the Ohio Board, when considering its penalty, ask itself these questions: If Dr. Gross is such a poor practitioner that the State of Colorado has permanently denied him a license to practice there, does the Ohio Board believe that he should remain licensed in Ohio? Is this the type of physician that the Board wants to practice in Ohio.

DR. MADIA MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF ROBERT GROSS, D.O. DR. STEINBERGH SECONDED THE MOTION.

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

Dr. Steinbergh stated that, in regards to Dr. Gross, clearly the State of Colorado placed Dr. Gross on a

permanent inactive status. Dr. Gross agreed to this and agreed to not reapply to reactivate his license. She stated that for Ohio, that is, essentially, permanent revocation. Dr. Steinbergh stated that this was a bootstrap action and Ohio had no specific facts. Although the Hearing Examiner felt that this was similar to the Salwitz case, she agrees with Dr. Gross' objections. She doesn't believe that this is the same case. In the Salwitz case, the Board had some very specific concerns. Dr. Steinbergh stated that she doesn't take seriously Dr. Gross' comments today about the accusers in his Colorado case. She added that she rarely responds to the concept of political reasons for these types of accusations. However, the truth is that the Board doesn't know. It doesn't have any hearing material from Colorado. The Board does know, however, that his Colorado license has been made permanently inactive.

Dr. Steinbergh stated that she mostly agrees with the Proposed Order in regard to limitation and restriction of Dr. Gross' Ohio certificate. She referred to paragraph 2.c. of the Proposed Order, which requires a clinical education program, noting that it was derived from the Order in Salwitz, and that it is a bit nebulous for her. Dr. Steinbergh suggested deleting that requirement from the Proposed Order.

Referring to paragraph 2.d. entitled Additional Evidence of Fitness to Resume Practice, Dr. Steinbergh stated that she would require surgical board certification as the standard. She would not use the SPEX, but would simply require him to become board certified in surgery by either the A.O.A. or the A.B.M.S. He would then be required to submit a practice plan, and probationary conditions would be for at least three years. Dr. Steinbergh stated that she would also delete paragraph B.5., which requires additional education hours that she doesn't feel are necessary. Dr. Steinbergh stated that if this is a board-certified physician who is complying with an approved practice plan, which includes a monitoring physician, she would be satisfied.

Dr. Buchan stated that he would take a little bit different tack. He stated that this Colorado action was the equivalent of a permanent revocation in Ohio. He doesn't buy into Dr. Gross' comments today; in fact, they weighed against Dr. Gross in Dr. Buchan's view. He stated that he doesn't buy this concept of politically motivated action and Dr. Gross' suggestion that he didn't have any weaknesses but was simply a victim. Dr. Buchan stated that he looks at the Colorado Board as being like-minded individuals, looking at information and data and process. They reviewed seven charts and these like-minded individuals said that they were going to, essentially, revoke this individual's license. Dr. Buchan stated that that weighs heavily on him. Dr. Buchan stated that Dr. Gross' presentation today was weak, at best. He doesn't feel that Dr. Gross was at all forthcoming.

Dr. Buchan stated that he has tried to imagine why he would want this individual practicing in this state. He doesn't understand requiring Dr. Gross to complete a clinical education program. He's not even sure what they're trying to test there. Dr. Buchan stated that he would agree to the elimination of that requirement, but his reality is that he would move for revocation of Dr. Gross' license. If Dr. Gross gets board-certified and continues to progress more in the State of Michigan, he can reapply.

Dr. Kumar stated that he understands and recognizes that there's not a lot of information provided by Colorado. However, the information that Dr. Gross has presented himself, and some of the comments he

made, do give the Board a fair amount of information on some of his thinking and how he works. Dr. Kumar stated that every time a surgeon has problems or some kind of complications, he or she tends to blame somebody else: "It's the assistant's fault;" "I was trying to improve the quality of surgical care in the hospital;" and they never say, "I want to take responsibility, I needed to do something different."

Dr. Kumar stated that the case Dr. Gross presents, where there was a colonic injury on a hysterectomy, was somewhat intriguing to him. Dr. Kumar stated that, as he looked at it, there was no indication that Dr. Gross questioned his own actions. He should have asked why he didn't do a protected division. If it was a big laceration, why didn't he consider doing a protected division? Dr. Kumar stated that, even if you're not doing a protected division, Dr. Gross should have taken charge of that patient and written in big bold letters: "no enemas or any other laxative without my permission." Dr. Kumar stated that allowing somebody else to follow up and write orders for enemas the next day, it's going to leak. There's no question about it. Dr. Kumar added that he does have a problem with Dr. Gross' thinking process and his blaming others for the rupture instead of saying, "Hey, I should have done this."

Dr. Kumar stated that he does agree with restrictions, however, he has drafted an amendment. He concurred with Dr. Steinbergh's comments about eliminating paragraph A.2.c. Dr. Kumar stated that there are only two or three other changes that he's recommending.

Dr. Kumar stated that, currently, there are two hospitals monitoring Dr. Gross' surgical practice. Dr. Kumar stated that he would like to have reports from those hospitals, as well, before the Board grants Dr. Gross a license.

DR. KUMAR MOVED TO AMEND MS. PETRUCCI'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN THE MATTER OF ROBERT GROSS, D.O. BY:

Eliminating paragraph A.2.c, and renumbering current paragraph A.2.d accordingly.

Amending new paragraph A.2.c to read as follows:

- 2.c **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Gross has not been engaged in the active practice of osteopathic medicine and surgery 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 of the Revised Code to require additional evidence of his fitness to resume practice.

Inserting as new paragraph A.2.d the following:

- 2.d **Reports to be Submitted:** At the time he submits his notice of intent to commence practice in Ohio, Dr. Gross shall provide the Board with the names and addresses of all hospitals at which he has held privileges from the effective date of this Order and cause to be submitted to the Board all monitoring and/or peer review reports

Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- nay
Dr. Madia	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Amato	- aye
Dr. Steinbergh	- aye
Dr. Kumar	- aye

The motion carried.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF ROBERT GROSS, D.O. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- nay
	Dr. Madia	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Kumar	- aye

The motion carried.



State Medical Board of Ohio

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

December 14, 2006

Robert Gross, D.O.
54641 Four Seasons Drive
Shelby Twp., MI 48316

Dear Doctor Gross:

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

- (1) On or about September 21, 2006, the Colorado State Board of Medical Examiners [Colorado Board] approved a Stipulation and Final Agency Order wherein, on or about August 24, 2006, you agreed to have your license to practice medicine in the State of Colorado [Colorado license] placed on inactive status. You further agreed that said inactivation shall be permanent and that you shall not apply to reactivate your Colorado license at any time in the future. A copy of the Colorado Stipulation and Final Agency Order is attached hereto and incorporated herein.

The Stipulation and Final Agency Order, as alleged in paragraph (1) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

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.

Mailed 12-14-06

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/AMS/flb
Enclosures

CERTIFIED MAIL # 7004 2510 0006 9802 9193
RETURN RECEIPT REQUESTED

STATE OF COLORADO

STATE BOARD OF MEDICAL EXAMINERS

Cheryl Hara, Program Director
1560 Broadway, Suite 1300
Denver, Colorado 80202-5146
Phone: (303) 894-7690
Fax: (303) 894-7692
TTY: Dial 771 for Relay Colorado
www.dora.state.co.us/medical

Department of Regulatory Agencies

Tambor Williams
Executive Director

Division of Registrations

Rosemary McCool
Director



Bill Owens
Governor

I, Cindy Klyn, Enforcement Program Manager and Custodian of Records, do hereby certify that the attached copy of the Stipulation and Final Agency Order September 21, 2006 regarding the disciplinary proceedings against the license to practice medicine of Robert C. Gross, D.O., License No. 39274, is a true and correct copy of the document on file with the Colorado State Board of Medical Examiners.

Subscribed and sworn to me this 27th day of October, 2006

Cindy Klyn
Enforcement Program Manager
Colorado State Board of Medical Examiners
1560 Broadway, Suite 1300
Denver, CO 80202

2006 OCT 31 A 11:00

STATE MEDICAL BOARD
OF OHIO

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF ROBERT C. GROSS, D.O., LICENSE NUMBER 39274,
Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Robert C. Gross, D.O. ("Respondent") as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the State of Colorado on January 18, 2001 and was issued license number 39274, which Respondent has held continuously since that date.
2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.
3. On May 12, 2006, the Panel reviewed case numbers 2004-003427-B, 2005-002606-B, and 2005-004161-B. The Panel thereupon referred this case to the Attorney General pursuant to § 12-36-118(4)(c)(IV), C.R.S.
4. It is the intent of the parties and the purpose of this Stipulation and Final Agency Order ("Order") to provide for a settlement of all matters set forth in Board case numbers 2004-003427-B, 2005-002606-B, and 2005-004161-B without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties. There are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order.
5. Respondent understands that:
 - a. Respondent has the right to be represented by an attorney of the Respondent's choice, and Respondent is so represented in this matter;

b. Respondent has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.

c. By entering into this Order, Respondent is knowingly and voluntarily giving up the right to a hearing, agrees to the provisions contained in this Order, and relieves the Panel of its burden of proving its case at hearing pursuant to § 12-36-118, C.R.S.; and

d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel.

6. The Panel has reviewed seven of Respondent's surgical cases and has found that Respondent failed to meet generally accepted standards of medical practice with regard to several cases. Respondent does not admit and specifically denies all allegations of unprofessional conduct. In order to resolve the differences between the parties and avoid the expense and uncertainty of litigation, the parties have agreed to the terms of this Order.

7. The parties specifically agree that the terms of this Order are authorized by §§ 12-36-117(1)(p) and 12-36-118(5)(g)(III), C.R.S.

PERMANENT LICENSE INACTIVATION

8. Commencing on the effective date of this Order, Respondent's license will be placed on inactive status..

9. Following inactivation of his license, Respondent shall not perform any act requiring a license issued by the Board.

10. Respondent agrees that the inactivation of his license shall be permanent and Respondent shall not apply to reactivate his license at any time in the future.

OTHER TERMS

11. The terms of this Order were mutually negotiated and determined.

12. Both parties acknowledge that they understand the legal consequences of this Order; both parties enter into this Order voluntarily; and both parties agree that no term or condition of this Order is unconscionable.

13. So that the Board may notify hospitals of this agreement pursuant to § 12-36-118(13), C.R.S., Respondent presently holds privileges at the following hospitals in Colorado:

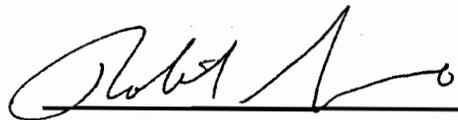
14. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary hearing pursuant to § 12-36-118(5)(g)(III), C.R.S. except that it may not be appealed. Failure to comply with the terms of this Order may be sanctioned by the Inquiry Panel as set forth in § 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C.R.S.

15. This Order shall be admissible as evidence at any future hearing before the Board.

16. Invalidation of any portion of this Order by judgment or court order shall in no way affect any other provision, which provision shall remain in full force and effect.

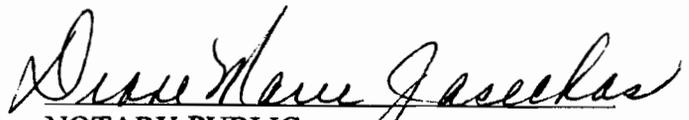
17. This Order shall be effective upon approval by the Panel and signature by a Panel member. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member, it is void.

18. Upon becoming effective, this Order shall be open to public inspection and publicized pursuant to the Board's standard policies and procedures. Additionally, this Order shall be reported the Federation of State Medical Boards, the National Practitioner Data Bank/Healthcare Integrity and Protection Data Bank ("NPDB") and as otherwise required by law.



Robert C. Gross, D.O.

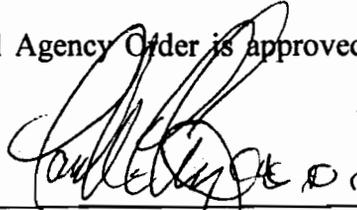
The foregoing was acknowledged before me this 24th day of August, 2006 by Robert C. Gross, D.O.



NOTARY PUBLIC

DIANE MARIE JASECKAS
Notary Public, State of Michigan
County of Oakland
My Commission Expires Nov. 3, 2011
Acting in the County of

THE FOREGOING Stipulation and Final Agency Order is approved and effective this ~~24~~²¹ day of August, 2006.
September;



FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS
INQUIRY PANEL B

APPROVED AS TO FORM:

WHITE AND STEELE, P.C.



John M. Palmeri, #14252
950 Seventeenth Street, 21st Floor
Denver, Colorado 80202
(303) 296-2828

ATTORNEYS FOR RESPONDENT

JOHN W. SUTHERS
Attorney General



Steven R. Kabler, #26358
First Assistant Attorney General
Business & Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
(303) 866-5697

ATTORNEYS FOR THE COLORADO
STATE BOARD OF MEDICAL
EXAMINERS, PANEL B