

# State Medical Board of Ohio

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med.ohio.gov

November 13, 2013

Anthony Donald Zucco, D.O.  
1865 Wilson Road SE  
West Jefferson, OH 43162

RE: Case No. 13-CRF-045

Dear Doctor Zucco:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 2013, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, 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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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

*J. Craig Stafford, MD, MPH*  
AEH

J. Craig Stafford, M.D., M.P.H.  
Secretary

JCS:jam  
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7032 2896 8977  
RETURN RECEIPT REQUESTED

CC: W. Jeffrey Moore, Esq.  
CERTIFIED MAIL NO. 91 7199 9991 7032 2896 8984  
RETURN RECEIPT REQUESTED

*Mailed 11-21-13*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 2013, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio, 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 Anthony Donald Zucco, D.O., Case No. 13-CRF-045, 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.

  
J. Craig Strafford, M.D., M.P.H.  
Secretary

(SEAL)

November 13, 2013

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 13-CRF-045

ANTHONY DONALD ZUCCO, D.O.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 13, 2013.

Upon the Report and Recommendation of Danielle R. Blue, State Medical Board 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.

**Rationale for Amendment:** Dr. Zucco was unprepared to handle the situation that underlies the criminal conviction, and the monitoring of his practice will instill confidence in his future practice.

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Anthony Donald Zucco, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Zucco's certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:
  - 1. **Application for Reinstatement or Restoration:** Dr. Zucco shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Certification of Compliance with the Terms of Criminal Community Control:** At the time he submits his application for reinstatement or restoration, Dr. Zucco shall provide the Board with certification from the Fairfield County Court of Common Pleas, Juvenile Division, dated no earlier than 60 days prior to Dr. Zucco's application for reinstatement or restoration, indicating that Dr. Zucco has maintained full compliance with the terms of community control in criminal case number 2012-AD-02.
  3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Zucco has not been engaged in the active practice of 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, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Zucco's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Zucco shall obey all federal, state, and local laws, all rules governing the practice of medicine and surgery in the state and/or country in which he is practicing.
  2. **Practice Plan and Monitoring Physician:** Within 30 days of the date of Dr. Zucco's reinstatement or restoration, or as otherwise determined by the Board, Dr. Zucco shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Zucco's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Zucco shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Zucco and his medical practice, and on the review of Dr. Zucco's patient charts. Dr. Zucco 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. Zucco's declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Zucco shall immediately so notify the Board in writing. In addition, Dr. Zucco shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Zucco shall further ensure that the previously designated monitoring physician also notifies the Board directly of his inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Zucco's monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Zucco's monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board for any other reason.

3. **Declarations of Compliance:** Dr. Zucco 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. Zucco's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Personal Appearances:** Dr. Zucco 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. Zucco's certificate is restored or reinstated, or as otherwise directed by the Board. Dr. Zucco shall also appear in person upon his request for termination of the probationary period, and/or as otherwise directed by the Board.

5. **Required Reporting of Change of Address:** Dr. Zucco shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Zucco's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Zucco violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Zucco shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Zucco shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Zucco receives from the Board written notification of the successful completion of his probation.  
  
In the event that Dr. Zucco provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Zucco receives from the Board written notification of the successful completion of his probation.
  2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Zucco shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Zucco shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This

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

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

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

  
J. Craig Strafford, M.D., M.P.H.  
Secretary

(SEAL)

November 13, 2013  
Date

2013 SEP 30 AM 11:51

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**In the Matter of**

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**Case No. 13-CRF-045**

**Anthony Donald Zucco, D.O.,**

\*

**Hearing Examiner Blue**

**Respondent.**

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**REPORT AND RECOMMENDATION**

Basis for Hearing

By letter dated May 8, 2013, the State Medical Board of Ohio ("Board") notified Anthony Donald Zucco, D.O., that it intended to determine whether to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board stated that its proposed action was based on an allegation that, on March 18, 2013, Dr. Zucco was found guilty by a jury of Failure to Report Child Abuse or Neglect, in violation of Ohio Revised Code Section ("R.C.") 2151.421, a fourth-degree misdemeanor. The Board further alleged that Dr. Zucco's conviction constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as set forth in R.C. 4731.22(B)(11). Accordingly, the Board advised Dr. Zucco of his right to request a hearing and received his request for a hearing on May 31, 2013. (State's Exhibit ("St. Ex.") 1 )

Appearances:

Mike DeWine, Attorney General of Ohio, and Kyle C. Wilcox, Assistant Attorney General, for the State of Ohio. William Moore and Donald Kline, Esqs., on behalf of Dr. Zucco.

Hearing Date: September 5, 2013

**SUMMARY OF THE EVIDENCE**

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

**Background Information**

1. Anthony Donald Zucco, D.O., was born in 1956 in Illinois. Dr. Zucco obtained his medical degree in 1990 from the University of Osteopathic Medicine in Des Moines, Iowa. In 1990, Dr. Zucco began an internship in Obstetrics and Gynecology at the

William Beaumont Army Medical Center in El Paso, Texas. However, Dr. Zucco was dismissed from the residency program after less than a year.<sup>1</sup> In 1992, he completed a transitional one-year internship at the Michigan Health Center in Detroit, Michigan. After subsequently completing two and one-half-years of an anesthesiology residency at the University of Massachusetts Medical Center in Worcester, Massachusetts, he transferred to a second anesthesiology residency at Meridia Huron Hospital in Cleveland, Ohio. He completed his residency in 1996. Dr. Zucco was initially licensed to practice medicine in Ohio in 1996. His license is currently active in renewal. He is board-certified in anesthesiology. (Hearing Transcript (“Tr.”) at 14-18, 106; St. Ex. 8; State of Ohio *eLicense* Center, <https://license.ohio.gov/lookup>, query on September 18, 2013).

2. Dr. Zucco testified that, from 1996 through 2006, he was employed as an anesthesiologist at Doctor’s Hospital West in Columbus, Ohio. He stated that, from 2006 through approximately 2010, he “took over the Department of Anesthesia” at Madison County Hospital in London, Ohio. In 2010, Dr. Zucco had a heart attack and did not practice medicine for one year. (Tr. at 25, 106-108)
3. In 2011, Dr. Zucco returned to the practice of medicine. Instead of returning to anesthesiology, he accepted a position at Premium Medical Care, an urgent care facility, that has several locations in central Ohio. He testified that he worked five days a week at various locations. (Tr. at 24-26)
4. For the past year, Dr. Zucco has practiced at an addiction medicine clinic at 1430 South High Street in Columbus. He stated that he is attempting to get board-certified in addiction medicine. (Tr. at 15)

### **Criminal Conviction**

5. As set forth in a Complaint filed on February 2, 2012, Dr. Zucco was charged in the Fairfield County Court of Common Pleas, Juvenile Division, in Fairfield County, Ohio, with the following:

#### **COUNT ONE**

Complainant, being first duly sworn according to law, states that between the dates of the 19<sup>th</sup> day of August 2011 and the 20<sup>th</sup> day of August, 2011, in the County of Fairfield, State of Ohio, Anthony Zucco, unlawfully, being a physician, acting in an official or professional capacity and knowing, or having reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under the age of eighteen years of age, to wit: H.Y. (D.O.B. 02/11/1999) has suffered or faces a threat of suffering any physical or mental wound,

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<sup>1</sup> Dr. Zucco’s dismissal and the circumstances surrounding it will be discussed in a later section entitled “Prior Board Action.”

injury, disability, or condition or a nature that reasonably indicates abuse or neglect of the child, did fail to immediately report that knowledge or reasonable cause to suspect to the public children service agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, to wit: Fairfield County, in violation of Section 2151.421 of the Ohio Revised Code.

**FAILURE TO REPORT CHILD ABUSE OR NEGLECT, M4**

(St. Ex. 2)

6. On March 18, 2013, after a three-day trial in the Fairfield County Court of Common Pleas, Juvenile Division, the jury returned a verdict against Dr. Zucco finding him guilty of one count of Failure to Report Child Abuse or Neglect, in violation of R.C. 2151.421, a fourth-degree misdemeanor. (St. Ex. 3)
7. As set forth in the Entry of Sentencing filed on April 10, 2013, the court sentenced Dr. Zucco to thirty days in jail, with 20 of those days suspended. The court further ordered Dr. Zucco to complete 200 hours of community service and pay a fine of \$250.00. (St. Ex. 4)
8. Dr. Zucco testified that he served 10 days in jail and is currently doing community service at a local church. (Tr. at 65-66)

**Conduct Underlying Criminal Conviction**

9. On August 19 and August 20, 2011, Dr. Zucco was working at Premium Medical Care located at 1981 Granville Pike in Lancaster. Dr. Zucco testified that, on those dates, he was the only physician at the facility along with a radiologist technician and a receptionist. He stated that Dr. Joseph Simone was his supervisor at the time. (Tr. at 26-28)
10. Patient 1, a female, was born in 1999. Patient 1 was 12-years-old when she was treated by Dr. Zucco at Premium Medical Care on August 19 and August 20, 2011. (St. Ex. 7)

*August 19, 2011 Office Visit*

11. Dr. Zucco testified that, on August 19, 2011, Patient 1 and her mother presented to Premium Medical Care with complaints of dysuria, vaginal tissue swelling, and white discharge.<sup>2</sup> (Respondent's Exhibit ("Resp. Ex.") A; Tr. at 30, 35, 86)

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<sup>2</sup> Dysuria is defined as pain or discomfort when urinating. Often described as a burning sensation, dysuria is most commonly caused by bacterial infections of the urinary tract. (See [www.intelihealth.com](http://www.intelihealth.com))

12. Dr. Zucco testified that the radiologist tech was the first person to enter the examination room to take Patient 1's history. According to Dr. Zucco, the radiologist tech came out of the exam room very upset and stated, "at a high decibel level," that "[w]e have a girl that got raped." He stated that he took the radiologist tech aside and asked her what happened. (Tr. at 30-32) According to Dr. Zucco, the radiologist tech answered that:

[Patient 1] was staying all night, and I can't remember if she said at a friend's house or at a cousin's house, and the boy, you know, according to her story, got up in the middle of the night, tried to pull her pants down and have sex with her.

And I said, "Well, calm down. Let me go in and find out what's going on."

(Tr. at 31-32)

13. Dr. Zucco testified that he then entered the examination room and stated the following to Patient 1 and her mother:

I closed the door so nobody could hear, and I said, "Look, this is what I'm hearing from our nurse out there, is that your daughter either had some sexual abuse, or was raped recently. And if this is the case then you've come to the wrong place. You need to go to the hospital where they have a rape test kit and they have got social workers. This is not the place to go. If that is the case, you know, I've got to report it to the Department of Family Services."

(Tr. at 33)

14. Dr. Zucco acknowledged that, upon entering the exam room the first time, Patient 1 and her mother did not deny that Patient 1 had been raped and/or sexually abused. (Tr. at 116)

15. Dr. Zucco explained what happened next:

And I told them, "Why don't you just take some time, talk together, you know, get your story straight, and I'll be back in." So I left for about ten minutes. I gave them time to talk. (Tr. at 33)

However, Dr. Zucco was unable to explain why he left Patient 1 and Patient 1's mother alone "to get your story straight." (Tr. at 33, 114)

16. Dr. Zucco testified that, after leaving Patient 1 and her mother alone for about ten minutes, he re-entered the examination room. He stated that Patient 1's mother informed him that she did not want her husband and Patient 1's father to find out because he had a

bad temper and she was afraid for Patient 1. Dr. Zucco admitted that he found this suspicious. (St. Ex. 7 at 35; Tr. at 34, 118)

17. Dr. Zucco testified that Patient 1's mother then changed her story. (Tr. at 34) He explained what Patient 1's mother next told him:

The story I got \* \* \* after I let them talk, was that she was staying at her cousin's house, and, you know, quote, kissing cousins or whatever, and that, you know, there might have been some touching, but there was no - - she said there was no sexual intercourse, there was no finger penetration, there was nothing, you know. There might have been some touching. And, you know, I asked her several times, and that's what she told me.

(Tr. at 34-35)

18. Dr. Zucco acknowledged that he never spoke to Patient 1 by herself or took a history directly from Patient 1. (Tr. at 45, 89) He admitted this was a mistake and further explained:

That was probably my mistake. Like I said, I'm new to it. I should have taken each of them in separate rooms and talked to them.

When I talked to mom and the child, they were both together. And I gave them that, you know, ten minutes of time or so to talk, but I didn't talk to each one individually.

(Tr. at 45)

19. Dr. Zucco testified that he did not perform a pelvic examination on Patient 1 because Patient 1's mother deferred it. He also added that he didn't examine Patient 1 because "to examine someone without their permission, it's considered an assault in itself" and "I'm always worried about traumatizing them." (Tr. at 38, 87, 118-119; St. Ex. 7 at 35)
20. Dr. Zucco testified that he did not have Patient 1 provide a urine sample because "the girl couldn't give me a urine sample." (Tr. at 39-40)
21. Dr. Zucco testified that he did not test Patient 1 for STDs because "I've ruled out STDs, because \* \* \* to get an STD you have to have sexual intercourse." (Tr. at 48, 98)
22. Dr. Zucco testified that he did not perform a pregnancy test on Patient 1 because "there was no sexual intercourse." He later admitted that he assumed Patient 1 was not pregnant because of the history provided to him by Patient 1's mother. (Tr. at 97, 130)

23. Dr. Zucco testified that he diagnosed Patient 1 with vaginitis, vaginal discharge, and a UTI solely on the history that Patient 1's mother relayed to him. (St. Ex. 7 at 35; Tr. at 40-42, 45) He further explained:

Yeah, based on what they told me that day.

She came in. We ruled out there was any sexual diseases because the mother said she didn't have sex.

She didn't have sex with - - In fact, it's anatomically impossible for a 10-year-old to get a hard on on command, so that you should - - there's no way that story could even stick, you know.<sup>3</sup>

But if she doesn't have sex, there can be no sexually transmitted diseases. And the only thing that logically came to my mind was that it's a urinary tract infection.

\* \* \*

My diagnosis was based on history, and absence of examination.

(Tr. at 45-46)<sup>4</sup>

24. Dr. Zucco testified that he does not normally make a diagnosis without performing an examination on a patient. (Tr. at 120)
25. Dr. Zucco testified that, based on his diagnoses, he prescribed Patient 1 Zithromax (an antibiotic for the UTI), Flagyl (for vaginitis), and Diflucan (for a yeast infection). (St. Ex. 7 at 35; Tr. at 40-42)
26. Dr. Zucco testified that, before Patient 1 and her mother left the office, he is "pretty sure" that he consulted Premium Medical Care's policy manual. He testified that the policy manual stated that "if two kids are under the age of 13, and one doesn't have a position of authority or control over the other one, then it's not sexual abuse." Dr. Zucco further stated that, based upon his interpretation of the definition, he felt that the situation "fell outside of the range based on the definition" of sexual abuse. (Board Exhibit A; Tr. at 54-55, 57, 92-93, 123)

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<sup>3</sup> Dr. Zucco admitted that he did not know the age of the perpetrator at the office visit. Rather, Patient 1's mother told him that he was around the same age as Patient 1, a 12-year-old. (Tr. at 79)

<sup>4</sup> Dr. Zucco was unable to provide the Board with any medical documentation to support his opinion that a 10-year-old boy would be unable to get an erection "on command." (Tr. at 121)

27. According to Premium Medical Care's Clinical Procedures/Policies manual in effect in August 2011, Premium Medical Care personnel had the following responsibilities in cases of obvious or suspected child abuse or neglect of a child:
- All cases of child abuse and/or neglect or suspected child abuse and/or neglect will be reported to the legal authorities. \* \* \*
  - The Ohio Revised code Section 2151.421 requires certain professionals including physicians, \* \* \* having reason to believe that a child less than eighteen years of age \* \* \* has suffered any wound, injury, disability or condition of such a nature to report indicated abuse or neglect immediately to the Children's Board in the County in which the child resides.
  - Section 2907.291 of the Ohio Revised Code requires physicians to examine suspected cases of sexual abuse/assault and report those cases to the proper authorities. The physician shall examine such person for the purpose of gathering physical evidence. Notwithstanding any other provision of law, a minor may consent to examination. Such consent is not subject to disapproval because of minority. Consent of the parent /or guardian of the minor is not required for such examination. \* \* \* Under the law, it is not necessary to obtain parental consent for medical examination of a child \* \* \*
  - "Sexual abuse," a form of physical abuse, including any contacts or interactions between a child and an adult in which the child is being used for the sexual stimulation of the perpetrator or another person. These acts, when committed by a person under the age of 18 who is either significantly older than the victim or in a position of power or control over another child, may be considered sexual abuse.

(Bd. Ex. A, Emphasis in original)

28. Dr. Zucco testified that he "scanned" Premium Medical Care's policies and procedures, including the section discussing sexual abuse, prior to working at the urgent care facilities. (Bd. Ex. A; Tr. at 112)
29. Dr. Zucco acknowledged that, based upon the policy manual, he did not need the permission of Patient 1's mother to examine her. (Bd. Ex. A; Tr. at 119)
30. The following exchange took place between the Hearing Examiner and Dr. Zucco regarding his understanding of the term "sexual abuse" as defined in the policy manual:
- Q: When we were looking at the policy \* \* \*, you indicated that you looked at it, correct, and that you believed - -
- A: I looked at that one page pretty thoroughly.

Q: - - that this did not apply because the perpetrator did not have control over her, is that right, or that's what you thought?

A: Well, because - - I thought because they were both under the age of 13, and that the perpetrator didn't have authority or control over her, is how I interpreted it.

Q: Okay. My first question is: Did you know how old he was when you looked at that policy?

A: I knew he was about her age. I did not know the exact specific age.

Q: Did you know how tall, and what his weight was?

A: No, I did not.

Q: So you made an assumption that he did not have any control over her; is that right? Is that a "yes"?

A: Yes.

(Tr. at 128-129)

31. The following physical indicators are listed as signs of sexual abuse in the policy manual:

- Difficulty walking or sitting,
- Torn, stained or bloody underclothing,
- Pain, swelling or itching in genital area,
- Bruises, bleeding or lacerations in external genitalia, vaginal or anal areas,
- Vaginal/penile discharge,
- Venereal disease, especially in preteens,
- Poor sphincter tone, and
- Pregnancy.

(Bd. Ex. A)

32. The following exchange took place between the Assistant Attorney General and Dr. Zucco regarding the physical indicators listed above:

Q: Page 12 talks about indicators of child abuse and neglect, sexual abuse. It says, "Pain, swelling or itching in the genital area." Do you see that?

\* \* \*

A: Yes. Sorry.

Q: Next page, again, "Vaginal Discharge," do you see that?

\* \* \*

A: Yes.

Q: So under your own policy manual those are indicators of sexual abuse; is that correct?

A: Yes. \* \* \*

(Tr. at 102-103)

33. However, Dr. Zucco countered that "pain, swelling, or itching in the genital area" could also be caused by a urinary tract infection. (Tr. at 105)
34. In addition to reviewing the policy manual, Dr. Zucco testified that he contacted his supervisor, Dr. Simone, about the situation. He stated that he explained the situation to Dr. Simone and Dr. Simone told him "[d]on't worry about calling it in." (Tr. at 55, 94)

*August 20, 2011 Office Visit*

35. Dr. Zucco testified that, on August 20, 2011, Patient 1 returned to Premium Medical Care with her mother because "she couldn't keep the medicine down." He stated that he substituted Patient 1's oral medications with an injection and then he administered it. (Tr. at 50; St. Ex. 7 at 25, 27) Dr. Zucco stated that he asked Patient 1's mother again about the situation:

I also asked the mom, you know, "Is everything still okay? There's no changes?" And mom left that first day with that she was staying at the cousin's house.

Okay. So when she came in the next day and I gave her the IM injection, she still stated, "Everything is fine. Don't worry about anything." And that was day two.

Then I followed up with her a week later over the phone, and it was still the same.

(Tr. at 50-51)<sup>5</sup>

**Prior Board Action**

36. On or about August 14, 1996, the Board issued an Entry of Order (“August 1996 Order”). The August 1996 Order, among other things, granted Dr. Zucco’s certificate to practice osteopathic medicine and surgery in Ohio and imposed probationary terms, conditions, and limitations for one year based upon his violations of R.C. 4731.22(B)(9) and 4731.08. The August 1996 Order was based, in part, on Dr. Zucco’s 1991 guilty plea, while in the service of the U.S. Army, to smuggling anabolic steroids into the United States and engaging in discussions with another concerning a deal for the murder of an individual. (St. Ex. 8)
37. At the September 2013 hearing, Dr. Zucco explained that he entered into a plea agreement with the military and served approximately six months in Leavenworth prison. He further explained that, because of his prison time, he was unable to get back into the OB/GYN residency in Texas. (Tr. at 21, 110-111)
38. Dr. Zucco successfully completed probation with the Board. (Tr. at 110-111)

**Additional Information**

39. Dr. Zucco testified that, if Patient 1 had sexual intercourse with an adult, he would have reported it “automatically.” However, he stated that part of the problem was that “I knew they were both under 13 years old.” (Tr. at 85)
40. Dr. Zucco testified that he has accepted responsibility for his actions and that “ignorance of the law is not an excuse.” (Tr. at 68)
41. Dr. Zucco explained what he has learned from this ordeal:

Well, it was all a good experience for me, even though some bad things happened.

What happened was, I’m 57 years old. I haven’t done urgent care in so long. Even though it was hard learning, Dr. Lackey did me a favor.

I was able to keep abreast of the current medicine, and I really did learn a lot. Even though this was kind of like a negative experience to me, it opened my eyes. Thank God no harm came to anyone.

---

<sup>5</sup> There is no documentation in Patient 1’s medical chart that Dr. Zucco contacted Patient 1’s mother by telephone. Dr. Zucco admitted that he did not document the telephone call in the chart. (St. Ex. 7; Tr. at 104)

And I don't know, you know, you mentioned the Army thing. That was before I ever, you know, had a license.

I mean, my big thing was to go 20 years without ever having an incident. I'm an anesthesiologist. I've saved a lot of people. Never had anybody die on me. Never had a malpractice suit. And I was pretty proud of it.

And I don't think I'm a bad physician. I just think I should have probably had some extra training before I hopped right into the urgent care field, which I feel there's no problem today. You know, I could go in any urgent care and perform the job properly.

(Tr. at 69-70)

### **FINDING OF FACT**

On March 18, 2013, in the Fairfield County Court of Common Pleas, Juvenile Division, in Lancaster, Ohio, Anthony Donald Zucco, D.O., was found guilty by a jury of one count of Failure to Report Child Abuse or Neglect, in violation of R.C. 2151.421, a fourth-degree misdemeanor.

The facts underlying the criminal conduct included Dr. Zucco's failure to report to law enforcement and/or child services the rape of a minor who presented to his medical practice with complaints stemming from sexual abuse. Further, when Patient 1 presented, Dr. Zucco failed to conduct a pregnancy test, perform a pelvic examination, and/or order any tests for urinary tract infections or sexually transmitted diseases on Patient 1. Rather, Dr. Zucco prescribed antibiotics.

### **CONCLUSION OF LAW**

Dr. Zucco's judicial finding of guilt as set forth above in the Finding of Fact, individually and/or collectively, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as set forth in R.C. 4731.22(B)(11).

### **DISCUSSION OF PROPOSED ORDER**

It is undisputed that, after a three-day jury trial, Dr. Zucco was found guilty of one count of Failure to Report Child Abuse or Neglect, a fourth degree misdemeanor, and served 10 days in jail for his crime.

Counsel for Dr. Zucco argued that Dr. Zucco has "paid ten times over" for his mistake by serving jail time, performing community service, and losing his job. He further argued that Dr.

Zucco was confused over whether this situation constituted sexual assault. Finally, he suggested that Dr. Zucco exercised his due diligence in this situation because he consulted the policy manual and checked with his superior before he made his decision.

However, the Hearing Examiner is not convinced. Plainly speaking, Dr. Zucco violated his duty as a physician to Patient 1 and did not have the best interest of the child at heart.

Dr. Zucco's duty was first and foremost to Patient 1, *not* her mother. However, Dr. Zucco breached this duty several times on August 19 and 20, 2011. Despite Patient 1's complaints and reporting to the radiologist tech that she had been raped, Dr. Zucco did not take a history from Patient 1, did not examine Patient 1, did not have Patient 1 provide him with a urine sample, did not administer a pregnancy test, did not test Patient 1 for STDs, and made a diagnosis without examining Patient 1. Why? Because Dr. Zucco chose to believe Patient 1's mother after *he insisted* that Patient 1 and her mother have time alone "to get your story straight."

Why did Patient 1 and her mother have to get their story straight? It is undisputed that, prior to entering the exam room, the radiologist tech had informed Dr. Zucco that Patient 1 told her that she was raped. When Dr. Zucco entered the room to inquire further, he stated that Patient 1 and her mother did not dispute that Patient 1 was raped. When Dr. Zucco was asked why he instructed Patient 1 and her mother to get their stories straight, Dr. Zucco was unable to articulate a reason why. It is evident that Dr. Zucco was not concerned about the safety and well-being of Patient 1 from the start.

The next question is: was Dr. Zucco gullible or did he blatantly ignore red flags of possible sexual abuse? Consider the red flags: (1) Patient 1 complained of dysuria, vaginal tissue swelling, and white discharge. According to the manual that Dr. Zucco supposedly consulted on August 19, 2011, the above-mentioned symptoms match the physical signs of sexual abuse; (2) At the first interaction at the office, Patient 1 and her mother reported Patient 1 had been raped; (3) Patient 1 and her mother did not deny that Patient 1 was sexually abused during their first encounter with Dr. Zucco; (4) Patient 1's mother reported that she did not want her husband to find out and if he did, she was afraid for Patient 1; (5) After allowing Patient 1 and her mother time to get their stories straight, Patient 1's mother changed her story; and (6) Patient 1's mother deferred a pelvic examination. Accordingly, the Hearing Examiner does not believe that Dr. Zucco was simply naïve.

Finally, Dr. Zucco failed in his duty to protect Patient 1 from further abuse. Dr. Zucco clearly had enough information to know or reasonably suspect that Patient 1 had suffered sexual abuse. And according to Ohio law and his own policy manual, he was required to examine and immediately report this to the proper legal authorities. Yet, he sent Patient 1 home with her mother who may have been acting out of self-interest.

Based on the foregoing, the Hearing Examiner finds that a permanent revocation is warranted in this matter to protect the public.

**PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Anthony Donald Zucco, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED

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

A handwritten signature in black ink, reading "Danielle R. Blue". The signature is written in a cursive style with a horizontal line underneath the name.

Danielle R. Blue, Esq.  
Hearing Examiner

# State Medical Board of Ohio

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

(614) 466-3934

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## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 13, 2013

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Steinbergh asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Stephen Michael Cardamone, D.O.; Walter Francis Finan, M.D.; Yousuf Masood, M.D.; Jarrod Eugene Miller, L.M.T.; Edward W. Millunchick, M.D.; Gareth J. Morris-Stiff, M.D.; Patrick Eugene Muffley, D.O.; Anil Choudary Nalluri, M.D.; and Anthony Donald Zucco, D.O.

A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Dr. Saferin	- aye
	Dr. Soin	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- aye
	Mr. Kenney	- aye
	Mr. Giacalone	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Dr. Saferin	- aye
	Dr. Soin	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- aye
	Mr. Kenney	- aye
	Mr. Giacalone	- aye

Dr. Steinbergh noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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 any disciplinary matters. In the matters before the Board today, Dr. Strafford served as Secretary and Dr. Bechtel served as Supervising Member. Dr. Steinbergh noted that Dr. Talmage also served as Secretary on the cases of Dr. Nalluri, Dr. Zucco, and Dr. Muffley.

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

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

.....

ANTHONY DONALD ZUCCO, D.O., Case No. 13-CRF-045

.....

**Dr. Saferin moved to approve and confirm Ms. Blue’s Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Anthony Donald Zucco, D.O. Dr. Soin seconded the motion.**

.....

**Dr. Ramprasad moved to amend the Proposed Order of the Report and Recommendation to read as follows:**

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Anthony Donald Zucco, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Zucco’s certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:
  - 1. **Application for Reinstatement or Restoration:** Dr. Zucco shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  - 2. **Certification of Compliance with the Terms of Criminal Community Control:** At the time he submits his application for reinstatement or restoration, Dr. Zucco shall provide the Board with certification from the Fairfield County Court of Common Pleas, Juvenile Division, dated no earlier than 60 days prior to Dr. Zucco’s application for reinstatement or restoration, indicating that Dr. Zucco has maintained full compliance with the terms of community control in criminal case number 2012-AD-02.

3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Zucco has not been engaged in the active practice of 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, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

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

1. **Obey the Law:** Dr. Zucco shall obey all federal, state, and local laws, all rules governing the practice of medicine and surgery in the state and/or country in which he is practicing.
2. **Practice Plan and Monitoring Physician:** Within 30 days of the date of Dr. Zucco's reinstatement or restoration, or as otherwise determined by the Board, Dr. Zucco shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Zucco's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Zucco shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Zucco and his medical practice, and on the review of Dr. Zucco's patient charts. Dr. Zucco 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. Zucco's declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Zucco shall immediately so notify the Board in writing. In addition, Dr. Zucco shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Zucco shall further ensure that the previously designated monitoring physician also notifies the Board directly of his inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Zucco's monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Zucco's monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board for any other reason.

3. **Declarations of Compliance:** Dr. Zucco 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. Zucco's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Personal Appearances:** Dr. Zucco 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. Zucco's certificate is restored or reinstated, or as otherwise directed by the Board. Dr. Zucco shall also appear in person upon his request for termination of the probationary period, and/or as otherwise directed by the Board.
5. **Required Reporting of Change of Address:** Dr. Zucco shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

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

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

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

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

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

In the event that Dr. Zucco provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Zucco receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Zucco shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Zucco shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Zucco receives from the Board written notification of the successful completion of his probation.
  
3. **Required Documentation of the Reporting Required by Paragraph F:** Dr. Zucco shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

**Dr. Sethi seconded the motion.**

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

ROLL CALL:	Dr. Strafford	- abstain
	Dr. Bechtel	- abstain
	Dr. Saferin	- aye
	Dr. Soim	- aye

Dr. Ramprasad	- aye
Dr. Steinbergh	- aye
Dr. Sethi	- aye
Dr. Talmage	- abstain
Mr. Kenney	- aye
Mr. Giacalone	- nay

The motion to amend carried.

**Dr. Soin moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Anthony Donald Zucco, D.O. Dr. Saferin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Strafford	- abstain
	Dr. Bechtel	- abstain
	Dr. Saferin	- aye
	Dr. Soin	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- abstain
	Mr. Kenney	- aye
	Mr. Giacalone	- nay

The motion to approve carried.



# State Medical Board of Ohio

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

(614) 466-3934  
med.ohio.gov

May 8, 2013

Case number: 13-CRF- 045

Anthony Donald Zucco, D.O.  
1865 Wilson Road SE  
West Jefferson, Ohio 43162

Dear Doctor Zucco:

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 March 18, 2013, in the Fairfield County Juvenile Court, Lancaster, Ohio, you were found guilty by jury of misdemeanor Failure to Report Child Abuse or Neglect, in violation of Section 2151.421, Ohio Revised Code.

The facts underlying the aforementioned criminal conduct includes your failure to report to law enforcement and/or child services the rape of a minor who presented to your medical practice with complaints stemming from sexual abuse. Further, when the patient presented, you failed to conduct a pregnancy test, perform a pelvic examination, and/or order any tests for urinary tract infections or sexually transmitted diseases on said patient. Rather, you prescribed antibiotics.

The facts as alleged in paragraph (1) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is

*Mailed 5-9-13*

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,



J. Craig Stafford, M.D., M.P.H.  
Secretary

JCS/DSZ/pev  
Enclosures

CERTIFIED MAIL #91 7199 9991 7031 2768 6552  
RETURN RECEIPT REQUESTED

Cc: Robert V. Kish, Esq.  
Reminger  
65 E. State Street, 4<sup>th</sup> Floor  
Columbus, Ohio 43215

CERTIFIED MAIL #91 7199 9991 7031 2768 6545  
RETURN RECEIPT REQUESTED



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

ANTHONY D. ZUCCO, D.O.

\*

## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 14th day of August, 1996.

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

It is hereby ORDERED that:

1. The application of Anthony D. Zucco, D.O., for a certificate to practice osteopathic medicine and surgery in the State of Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to the following PROBATIONARY terms, conditions, and limitations for a period of one year:
  - a. Dr. Zucco shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.
  - b. Dr. Zucco shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the provisions of probation.
  - c. Dr. Zucco shall appear in person for interviews before the full Board or its designated representative at three month intervals, or as otherwise requested by the Board.
  - d. Prior to commencing practice [other than his current residency program], Dr. Zucco shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Zucco's activities will be directly supervised and overseen by another physician approved by the Board.

Moreover, Dr. Zucco shall obtain the Board's prior approval for any alteration to the practice plan. In the event that Dr. Zucco's supervising physician under this practice plan becomes unable or unwilling to so serve, Dr. Zucco shall immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Zucco shall refrain from practicing unless and until such supervision is in place, unless otherwise determined by the Board.

- e. Dr. Zucco shall not prescribe, administer, dispense, order, or possess (except as prescribed for Dr. Zucco's use by another so authorized by law) the following drugs: anabolic steroids.

- f. Dr. Zucco shall submit to random urine screenings for anabolic steroids on a monthly basis or as otherwise directed by the Board. Dr. Zucco shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of issuance of Dr. Zucco's certificate to practice medicine and surgery, Dr. Zucco shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Zucco shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Zucco must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.
  - g. Dr. Zucco shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
  - h. In the event that Dr. Zucco should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Zucco must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- 2. Dr. Zucco shall not request a change in the terms of his probation for at least nine months from the effective date of this Order.
  - 3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Zucco's certificate will be fully restored.

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



Thomas E. Gretter, M.D.  
Secretary

(SEAL)

8/29/96

Date

95 JUL -3 PM 3:04

**REPORT AND RECOMMENDATION  
IN THE MATTER OF ANTHONY D. ZUCCO, D.O.**

The Matter of Anthony D. Zucco, D.O., was heard by Sharon W. Murphy, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on June 19, 1996.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated July 12, 1995, the State Medical Board of Ohio [Board] notified Anthony D. Zucco, D.O., that it proposed to take disciplinary action against his application for a certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on one or more of the following allegations:
1. On or about August 10, 1995, Dr. Zucco submitted an application for licensure to practice osteopathic medicine and surgery in Ohio.
  2. On or about May 8, 1991, while in the service of the United States Army, Dr. Zucco pled guilty to the following charges:
    - (a) Smuggling goods into the United States, to wit: anabolic steroids, a felony; and
    - (b) Conduct unbecoming an officer and a gentleman, to wit: engaging in discussions and conversations with another, concerning a deal for the murder of an individual.

The Board alleged that Dr. Zucco's guilty plea in paragraph 2(a) constitutes "[a] plea of guilty to, or a judicial finding of guilty of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code." Moreover, the Board alleged that Dr. Zucco's guilty pleas in paragraphs 2(a) and (b) constitute "a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

In addition, the Board advised Dr. Zucco of his right to request a hearing in this Matter. (State's Exhibit 1).

- B. On March 7, 1996, David M. Levine, Esq., filed a written hearing request on behalf of Dr. Zucco. (State's Exhibit 2).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Anne B. Strait, Assistant Attorney General.
- B. On behalf of the Respondent: David M. Levine, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Presented by Respondent

- A. Anthony D. Zucco, D.O.
- B. John Poulos, M.D. (by deposition, see Respondent's Exhibit A)
- C. Donald A. Malone, Jr., M.D. (by deposition, see Respondent's Exhibit B)

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

- A. Presented by the State
  - 1. State's Exhibit 3: Copy of a March 8, 1996, letter to Mr. Levine from the Board advising that a hearing had been scheduled for March 22, 1996; but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
  - 2. State's Exhibit 4: Copy of a March 14, 1996, letter to Mr. Levine from the Board advising that a hearing had been scheduled for May 2, 1996.
  - 3. State's Exhibit 5: Copy of Respondent's Notice of Appearance of Counsel, filed April 8, 1996. (2 pp.)
  - 4. State's Exhibit 6: Copy of Respondent's Motion for Leave to Take Testimony of Expert Witness [Donald A. Malone, Jr., M.D.] by Deposition, filed April 22, 1996. (2 pp.)

96 JUL -3 PM 3:04

5. State's Exhibit 7: Copy of a Joint Motion for Continuance, filed April 24, 1996. (2 pp.)
6. State's Exhibit 8: Copy of an April 24, 1996, Entry granting the parties' motion for continuance and granting Respondent's motion for leave to depose Dr. Malone.
7. State's Exhibit 9: Copy of Respondent's Request for Application Forms, filed July 24, 1995. (6 pp.) (Note: pages numbered by the Attorney Hearing Examiner).
8. State's Exhibit 10: Copy of Respondent's Application for Certificate - Medicine or Osteopathic Medicine, filed August 10, 1995. (39 pp.)
9. State's Exhibit 11: Certified copy of the final court-martial order from *US v. Captain Anthony D. Zucco* (91000767). (3 pp.)
10. State's Exhibit 12: Copies of documents from the Department of the Army regarding Dr. Zucco. (11 pp.) (Note: [1] Pages numbered by the Attorney Hearing Examiner; [2] Portions of exhibit redacted by the Attorney Hearing Examiner as stipulated by the parties (See hearing transcript at page 10); and [3] Exhibit sealed in accordance with 10 U.S.C. Section 1102).
11. State's Exhibit 13: Copy of a November 13, 1995, letter to Dr. Zucco from the Board requesting additional information and documentation. (2 pp.)
12. State's Exhibit 14: Copy of a November 27, 1995, letter to the Board from Dr. Zucco providing additional documentation. (3 pp.)
13. State's Exhibit 15: Copy of a December 7, 1995, letter to the Board from Dr. Zucco providing additional information.
14. State's Exhibit 16: Copy of Respondent's Motion for Leave to Take Testimony of John G. Poulos, M.D., by Déposition filed on or about May 14, 1996. (2 pp.)
15. State's Exhibit 17: Copy of a May 21, 1996, Entry granting Respondent's motion for leave to depose Dr. Poulos.

B. Presented by Respondent

1. Respondent's Exhibit A: Deposition of John Poulos, M.D., taken in lieu of live testimony. (33 pp.)
  - a. Respondent's Exhibit A/Poulos: Curriculum vitae Dr. Poulos. (5 pp.)
2. Respondent's Exhibit B: Deposition of Donald A. Malone, Jr., M.D., taken in lieu of live testimony. (47 pp.)
  - a. Respondent's Exhibit B/Malone: Curriculum vitae Dr. Malone. (12 pp.)
  - b. Respondent's Exhibit C/Malone: Copy of *Anabolic-Androgenic Steroids: Current Issues*, Sports Med, Vol. 19(5) 1995. (16 pp.)
  - c. Respondent's Exhibit D/Malone: Copy of *Neuropsychiatric Effects of Anabolic Steroids in Male Normal Volunteers*, JAMA, Vol. 269, No. 21, June 2, 1993. (5 pp.)
  - d. Respondent's Exhibit E/Malone: Copy of *Anabolic-Androgenic Steroids and Psychiatric-Related Effects: A Review*, Can. J. Psychiatry, Vol. 37, February 1992. (6 pp.)
  - e. Respondent's Exhibit F/Malone: Copy of *Psychological Moods and Subjectively Perceived Behavioral and Somatic Changes Accompanying Anabolic-Androgenic Steroid Use*, Am. J. Sports Med., Vol. 20, No. 6, 1992. (8 pp.)
  - f. Respondent's Exhibit G/Malone: Copy of *Hooked on Hormones: An Anabolic Steroid Addiction Hypothesis*, JAMA, Vol. 262, No. 22, December 8, 1992. (15 pp, Westlaw).
  - g. Respondent's Exhibit H/Malone: Copy of *Violent Crime Possibly Associated with Anabolic Steroid Use*, Am. J. Psychiatry, Vol. 146:5, May 1989. (3 pp.)
  - h. Respondent's Exhibit I/Malone: Copy of *Affective and Psychotic Symptoms Associated with Anabolic Steroid Use*, Am. J. Psychiatry, Vol. 145:6, April 1988. (4 pp.)

95 JUL -3 PM 3:04

3. Respondent's Exhibit C: Copy of *Psychiatric Effects and Psychoactive Substance Use in Anabolic-Androgenic Steroid Users*, Clin. J. Sports Med., Vol. 5, No. 1, 1995, co-authored by Donald A. Malone, Jr., M.D. (7 pp.)
4. Respondent's Exhibit D: Copy of *Psychiatric and Medical Effects of Anabolic-Androgenic Steroid Use: A Controlled Study of 160 Athletes*, Arch. Gen. Psychiatry, Vol. 51, May 1994. (8 pp.)
5. Respondent's Exhibit E: Dr. Zucco's curriculum vitae. (3 pp.)
6. Respondent's Exhibit F: Copy of Dr. Zucco's passing scores from the NBOME [National Board of Osteopathic Medical Examiners] Part I, taken October 14, 1994.
7. Respondent's Exhibit G: Copy of Dr. Zucco's passing scores on the COMLEX [Comprehensive Osteopathic Medical Licensing Examination] Level III, taken February 20, 1996. (2 pp.)
8. Respondent's Exhibit H-N: Copies of letters written by supervisors and peers in support of Dr. Zucco. (7 pp.)

### SUMMARY OF THE EVIDENCE

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

1. Anthony D. Zucco, D.O., graduated from the University of Osteopathic Medicine in Des Moines, Iowa, in June 1990. Dr. Zucco obtained a license to practice osteopathic medicine in West Virginia in June 1992, based on passage of the State Board examination. Dr. Zucco testified at hearing that he took the West Virginia State Board Examination in order to prepare for the FLEX examination. Thereafter, Dr. Zucco passed the examination offered by the National Board of Osteopathic Medical Examiners [NBOME] Parts I and II, in Maine. (Transcript [Tr.] at 67; State's Exhibit [St. Ex.] 9 at 1-3, 5; St. Ex. 10 at 22-24).
2. In 1976, before beginning his college education, Dr. Zucco enlisted in the United States Army. He was twenty years old. Dr. Zucco served four years of active duty as a Green Beret in the Special Forces. Thereafter, Dr. Zucco served four years of Reserve duty while attaining, first, an associate degree and, later, a

bachelor degree. Finally, Dr. Zucco served four years in the National Guard while attending medical school, from 1986 through 1990. (Tr. at 30-33; St. Ex. 10 at 7).

While in the Special Forces, Dr. Zucco received an Army Service Ribbon, a National Defense Service Medal, and a Good Conduct Medal. (St. Ex. 14). At hearing, Dr. Zucco testified that as a member of the Special Forces, he trained in survival, escape and invasion, and military occupation skill training. He also attended a school for military free fall, where participants are trained to jump from planes at 30,000 feet. He was also sent to a scuba school, after which he joined a team that provided training in skydiving techniques to military organizations around the world. Dr. Zucco testified physical prowess was important because a member needed to be in great physical condition. He further testified that strength training was a significant part of his daily routine. Dr. Zucco asserted that, at that time, he had always been in better physical condition than his associates. (Tr. at 30-32; St. Ex. 10 at 7).

Dr. Zucco stated that, by the third year of medical school, he was in his early thirties. He was surrounded by younger people who were in better shape than he. He also felt that he was starting to "slow down." Accordingly, when a friend in medical school encouraged him to try anabolic steroids, Dr. Zucco agreed. The friend was a weight lifter, and had no difficulty obtaining the drugs on the power lifter circuit. Dr. Zucco further stated that when he was using steroids, he felt "elated, ecstatic, more aggressive, like [he was] sort of invincible." He also thought that the drugs gave him more energy and a "mental edge." (Tr. at 41, 46-48).

3. In June 1990, after completing medical school, Dr. Zucco reentered the United States Army with the rank of Captain. He began an internship in Obstetrics and Gynecology at the William Beaumont Army Medical Center (WBAMC), in El Paso, Texas. Dr. Zucco testified that when he first arrived at WBAMC, he encountered an individual with whom he had served in the Special Forces. The individual was, at that time, enlisted with the rank of sergeant. Dr. Zucco befriended the sergeant; but by doing so, Dr. Zucco was violating military rules which prohibit an officer from fraternizing with an enlisted person. (Tr. at 33-34, 50; St. Ex. 10 at 7).

In 1990, Dr. Zucco was using testosterone propionate and testosterone cypionate [anabolic steroids]. At that time, anabolic steroids could be obtained only with a prescription in the United States, although they had not yet been scheduled as controlled substances. In Mexico, however, anabolic steroids were available without prescription. WBAMC is situated just a few miles from the Mexican border. Therefore, with the sergeant's help, Dr. Zucco purchased

steroids in Mexico on a number of occasions and transported them across the border in a duffel bag. Dr. Zucco asserted that he intended the steroids only for his own use. He kept the steroids in his room, but never had an opportunity to use them. (Tr. at 34-35; St. Ex. 10 at 7; Respondent's Exhibit [Resp. Ex.] A at 29-30).

Eventually, Dr. Zucco's relationship with the sergeant deteriorated. Dr. Zucco testified he and the sergeant had been accompanied on their trips to Mexico by the sergeant's seventeen year old girlfriend. At that time the sergeant was forty, and planning to marry another woman. When the girlfriend told Dr. Zucco that she thought she had acquired a venereal disease, Dr. Zucco informed her that the sergeant was planning to marry another and advised her to leave the sergeant. The girlfriend told the sergeant what Dr. Zucco had said. (Tr. at 52-53).

Dr. Zucco testified that he later discovered that the sergeant first reported him to military authorities for steroid use at that time. Dr. Zucco further testified that the military authorities decided not to take any immediate action against him. (Tr. at 36, 52-54).

Thereafter, the sergeant did marry the other woman, but was unable to support her on an enlisted man's pay. Therefore, he invited Dr. Zucco to share a home with them. Dr. Zucco did so. When Dr. Zucco moved into the home, however, he discovered that the sergeant was abusing his wife. When the wife asked for help, Dr. Zucco gave her money to assist her in leaving the sergeant. When his wife left, the sergeant assumed that she had had an intimate relationship with Dr. Zucco. The sergeant sought revenge and endeavored to generate additional allegations against Dr. Zucco. (Tr. at 35-36, 54-55; St. Ex. 10 at 7).

Dr. Zucco testified that the additional allegations were derived from a series of conversations between Dr. Zucco and the sergeant. These conversations arose due to a picture of Dr. Zucco's father with Frank Sinatra, Jr. When the sergeant asked who was with Mr. Sinatra, Dr. Zucco replied: "This is the 'Don' of the Midwest." Dr. Zucco testified that he jokingly did so because his father's name is Don. The sergeant, however, believed that Dr. Zucco had connections to the Mafia, and asked Dr. Zucco to get him a contract to commit murder. At first, Dr. Zucco thought the misunderstanding was humorous. However, the sergeant continued to question him about the contract. After considering the problems with the sergeant's wife and girlfriend, Dr. Zucco began to suspect that the sergeant had reported him to the military secret police for his steroid use. (Tr. at 36-40).

At that time, Dr. Zucco no longer lived with the sergeant. In fact, Dr. Zucco had been advised by his superior officer to avoid the sergeant at all times. Nevertheless, the sergeant continued to call Dr. Zucco many times a day, crying and claiming that Dr. Zucco was his "only friend in the world." Dr. Zucco finally agreed to meet the sergeant in a restaurant. When he arrived, the sergeant wanted to talk only about the contract and only in his van. Dr. Zucco became suspicious, but decided to cooperate in order to discover what exactly the sergeant had done. Moreover, Dr. Zucco allowed the sergeant to believe that Dr. Zucco really could facilitate a murder for hire, so that the sergeant would be afraid to report him to the military authorities. (Tr. at 36-40, 55-57).

At hearing, Dr. Zucco firmly stated that he has never been connected with the Mafia, that he could not have facilitated a contract for murder, and that no individual was ever specified in his conversations with the sergeant. He further admitted that his decision to allow the sergeant to believe he could facilitate the contract was "absolutely wrong" and very poor judgment on his part. Finally, Dr. Zucco testified that he later discovered that the sergeant had a history of psychiatric problems. At the time, however, the sergeant seemed to Dr. Zucco no different than most others with whom he had served in the Special Forces. (Tr. at 36-40, 42, 58-59).

4. Dr. Zucco was arrested in November 1990, and the Army instituted court martial proceedings against him. Dr. Zucco was given pretrial confinement, which meant that he sat in a four-by-eight cell for four months with no access to a lawyer. After four months incarceration, Dr. Zucco was allowed to see a lawyer. The lawyer arranged a pretrial agreement whereby, on May 8, 1991, Dr. Zucco pleaded guilty to two of four charges. The first charge alleged that Dr. Zucco had "[e]ngaged in conduct unbecoming an officer and gentleman, by wrongfully engaging in discussions and conversations with [the sergeant], concerning a deal for the murder of an individual, on or about 12 October 1990 through on or about 7 November 1990." (Tr. at 59-61; St. Ex. 11). The arraignment for the first charge specified that Dr. Zucco engaged in conversions concerning:

a deal for the murder of an individual in which [Dr. Zucco] communicated to [the sergeant] that [Dr. Zucco] was acting on behalf of a criminal organization to arrange for the employment of [the sergeant] as a paid murderer, that the organization was requesting [the sergeant] to murder an individual, that it would be better if [the sergeant] made the murder look like an accident, that a bomb would be nice because it is hard to put the pieces back together, that [Dr. Zucco] would get [the sergeant] all the information necessary to do the murder, that [Dr. Zucco] would guarantee [the sergeant] payment for

95 JUL -3 PM 3:04

the murder, and that [the sergeant] was not to implicate [Dr. Zucco] if [the sergeant] got caught.

(St. Ex. 12 at 4).

The second charge alleged that Dr. Zucco “[k]nowingly imported or brought into the United States merchandise contrary to law, to wit: anabolic steroids, in violation of Title 18, United States Code, Section 545, on or about July or August 1990.” Two other charges were dismissed. The military court sentenced Dr. Zucco to confinement for six months and the monthly forfeiture of \$1,500 of his military pay for six months. The court credited Dr. Zucco with four months for the time he had been incarcerated prior to the court martial. Therefore, Dr. Zucco spent two months at the United States Disciplinary Barracks at Fort Leavenworth, Kansas. (Tr. at 62-63; St. Ex. 11).

Significantly, the Army did not discharge Dr. Zucco as a result of these offenses. He returned to the WBAMC as a Captain, but was dismissed from his residency program. Dr. Zucco asserted that the Army’s decision to terminate him from the Obstetrics/Gynecology residency program was not a reflection of his clinical skills. Nevertheless, after working in the hospital library for a few months, Dr. Zucco decided he needed to complete his medical training. He requested permission to resign, which was granted. He left the Army with a general discharge under honorable conditions (Tr. at 65; St. Ex. 10 at 7, 34).

5. In June 1992, Dr. Zucco completed a transitional internship at the Michigan Health Center, Detroit, Michigan. He began an anesthesia residency at the University of Massachusetts Medical Center in Worcester, Massachusetts. However, after two and one half years, in April 1995, Dr. Zucco transferred to the Meridia Huron Hospital, East Cleveland. Dr. Zucco stated that he left the residency program at the University of Massachusetts because it was a very difficult program, and the administration had determined that he was not “up to par” with others at his level. Rather than complete an additional six months of the program, Dr. Zucco decided to transfer to an anesthesiology program in the Midwest. Dr. Zucco testified that he wanted to practice in the Midwest, and the only way to do so was to complete his residency program in that area. Moreover, he had never been happy in the Northeast or in the “high-pressure” residency program. Dr. Zucco anticipates completing the Meridia Huron Hospital anesthesiology program in October 1996. (Tr. at 29, 67-68, 72; St. Ex. 10 at 7-8; St. Ex. 9 at 3).
6. On July 24, 1995, Dr. Zucco submitted a Request for Application Forms to obtain a certificate to practice osteopathic medicine and surgery in Ohio. (St. Ex. 9). He submitted his Application for Certificate - Medicine or Osteopathic

Medicine on August 10, 1995. (St. Ex. 10). In the application, Dr. Zucco provided a detailed explanation of his conviction and steroid use. (St. Ex. 10 at 6-8).

7. Donald A. Malone, Jr., M.D., testified on behalf of the Dr. Zucco by deposition in lieu of live testimony. (Resp. Ex. B).

Dr. Malone completed a residency in psychiatry at the Massachusetts General Hospital, in Boston. Dr. Malone has practiced at the Cleveland Clinic since 1989, and is currently the Director of the Mood and Anxiety Disorders Clinic. He further testified that his research has been in the area of mood and anxiety as well as steroid use. (Resp. Ex. B at 4; Resp. Ex. C). Dr. Malone testified that one of the most frequently reported behavioral effect of anabolic steroid use is hypomania. He defined hypomania as:

a clinical state where people's thoughts are racing, where they show some decrease in their ability to discern what is good judgment from bad judgment. They have difficulty with judgment because their thoughts are going quickly. They become more grandiose, their mood is a bit elevated. . . . They make plans that there is no way anybody would be capable of fulfilling. . . . They make goals for themselves which are unrealistic or less realistic than they would usually make.

(Resp. Ex. B at 8-9). Dr. Malone further noted that there have also been reports of anxiety or panic attacks. Other frequently reported symptoms include: psychosis; hallucinations; delusions; and violent, aggressive, and impulsive behavior. He added that depression is a common complaint upon terminating anabolic steroid use. (Resp. Ex. B at 9-11, 24) (Note: the numerous journal articles submitted by the Respondent support Dr. Malone's testimony).

Dr. Malone further testified that he had met with Dr. Zucco for approximately one hour prior to providing testimony. Dr. Zucco had discussed with Dr. Malone the facts surrounding his steroid use and convictions. (Resp. Ex. B at 12-16). Dr. Malone testified that he views Dr. Zucco's transportation of steroids and the conversations with the sergeant as two separate incidents. He acknowledged, however, that a common thread exists in that Dr. Zucco's use of steroids may have affected his judgment in both incidents. (Resp. Ex. B at 17). Dr. Malone concluded that anabolic steroid use may have contributed to Dr. Zucco's actions, which were consistent with hypomanic behavior. (Resp. Ex. B at 30). He further stated that the steroid use could have contributed to impairment of judgment leading to participation in the conversations. He explained that "if you have an elevated mood, you get more grandiose [and] you tend to talk a lot." He further explained that, because their judgment is

95 JUL -3 PM 3:04

impaired, it's not unusual for persons using steroids to say things "they don't really mean." (Resp. Ex. B at 37).

Dr. Malone testified that he performed a mental status evaluation on Dr. Zucco, which demonstrated normal mood, no psychotic thinking, and no depressive or manic symptoms. Dr. Malone further testified that Dr. Zucco's history should not be an impediment to his practice of medicine, as long as he does not resume the use of steroids. Dr. Malone testified that he did not have a sense that Dr. Zucco would use steroids again, as his life has changed significantly since his Special Forces days. Nevertheless, it would be wise to take precautions and subject Dr. Zucco to random urine testing for at least one to two years. Dr. Malone denied that Dr. Zucco required counseling at this time. (Resp. Ex. B at 21-22, 31, 47).

8. John Poulos, M.D., also testified on behalf of the Dr. Zucco by deposition in lieu of live testimony. (Resp. Ex. A).

For the past eleven years, Dr. Poulos has been the Program Director of the Anesthesiology Residency Program at Meridia Huron Hospital, where Dr. Zucco is completing his residency. Dr. Poulos stated that he decided to testify on behalf of Dr. Zucco because "Dr. Zucco is an excellent physician and deserves a license to practice medicine in the State of Ohio." (Resp. Ex. A at 6-7).

Dr. Poulos further testified that he is responsible for all the residents in the program. Dr. Poulos stated also that at the time he accepted Dr. Zucco into the residency program, Dr. Poulos was fully aware of Dr. Zucco's military record and the guilty pleas. (Resp. Ex. A at 7-8, 12).

Since that time, Dr. Poulos has administered anesthesia at many surgeries in concert with Dr. Zucco. He sees each of the residents virtually every day, except when they are on rotation to other hospitals. (Resp. Ex. A at 7- 10). Dr. Poulos testified that Dr. Zucco's clinical competence, professional judgment, and professional ethics are excellent. He even stated that he would not hesitate to allow Dr. Zucco to perform anesthesia on him or on a member of his family. Dr. Poulos further stated that Dr. Zucco is a person of good moral character. (Resp. Ex. A at 12-14).

In addition, Dr. Poulos testified that his group of physicians has offered Dr. Zucco a position with their practice when he finishes his residency. Dr. Poulos' group consists of twenty-five physicians and forty Certified Registered Nurse Anesthetists and serves five facilities. (Resp. Ex. A at 14-15, 24). Dr. Poulos concluded that Dr. Zucco ranks very highly when compared to other residents in both a clinical and character perspective. (Resp. Ex. A at 16).

9. Dr. Zucco also submitted certificates and letters of recommendation. George Bause, M.D., of Meridia Huron Hospital, stated that Dr. Zucco's medical knowledge and technique are "excellent," his rapport with patients "superb," and commented that Dr. Zucco is "a real professional." Dr. Poulos rated Dr. Zucco as "excellent" in all categories. (St. Ex. 10 at 10-13). Charles A. Vacanti, M.D., Director of the Department of Anesthesiology at the University of Massachusetts Medical Center recommended Dr. Zucco for licensure in Ohio, and rated him as "good" and "excellent." (St. Ex. 10 at 15-16) (See also: Respondent's Exhibits H through N).

### FINDINGS OF FACT

1. On August 10, 1995, Dr. Zucco submitted an application for licensure to practice osteopathic medicine and surgery in Ohio.
2. On May 8, 1991, while in the service of the United States Army, Dr. Zucco pled guilty to the following charges:
  - (a) Smuggling goods into the United States, to wit: anabolic steroids, a felony; and
  - (b) Conduct unbecoming an officer and a gentleman, to wit: engaging in discussions and conversations with another, concerning a deal for the murder of an individual.

### CONCLUSIONS OF LAW

1. Dr. Zucco's guilty plea in Finding of Fact 2(a) constitutes "[a] plea of guilty to, or a judicial finding of guilty of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."
2. The evidence does not support a conclusion that Dr. Zucco's guilty pleas in Finding of Fact 2(a) and (b) constitute a present "failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

\* \* \* \* \*

Six years ago, Dr. Zucco utilized poor judgment in his decisions to use anabolic steroids, to transport them across the border illegally, and to intimate that he had

95 JUL -3 PM 3:04

the ability to arrange contracts for murder. His conduct constituted serious violations of military code and federal law.

Evidence presented at hearing, however, demonstrated a number of mitigating factors. Most significantly, Dr. Zucco expressed sincere remorse and realized the gravity of his misconduct. He convincingly argued he has not used anabolic steroids in over five years and would not advocate their use for anyone. Moreover, as noted by Dr. Malone, Dr. Zucco's judgment may have been impaired at the time of his offenses due to his steroid use. However, Dr. Malone also stated that Dr. Zucco has made significant changes in his life and is unlikely to make similar mistakes in the future. In addition, Dr. Zucco has never denied responsibility for his actions, and was sincerely forthcoming at hearing. Furthermore, although Dr. Zucco was punished for his actions, the Army allowed him a discharge under honorable condition. Finally, Dr. Poulos, the director of Dr. Zucco's residency program, believes Dr. Zucco to be a person of good moral character, good professional judgment, excellent skills, and high professional ethics. Others who have supervised Dr. Zucco also consider him to be worthy of the opportunity to practice osteopathic medicine in this State.

### PROPOSED ORDER

It is hereby ORDERED that:

1. The application of Anthony D. Zucco, D.O., for a certificate to practice osteopathic medicine and surgery in the State of Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
  - a. Dr. Zucco shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.
  - b. Dr. Zucco shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the provisions of probation.
  - c. Dr. Zucco shall appear in person for interviews before the full Board or its designated representative at three month intervals, or as otherwise requested by the Board.
  - d. Prior to commencing practice [other than his current residency program], Dr. Zucco shall submit to the Board and receive its approval for a plan of

practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Zucco's activities will be directly supervised and overseen by another physician approved by the Board.

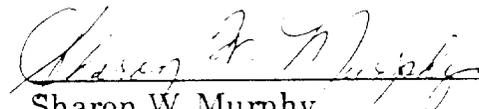
Moreover, Dr. Zucco shall obtain the Board's prior approval for any alteration to the practice plan. In the event that Dr. Zucco's supervising physician under this practice plan becomes unable or unwilling to so serve, Dr. Zucco shall immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Zucco shall refrain from practicing unless and until such supervision is in place, unless otherwise determined by the Board.

- e. Dr. Zucco shall not prescribe, administer, dispense, order, or possess (except as prescribed for Dr. Zucco's use by another so authorized by law) the following drugs: anabolic steroids.
- f. Dr. Zucco shall submit to random urine screenings for drugs on a monthly basis or as otherwise directed by the Board. Dr. Zucco shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of the reinstatement of his certificate, Dr. Zucco shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Zucco shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Zucco must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.
- g. Dr. Zucco shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
- h. In the event that Dr. Zucco should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Zucco must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board

in instances where the Board can be assured that probationary monitoring is otherwise being performed.

2. Dr. Zucco shall not request a change in the terms of his probation for at least nine months from the effective date of this Order.
3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Zucco's certificate will be fully restored.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



## STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43260-0315 • (614) 499-1031

February 14, 1996

Anthony D. Zucco, D.O.  
445 Richmond Park West, Apt. #628-B  
Richmond Heights, OH 44143

Dear Doctor Zucco:

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

- 1) On or about August 10, 1995, the State Medical Board of Ohio received your application for licensure to practice osteopathic medicine and surgery, which is currently pending.
- 2) On or about May 8, 1991, while in the service of the United States Army, you pled guilty to the following:
  - a) Smuggling goods into the United States, to wit: anabolic steroids, a felony; and
  - b) Conduct unbecoming an officer and a gentlemen, to wit: engaging in discussions and conversations with another, concerning a deal for the murder of an individual.

Your plea of guilty as alleged in paragraph (2)(a) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, your pleas of guilty as alleged in paragraph (2) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, 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 (30) days of the time of mailing of this notice.

Mailed 2/15/96

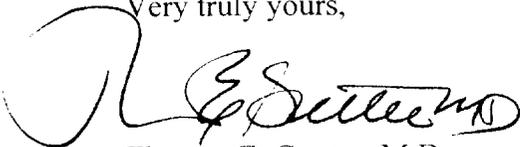
February 14, 1996

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. E. Gretter, M.D.", written in a cursive style.

Thomas E. Gretter, M.D.  
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 348 887 246  
RETURN RECEIPT REQUESTED