State Medical Board of Ohio

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October 11, 2000

James H. Scott, D.O.
12053 Crestfield Court
Cincinnati, OH 45249

Dear Doctor Scott:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 11, 2000, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0022 4402 7150
RETURN RECEIPT REQUESTED

cc: Michael R. Barrett and Karri K. Haffner, Esqs.
CERTIFIED MAIL NO. 7000 0600 0022 4402 7167
RETURN RECEIPT REQUESTED

Mailed 10-13-00

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 11, 2000, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of James H. Scott, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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

Anand G. Garg, M.D.
Secretary

(SEAL)

OCTOBER 11, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

JAMES H. SCOTT, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 11, 2000.

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

It is hereby ORDERED that:

1. The certificate of James H. Scott, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years.

    a. Dr. Scott shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

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

    c. Within 60 days of the effective date of this Order, Dr. Scott 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. Scott's activities will be

directly supervised and overseen by a monitoring physician approved by the Board. In addition, within 60 days of the effective date of this Order, Dr. Scott shall submit for the Board's prior approval the name of a monitoring physician. The monitoring physician shall monitor Dr. Scott and provide the Board with reports on Dr. Scott's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Scott's quarterly declaration. It is Dr. Scott's responsibility to ensure that the reports are timely submitted.

Dr. Scott shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Scott shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Scott shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Scott shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

d. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Scott shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s). in which they are completed.

e. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Scott shall complete a course on maintaining adequate and appropriate medical records, such course to be approved in advance by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s). in which they are completed.

f. Dr. Scott shall appear in person for interviews before the full Board or its designated representative within three months of

the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Scott's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Scott shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

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

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

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

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

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

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

m. If Dr. Scott violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the suspension of Dr. Scott's certificate.

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

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

Anand G. Garg, M.D.
Secretary

(SEAL)

OCTOBER 11, 2000
Date

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REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES H. SCOTT, D.O.

The Matter of James H. Scott, D.O., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on June 19 and July 20, 2000.

INTRODUCTION

I. Basis for Hearing

A. By letter dated April 5, 2000, the State Medical Board of Ohio [Board] notified James H. Scott, D.O., that it had proposed to determine whether to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

1. On or about December 27, 1999, the Osteopathic Medical Board of California [California Board] issued a Default Decision and Order effective January 27, 2000, revoking Dr. Scott's license to practice osteopathic medicine and surgery in California.

2. The California Board found that Dr. Scott had been guilty of gross negligence and incompetence in the treatment of a patient. The facts underlying the California Board Order were that he had performed a major surgical procedure, an abdominal lipectomy and re-implantation of the umbilicus, on a coworker on or about August 25, 1997. The procedure had been performed after hours in a non-sterile environment, in an outpatient urgent care facility in La Habra, California.

3. The California Board further found that Dr. Scott had inappropriately used only local anesthesia when a general anesthetic should have been used, and that a properly qualified anesthesiologist had not been present.

4. The California Board also found that the procedure had been done without a properly trained assisting physician or nurse. The procedure had lasted three to five hours and Dr. Scott had taken the patient to his home following the surgery. The California Board further found that Dr. Scott had not maintained a medical record of the procedure.

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5. The California Board found that Dr. Scott had performed this procedure when he had not had the proper medical background, education and training to be qualified and competent to perform it. He had not been granted surgical privileges, and had not been authorized to perform such a procedure, by the outpatient urgent care facility.

6. The California Board also found that the patient had sustained injury as a result of the surgery: the patient had been admitted to the hospital for blood transfusions for anemia caused by the surgery, had been readmitted for surgery for an abdominal wall abscess which resulted from Dr. Scott's surgery, and had suffered cosmetic irregularities as a result of the surgery which may not be repairable.

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

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

B. On April 28, 2000, Michael R. Barrett, Esq., filed a written hearing request on behalf of Dr. Scott. (State's Exhibit 1B).

II. Appearances

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

B. On behalf of the Respondent: Michael R. Barrett, Esq., and Karri K. Haffner, Esq.

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EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent:

James H. Scott, D.O.

II. Exhibits Examined

A. Presented by the State:

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

2. State's Exhibit 2A: Certified copies of April 27, 1999, Accusation and December 27, 1999, Default Decision and Order, captioned *In the Matter of the Accusation Against James H. Scott, D.O.*, Case No: 99-05, before the Osteopathic Medical Board of California.

3. State's Exhibits 2B-2E: Certified copies of California procedural exhibits, *In the Matter of Scott.*

4. State's Exhibit 3: Certified copy of May 14, 1999, Notice of Defense, *In the Matter of Scott.*

5. State's Exhibit 4: Copy of September 19, 1997, surgical note describing August 25, 1997, procedure on Patient D.B. [Exhibit sealed to protect patient confidentiality.]

6. State's Exhibit 5: Certified copies of Exhibits C-F, containing medical records for Patient D.B., *In the Matter of Scott.* [Exhibit sealed to protect patient confidentiality.]

B. Presented by the Respondent:

1. Respondent's Exhibit A: Copy of August 22, 1997, letter from Marvin I. Rice, M.D., Chair, Friendly Hills Regional Medical Center, Hospital Operations Committee to Dr. Scott.

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2. Respondent's Exhibit B: Copy of October 29, 1999, letter from Dr. Scott to the California Board tendering the surrender of his California license.

3. Respondent's Exhibit C: Copy of October 29, 1999, letter from Dr. Scott to Linda K. Schneider, California Assistant Attorney General, notifying her that he would be unable to attend a hearing in California until at least February 2000 and that he was tendering the surrender of his California license.

4. Respondent's Exhibit D: Packet of documents containing copies of the following:

- September 11, 1997, recommendation form from Guy Paquet, M.D., Medical Director, Friendly Hills Regional Medical Center, to the Board.
- November 27, 1998, letter from the Board to Dr. Scott
- July 11, 1999, Portion of Application for Renewal submitted by Dr. Scott to the Board.
- September 22, 1999, letter from the Board to Dr. Scott.
- October 4, 1999, letter of explanation from Dr. Scott to the Board.
- October 14, 1999, letter from Ms. Schneider to Dr. Scott.
- California Proposed Stipulation in Settlement and Decision, *In the Matter of Scott*.
- California Proposed First Amended Accusation, *In the Matter of Scott*.

SUMMARY OF THE EVIDENCE

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

1. On December 27, 1999, the Osteopathic Medical Board of California [California Board] issued a Default Decision and Order effective January 27, 2000, revoking the license of James H. Scott, D.O., to practice osteopathic medicine and surgery in the State of California.

   The California Board made the following jurisdictional and procedural findings of fact:

   - Dr. Scott had been licensed in California on or about July 1, 1985.

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- At the time of the California hearing, Dr. Scott's California license had been "of inactive status (out-of-state practice only), in good standing, with an expiration date of August 31, 2000."
- Accusation No. 99-05 had been filed by the Executive Director of the California Board against Dr. Scott on or about April 27, 1999.
- Dr. Scott had been served with the Accusation and related documents on May 6, 1999.
- Dr. Scott had filed a Notice of Defense on May 14, 1999.
- On June 7, 1999, a Notice of Hearing for August 31, 1999, through September 2, 1999, had been served on Dr. Scott.
- On June 10, 1999, a First Amended Notice of Hearing had been served on Dr. Scott.
- On July 30, 1999, the California Office of Administrative Hearings granted a continuance of the hearing and rescheduled it for November 16-18, 1999.
- On August 4, 1999, Dr. Scott had been served with notice of the November 16-18, 1999, hearing.
- On November 16, 1999, Dr. Scott did not appear at the California hearing and the Administrative Law Judge entered a default judgment against Dr. Scott.
- Pursuant to Section 11520, California Government Code, by failing to attend the California hearing, Dr. Scott had waived his right to a hearing to contest the merits of the Accusation and that the California Board could proceed to adjudicate the matter based on the documentary record.

(State's Exhibits [St. Exs.] 2A-2E, and 3).

In addition, the California Board found that on August 25, 1997, and in relation to a single surgery, Dr. Scott had:

- been employed as an osteopathic physician at Friendly Hills Health Care Network [Friendly Hills] in the Med-Care Unit, an out-patient urgent care facility in La Habra, California.
- performed an abdominal lipectomy and re-implantation of the umbilicus on Patient D.B., a physician's assistant at Friendly Hills.
- not had surgical privileges at Friendly Hills.
- never applied for any credentials to perform surgery at Friendly Hills.
- not been authorized to perform the procedure at the facility.
- performed the surgery after working hours at approximately 2:00 AM.
- performed the surgery in a non-sterile environment, specifically a "minor surgery room in the Med-Care facility."

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- used a local anesthesia when a general anesthetic should have been used.
- failed to utilize a qualified anesthesiologist when one should have been utilized.
- performed the procedure without a properly trained assisting physician or nurse.
- taken three to five hours to perform the procedure.
- not had the proper medical background, education, and training to be qualified and competent to perform the surgery.
- not made a record of the surgery at or near the time it took place.
- taken Patient D.B. to Dr. Scott's home after the surgery.

(St. Exs. 2A and 4).

Moreover, the California Board found that, as a result of the surgical procedure performed by Dr. Scott, Patient D. B. had:

- sustained injury.
- been admitted to the hospital ten days after the procedure for blood transfusions as a result of anemia.
- been re-admitted to the hospital 23 days after the procedure for surgery for an abdominal wall abscess.
- suffered cosmetic irregularities which may not be repairable.

(St. Exs. 2A and 5).

Finally, the California Board found that Dr. Scott's conduct constituted gross negligence and incompetence in violation of Section 2234, California Business and Professions Code. The California Board further found that Dr. Scott's failure to create a medical record of the surgical procedure violated Section 2266, California Business and Professions Code. (St. Ex. 2A).

2. At the present hearing, Dr. Scott testified that he had graduated from California State University Fullerton with a bachelor's degree in biology in 1980. He later graduated from the College of Osteopathic Medicine of the Pacific in Pomona, California in 1984.[1] Dr. Scott testified that his medical school training had included six to eight months of surgical training. He also testified that he had completed a one year rotating internship at Pacific Hospital that had included three months of surgical training. Prior to completing his medical training, Dr. Scott had been a full time police officer for ten years. After completing his medical training he continued to serve as a reserve police officer for an additional six years. (Transcript Volume I [Tr. I] at 22-26).

[1] Now the Western University of Health Sciences.

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Dr. Scott testified that he had opened a general family practice in 1985 and had become board certified in family practice in 1991. Dr. Scott further testified that he had been invited to join the Friendly Hills family practice in 1991. He noted that this had appealed to him in part because he would be able to significantly reduce his working hours. Dr. Scott testified that he had worked almost exclusively in family practice for the first year at Friendly Hills. He had then worked a few shifts in the urgent care facility. He had enjoyed the urgent care work and had continued to work shifts there for a year or two while working primarily in the family practice. When a full time position had become available in urgent care he transferred there and his family practice was absorbed by the eight other family practice physicians at Friendly Hills. He remained at Friendly Hills until relocating to Ohio in 1997. (Tr. I at 26-30, 33-34, 79-81).

Dr. Scott described Friendly Hills as consisting of a 300 bed hospital with a level two emergency room, an urgent care facility, surgical suites that were available twenty-four hours per day, a laboratory, MRI facilities, CT facilities, and eight or ten different offices. (Tr. I at 34, 75).

3. At hearing, Dr. Scott testified that in early 1997 he had been engaged in informal conversation with Patient D.B., a physician's assistant, and nurses from the urgent care center. During this conversation the topic of plastic surgery had arisen. Patient D.B. had commented that she had consulted with a plastic surgeon about removal of a cesarean section scar and the surgeon had quoted a price of $15,000 for the procedure. Dr. Scott had reacted by commenting that it seemed like a lot of money for such a simple procedure. He had further commented to his coworkers that he had done hundreds of scar removal procedures. Several times over the next five months Patient D.B. had told Dr. Scott that she would like to have him perform a scar removal for her in order to save money. Eventually, Dr. Scott consented to perform the procedure. Dr. Scott testified that Patient D.B. was familiar with surgical procedures and had previously assisted Dr. Scott in performing such procedures. (Tr. I at 35-39, 75-77).

4. Dr. Scott testified that he had performed an abdominal lipectomy on Patient D.B., in the urgent care facility clean room, on August 25, 1997. He further testified that he had been assisted by a medical assistant. Dr. Scott stated that the medical assistant had had one or two years of training in various emergency room and urgent care procedures, including obtaining vital signs, handling IV's, and wound cleaning. She had previously assisted Dr. Scott on many occasions. (Tr. I at 39-40, 77, 96-97).

At hearing, Dr. Scott described his preparation for performing the procedure. He explained that the clean room at the urgent care facility is a separate closed room with an electric table. He stated that it had been used for skin flaps, reattachment of fingers, or

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treatment of large lacerations. He further explained that it had been used for "any kind of operative or surgical type procedures we were going to do." He noted that the urgent care center is next door to the emergency room. He explained that, had there been any difficulties with the procedure, the assistance of the physicians, equipment, and staff of the emergency room would have been immediately available to the patient. Dr. Scott testified that a surgical suite would have been available to perform the procedure on Patient D.B., however they had elected not utilize it. Utilizing the surgical suite would have required the opening of a medical record and would have resulted in Patient D.B. being billed for the procedure. (Tr. I at 34-35, 40, 75).

Dr. Scott testified that he had used sterile plastic and paper drapes on the electric table to provide a protective barrier. He then used Betadine to scrub the patient's abdominal area. Dr. Scott explained that he used a mixture of half lidocaine and half normal saline to anesthetize the surgical area. He explained that this mixture causes the tissue to swell up, making blunt dissection easier. (Tr. I at 40-41).

Dr. Scott described Patient D.B.'s old scar as having been about five or six inches long and very ragged looking. He explained that he had injected the lidocaine solution and made an elliptical incision around the old scar. Dr. Scott stated that this incision had been about three quarters of an inch deep. He further stated that he had removed the tissue around the old scar then pulled the skin together and sutured it. (Tr. I at 41-42).

Dr. Scott testified that he had also made a dime sized incision around the umbilicus and another identical incision about one and a half inches above the umbilicus. He explained that by pulling the skin down the umbilicus had appeared in the opening created by the upper dime sized incision. He explained that he had made a few stitches around the new opening for the umbilicus and had stitched the former opening for the umbilicus. Dr. Scott emphasized that he had not made any changes in the location of the umbilicus itself which had remained attached to the inner muscle wall. (Tr. I at 42-43, 96).

Dr. Scott testified that he had used intracuticular stitching. He explained that he had pulled the skin tight and stitched it so that when he had pulled the stitching together it had been like a zipper. He further explained that this results in "no holes in the skin just a little tiny line and it heals much better." Dr. Scott testified that the procedure on Patient D.B. had lasted about an hour and a half including scrub procedure and cleaning up. (Tr. I at 43-44, 82).

Dr. Scott explained that he had observed the patient for about an hour after the procedure had been completed and had observed no complications. Dr. Scott also explained that he had provided Patient D.B. with a prescription for prophylactic antibiotics and specific post

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operative instructions. He testified that he had told the patient to stay in bed and only get up to go to the bathroom. Dr. Scott stated that it had been his understanding that Patient D.B. had arranged for someone to take care of her children so that she would be able to follow these instructions. Dr. Scott testified that he had taken Patient D.B. to his home, which was only about five minutes away, so that she would not wake her children at her own home. (Tr. I at 45-46, 50, 82, 84-85).

At hearing, Dr. Scott disagreed with the California Board's finding that general anesthesia had been required. He explained that this type of procedure is sometimes done under a general anesthetic. However a general anesthetic increases risk to the patient. Dr. Scott further explained that the majority of times when he had assisted with this type of procedure they had used a local anesthetic. (Tr. I at 77-79).

Dr. Scott testified that he had not made a medical record of the procedure on Patient D.B. at the time the procedure had been performed. He also testified that he had written a post operative note on September 17, 1997. He stated that it had been written before he learned of Patient D.B.'s complaint to Friendly Hills. However, he had retained this note personally and had not opened a patient record file at Friendly Hills. Dr. Scott had provided this note to the California Board during its investigation. (Tr. I at 82-83, 91-93; St. Ex. 4).

Dr. Scott admitted at hearing that his performing of the surgical procedure on Patient D.B. without proper authorization from Friendly Hills and without completing the appropriate medical records was a serious error of judgment on his part. (Tr. I at 35, 70, 98).

5. Dr. Scott testified that, one or two days after the surgery, Patient D.B. had telephoned him and stated that she had a little bleeding from the incision. In response, Dr. Scott had gone to the patient's home and examined her. He testified that she had had a small amount of bleeding. The patient had advised Dr. Scott that she had been up fixing lunch for her children. Dr. Scott reminded her that she was supposed to be on bed rest. He then redressed the wound. (Tr. I at 46-47, 85, 87).

At hearing, Dr. Scott related that Patient D.B. had subsequently telephoned him a few days later and stated that she was again having bleeding from the incision. Dr. Scott again visited Patient D.B. at her home. Dr. Scott testified that Patient D.B. had related to him that she had mopped the floor. Dr. Scott told her that she was going to destroy everything if she did not follow his post operative instructions. Dr. Scott again redressed the wound. (Tr. I at 47-48, 85, 87).

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Dr. Scott testified that Patient D.B. had again telephoned him four or five days later and stated that she was having abdominal pain and additional bleeding. Under questioning from Dr. Scott, Patient D.B. had told him that she had been painting her kitchen ceiling. Dr. Scott testified that he had become irate on learning of Patient D.B.'s activities. He testified that he had examined Patient D.B., who had a slightly larger amount of bleeding than on his previous visits; however, the amount had still been small. Dr. Scott testified that he had not observed any evidence of infection. (Tr. I at 48-49, 88).

Dr. Scott stated at hearing that a day or two later Patient D.B. had again telephoned and stated that she was having a lot more pain, a lot of bleeding, and a lot of discharge from the incision. Dr. Scott had advised Patient D.B. to go to the emergency room for treatment. Dr. Scott testified that Patient D.B. had told him that she had not taken the antibiotics he had prescribed for her. He further testified that she had not told him why she had not taken the antibiotics. (Tr. I at 49-50, 86, 88-89).

6. Dr. Scott testified that Patient D.B.'s failure to follow his post operative instructions did not help her situation. He elaborated that the abscess occurred about two weeks after the surgery and the antibiotics would have helped prevent the infection. Dr. Scott also testified that when a patient is up and moving around they put tension on the suture line. If this tension pulls part of the skin apart it provides an opening for bacteria to get in to the wound. Dr. Scott said that painting a ceiling, such as Patient D.B. had done, might tear underlying sutures and cause bleeding underneath which cannot be seen from the outside. He added that bleeding from the wound would provide an excellent growth media for bacteria. However, he noted that he can not be certain that this is what occurred in Patient D.B.'s case because he did not examine her during her hospitalization. (Tr. I at 86-87, 89).

7. Medical records of Patient D.B., that were admitted in both the present hearing and in the California hearing, indicate that, on March 20, 1997, Patient D.B. had discussed with Edward Oiven Terino, M.D., an abdominoplasty and her desire to remove laxity around her naval. Dr. Terino had examined Patient D.B. and had advised her that it would be impossible to accomplish all she wanted. He further advised her that the laxity would be transferred below the naval and that she would end up with a vertical scar above the pubis. Dr. Terino noted that Patient D.B. was unhappy to hear his negative opinion of the procedure she wished to have performed. However, Patient D.B. and Dr. Terino agreed that it would be a major improvement and it was the only way to give her some improvement in her abdomen. (St. Ex. 5).

According to the medical records, on September 30, 1997, Patient D.B. returned to see Dr. Terino. Dr. Terino described Dr. Scott's surgery as having been an abdominoplasty

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resulting in no significant improvement, a midline scar, unattractive naval, a pouch of the lower abdomen and dog ears. Dr. Terino advised Patient D.B. that it might not be possible to improve the appearance. He noted that she needed to continue to heal and return for further evaluation in six months. (St. Ex. 5).

8. Dr. Scott testified that his privileges, as delineated in the August 22, 1997, letter from Marvin I. Rice, M.D., applied only to his practice in the urgent care facility. Dr. Scott further testified that he had assumed his privileges at Friendly Hills, outside of the urgent care facility setting, had remained in place because he had assisted in hundreds of surgical cases at Friendly Hills while working primarily in the family practice. He elaborated that he had worked on numerous surgical cases, including: aneurysms, bowel surgeries, abdominal lipectomies, scar removals, tattoo removals and numerous abdominal procedures. Dr. Scott explained that his involvement differed from surgery to surgery. Dr. Scott stated that he had never acted as a primary surgeon aside from medical missionary work overseas. Dr. Scott testified that he had experience with the type of scar removal and lipectomy he performed on Patient D.B. He explained that he had participated in this type of procedure at least 100 times. (Tr. I at 31-33, 62-64, 79, 73-76, 79, 81, 84; Resp Ex. A).

   Dr. Scott stated that he would not have used the term "surgeon" to describe himself while working in the urgent care facility. However, he testified that it had been normal practice for physicians in the urgent care facility, including himself, to perform surgical procedures, as permitted by the appropriate privileges document. Dr. Scott testified that, while working in the urgent care unit, he had been authorized to perform repair of lacerations, emergency transfusions, diagnostic paracentesis, removal of foreign bodies, incision and drainage, conscious sedation and various other procedures. He also testified that he had performed many laceration repairs, incision and drainage procedures, and repair of major abdominal abscesses. (Tr. I at 63-64, 97; Resp. Ex. A)

9. Dr. Scott testified that he and his wife have been involved in medical missions work. He elaborated that, in addition to short term service in overseas medical missions, he and his family had spent 13 months working in Honduras. Dr. Scott explained that, because of his background in the construction industry as well as the practice of medicine, he had been asked to come to Honduras to build a small hospital. (Tr. I at 29-30).

   Dr. Scott explained that his medical practice in Honduras and at other medical mission sites had included performing surgical procedures. He testified that he had treated all varieties of injuries, "Whatever you can imagine walked in." Dr. Scott testified that he had always been the only physician. He further testified that he had utilized the assistance of his wife, his daughters, and local persons who had been available. (Tr. I at 30-31).

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10. At hearing, Dr. Scott testified that he and his wife had relocated to Ohio in September 1997. He explained that they had been considering leaving southern California for some time due to crime and smog and, while visiting family in Ohio, had decided that they liked the Cincinnati area. He further explained that it took between twelve and eighteen months after they made the decision to move to Cincinnati to make all of the arrangements for the move. This included a three to six month process to obtain his Ohio license. Dr. Scott testified that his decision to leave California had been completely unrelated to the California Board investigation and action. (Tr. I at 20-22, 50, 89-91).

11. Dr. Scott testified that, after relocating to Ohio, he had received a telephone call from a representative of either Friendly Hills or its insurance carrier. This person had asked him a number of questions about the procedure on Patient D.B. The representative had advised him that Patient D.B. had filed a lawsuit against Friendly Hills but not against Dr. Scott personally. Dr. Scott testified that the California Assistant Attorney General had subsequently advised him that Friendly Hills had made a cash settlement with Patient D.B. (Tr. I at 51, 99-100).

    Dr. Scott testified that in the course of the California investigation he had provided a full statement to the California Board. He noted that eventually he had had between seven and ten telephone conversations with the Assistant Attorney General representing the California Board. (Tr. I at 51-52, 107).

12. Dr. Scott testified that he had believed he had reached a negotiated settlement of the California Board action. He explained that he had agreed that he had not had permission from Friendly Hills to perform the procedure and that the environment had not been sterile. Dr. Scott testified that he has admitted the sterile environment violation because he had not worn a mask and a head cover, and had performed the procedure in the urgent care facility rather then in a surgical suite. (Tr. I at 53-54, 56, 101; St. Ex. 2B; Resp. Exs. C-D).

    Dr. Scott testified that when the October 14, 1999, letter from the California Assistant Attorney General arrived with the proposed Stipulation In Settlement and Decision [Stipulation] attached it had been consistent with his understanding of the verbal agreement except for findings that he had been incompetent and negligent. Dr. Scott objected strongly to these two findings. At hearing, Dr. Scott testified that he refused to sign the proposed agreement because he had been neither incompetent or negligent. Dr. Scott testified that in his telephone conversations with representatives of the California Board he had never agreed that his conduct had constituted "gross negligence and incompetence." (Tr. I at 53-54, 56, 64-67; St. Ex. 2B; Resp. Exs. C-D).

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Dr. Scott testified that paragraphs eight and nine of the Order contained in the Stipulation led him to believe that he could end the proceedings by tendering the surrender of his California license. Dr. Scott noted that he had come to this conclusion without consulting legal counsel. (Tr. I at 58, 64-68; Resp. Exs. B-D).

Dr. Scott stated that on October 29, 1999, he sent two letters in response to the October 14, 1999, letter from the California Assistant Attorney General. The first letter went to the California Assistant Attorney General and the second letter went directly to the California Board. Dr. Scott advised the California Assistant Attorney General that he would not sign the proposed Stipulation. He explained that he had believed that the document included statements that were untrue. Dr. Scott stated that he would be unable to attend a hearing in California prior to February 2000. He further explained that he had tendered the surrender of his California license. (Tr. I at 66; St. Ex. 2A; Resp. Exs. B-D).

In the second letter dated October 29, 1999, Dr. Scott advised the California Board that he was enclosing and tendering the surrender of his California license. Dr. Scott noted that he believed that would be financially unwise continue to pay for a license he would not use again. He further noted that he did not intend to return to live in California. He expressed the hope that tendering the surrender of his license would close the current issue before the California Board and save both time and money for all parties. (Tr. I at 64; Resp. Ex. B).

Dr. Scott testified that it had been his understanding that if he had signed the California proposed agreement that his California license would have been placed on probation, he would have paid costs of $8,000.00 or $9,000.00, and that he would be required to take additional CME courses if he returned to practice in California. (Tr. I at 55-57, 64-66; Resp. Exs. B-D).

Dr. Scott testified that his October 29, 1999, letter to the California Assistant Attorney General contained a paragraph that he had intended to constitute a request for continuance of the November 1999 California hearing date. He testified that subsequent to sending this letter he had been advised by the California Assistant Attorney General that a continuance would not be granted and that the hearing would proceed without him. Dr. Scott testified that he had not attended the California hearing. Dr. Scott testified that it was his understanding that the California hearing was based only on the documents in the California record. (Tr. I at 54-55, 57-58, 64-66, 94-96, 100-101; St Ex. 2A; Resp Exs. C-D).

At hearing, Dr. Scott explained that his relocation to Ohio for personal reasons, the cost of retaining his California license and the fact that he believed the Ohio Board had cleared

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him had contributed to his decision to tender the surrender of his California license. (Tr. I at 50-61, 64-66, 68-70, 93, 98, 102-104; Resp. Exs. B-D).

13. Dr. Scott testified that his long range plans are to continue practicing in Ohio, where he is currently the medical director for eight clinics, for another five to ten years and then work full time in medical missions. Dr. Scott testified that the California action underlying the present matter is the only professional disciplinary case ever brought against him, either as a physician or as a police officer. Dr. Scott testified that he is willing to follow any requirements imposed by the Board. (Tr. I at 23-24, 70-71).

FINDINGS OF FACT

1. On or about December 27, 1999, the Osteopathic Medical Board of California [California Board] issued a Default Decision and Order effective January 27, 2000, revoking the license of James H. Scott, D.O., to practice osteopathic medicine and surgery in California.

2. The California Board found that Dr. Scott had been guilty of gross negligence and incompetence in the treatment of a patient. The facts underlying the California Board Order were that he had performed a major surgical procedure, an abdominal lipectomy and re-implantation of the umbilicus, on a coworker on or about August 25, 1997. The procedure had been performed after hours in a non-sterile environment, in an outpatient urgent care facility in La Habra, California.

3. The California Board further found that Dr. Scott had inappropriately used only local anesthesia when a general anesthetic should have been used, and that a properly qualified anesthesiologist had not been present.

4. The California Board also found that the procedure had been done without a properly trained assisting physician or nurse. The procedure had lasted three to five hours and Dr. Scott had taken the patient to his home following the surgery. The California Board further found that Dr. Scott had not kept a medical record of the procedure.

5. The California Board further found that Dr. Scott had performed this procedure when he had not had the proper medical background, education, and training to be qualified and competent to perform it. He had not had surgical privileges and had not been authorized to perform such a procedure by the outpatient urgent care facility.

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6. The California Board found that the patient had sustained injury as a result of the surgery: the patient had been admitted to the hospital for blood transfusions for anemia caused by the surgery, had been readmitted for surgery for an abdominal wall abscess which resulted from Dr. Scott's surgery, and had suffered cosmetic irregularities as a result of the surgery which may not be repairable.

CONCLUSIONS OF LAW

The Osteopathic Medical Board of California Default Decision and Order concerning James H. Scott, D.O. as described in the Findings of Fact constitutes "[a]ny of the following actions taken by a state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other then the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance or an order or censure or other reprimand"; as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

The Osteopathic Medical Board of California Default Decision and Order was based upon documentary evidence without testimony from James H. Scott, D.O. At hearing in Ohio, Dr. Scott offered credible evidence in mitigation and demonstrated a willingness to comply with the requirements of the Board.

Dr. Scott readily admitted that he had committed errors in judgment by performing the abdominal lipectomy on Patient D.B. in the urgent care facility without proper authorization, without wearing a mask and head covering, and without creating appropriate, contemporary medical records.

The evidence in the record clearly shows that Dr. Scott's relocation to Ohio was for personal and family reasons and had been in process for an extended period of time prior to the surgery which led to the California action. Dr. Scott did not move to Ohio to avoid responsibility for his errors in California.

It is beyond the role of this Board to second guess the factual findings of the California Board. However, the additional evidence presented in mitigation at hearing in Ohio justifies the imposition of a less severe sanction by this Board than that imposed by the California Board.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of James H. Scott, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years.

   a. Dr. Scott shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

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

   c. Within 60 days of the effective date of this Order, Dr. Scott 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. Scott's activities will be directly supervised and overseen by a monitoring physician approved by the Board. In addition, within 60 days of the effective date of this Order, Dr. Scott shall submit for the Board's prior approval the name of a monitoring physician. The monitoring physician shall monitor Dr. Scott and provide the Board with reports on Dr. Scott's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Scott's quarterly declaration. It is Dr. Scott's responsibility to ensure that the reports are timely submitted.

      Dr. Scott shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

      In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Scott shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Scott shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Scott shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

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d. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Scott shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s). in which they are completed.

e. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Scott shall complete a course on maintaining adequate and appropriate medical records, such course to be approved in advance by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s). in which they are completed.

f. Dr. Scott shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Scott's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Scott shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

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

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

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

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

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

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

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m. If Dr. Scott violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the suspension of Dr. Scott's certificate.

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

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

Daniel Roberts
Attorney Hearing Examiner

State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 11, 2000

REPORTS AND RECOMMENDATIONS

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

Dr. Egner asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Cayetano S. Munoz, M.D.; Abdolvahab S. Pirnia, M.D.; and James H. Scott, D.O. A roll call was taken:

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

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

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

Dr. Steinbergh	- aye
Dr. Egner	- aye

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

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

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

.....

JAMES H. SCOTT, D.O.

.....

DR. SOMANI MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES H. SCOTT, D.O. DR. AGRESTA SECONDED THE MOTION.

.....

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

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

The motion carried.

State Medical Board of Ohio

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April 5, 2000

James H. Scott, D.O.
12053 Crestfield Court
Cincinnati, Ohio 45249

Dear Doctor Scott:

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

(1) On or about December 27, 1999, the Osteopathic Medical Board of California (hereinafter the "California Board") issued a Default Decision and Order effective January 27, 2000, revoking your license.

The California Board found that you were guilty of gross negligence and incompetence in the treatment of a patient. The facts underlying the California Board Order were that you performed a major surgical procedure, an abdominal lipectomy and re-implantation of the umbilicus, on a coworker on or about August 25, 1997. The procedure was performed after hours in a non-sterile environment, in an outpatient urgent care facility in La Habra, CA.

Further, you inappropriately used only local anesthesia when a general anesthetic should have been used and a properly qualified anesthesiologist was not present.

Further, the procedure was done without a properly trained assisting physician or nurse. The procedure lasted 3-5 hours and you took the patient to your home following the surgery. You did not keep a medical record of the procedure.

Further, you performed this procedure when you did not have the proper medical background, education and training to be qualified and competent to perform it. You did not have surgical privileges and were not authorized to perform such a procedure by the outpatient urgent care facility.

Further, the California Board found that the patient sustained injury as a result of the surgery; the patient was admitted to the hospital for blood transfusions for anemia caused by the surgery, was readmitted for surgery for an abdominal wall abscess which resulted from your surgery; the patient suffered cosmetic irregularities as a result of the surgery which may not be repairable.

Copies of the California Board Accusation, Notice of Defense, Default Decision and Order are attached hereto and fully incorporated herein.

Mailed 4-6-00

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # Z 281 981 868
RETURN RECEIPT REQUESTED

BILL LOCKYER, Attorney General
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Attorney for Complainant

BEFORE THE

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES H. SCOTT, D.O., 8727 Redcloud Court Apartment No. 815 Cincinnati, OH 45249 Osteopath Lic. No. 20A5009 Respondent.	Case No. 99-05 ACCUSATION

PARTIES

Complainant, Linda J. Bergman, alleges as follows:

1. She is the Executive Director of the Osteopathic Medical Board of California (the "Board") and makes and files this Accusation solely in her official capacity as such.

License Status

2. On or about July 1, 1985, the Board issued Osteopath Certificate No. 20A5009 to James H. Scott ("respondent"). Said certificate is of inactive status (out-of-state practice only), in good standing, with an expiration date

of August 31, 2000.

JURISDICTION

3. This accusation is made in reference to the following statutes of the California Business and Professions Code ("Code"):

a. Section 3600 of the Code, a provision of the Osteopathic Act, provides that the law governing licentiates of the Board is found in the Osteopathic Act and in Chapter 5 of Division 2 of the Code, relating to Medicine.

b. Section 3600-2 provides, in part:

"The Osteopathic Medical Board of California shall enforce those portions of the Medical Practice Act identified as Article 12 (commencing with Section 2220), of Chapter 5 of Division 2 of the Business and Professions Code, as now existing or hereafter amended, as to persons who hold certificates subject to the jurisdiction of the Osteopathic Medical Board of California..."

c. Section 2234 of the Code provides:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"b) Gross negligence

"d) Incompetence."

d. Section 2266 of the Code provides:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of

services to their patients constitutes unprofessional conduct."

e. Section 2227 of the Code provides:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Have any other action taken in relation to discipline as the division or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a) except for warning letters, medical review or advisory conferences, or other matter made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board."

f. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act to pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of the case.

CHARGES AND ALLEGATIONS

4. Respondent is subject to disciplinary action pursuant to Code section 2234 based on the following:

5. On or about August 25, 1997, respondent, James Scott, D.O., was employed as an osteopathic physician at Friendly Hills Health Care Network in the Med-Care Unit, an out-patient urgent care facility, in La Habra, California. D.B. was a physician's assistant employed in the same Med-Care unit.

6. On or about August 25, 1997, respondent, James Scott, D.O., after working hours, at approximately 2:00 A.M., performed a major surgical procedure known as an "abdominal lipectomy and re-implantation of the umbilicus," on his co-worker, D.B.. Respondent, James Scott, D.O., did not have surgical privileges at Friendly Hills. Respondent, James Scott, D.O., had never applied for any credentialing to perform surgery at Friendly Hills. Respondent, James Scott, D.O., did not have the proper medical background, education and training to be qualified and competent to perform the surgery. The surgery was not authorized by Friendly Hills and the staff of Friendly Hills did not have knowledge that the procedure occurred.

7. The surgery referred to in paragraph 6, was performed in a non-sterile environment; that being a minor surgery room in the Med-Care facility. The surgery was inappropriately performed using only local anesthetic when general anesthetic should have been used and a properly qualified anesthesiologist was not present. There were no properly trained assisting physicians or nurses present at the time of the

surgery; only J.H. a medical assistant was present for the purpose of observing the surgery. The surgery lasted between 3 and 5 hours. After the surgery was completed, respondent, James Scott, D.O., took the patient, D.B., back to his home. Respondent, James Scott, D.O., did not make a record of the occurrence of the surgery at or near the time that the surgery took place.

8. D.B. has sustained injury as a result of the surgery. Ten days following the surgery of August 25, 1997, D.B. required admission to Friendly Hills Hospital and for blood transfusions for anemia caused by the surgery. On September 17, 1997, D.B., required re-admission to Friendly Hills Hospital for surgery for an abdominal wall abscess which resulted from the surgery. D.B. has also suffered cosmetic irregularities as a result of the surgery which may not be repairable.

9. Respondent's conduct, as is more particularly described in paragraphs 5 through 8, violated Code section 2234, by his gross negligence and incompetence in performing a major surgery on a co-worker after working hours in a non-sterile environment; using only local anesthesia; without an anesthesiologist or appropriate medical assistance; without having appropriate credentials and surgical privileges at Friendly Hills Hospital; and without authorization to do so.

10. Respondent's conduct, as is more particularly described in paragraphs 5 through 8, violated Code section 2266, by his failure to make a medical record of the surgical procedure

performed on D.B.

WHEREFORE, complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking or suspending License No. 20A5009, heretofore issued to respondent;

2. Awarding the costs of investigation and prosecution of this case, pursuant to Code section 125.3; and

3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

Dated: April 27, 1999.

Linda J. Bergman

LINDA BERGMAN, Executive Officer
Osteopathic Medical Board
of California
State of California

BEFORE THE
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES H. SCOTT, D.O. Osteopath No. 20A5009 Respondent.	NO. 99-05 **NOTICE OF DEFENSE** [Pursuant to Gov. Code 11506]

I, the undersigned, the respondent named in the above-entitled proceeding, hereby acknowledge receipt of a copy of the **Accusation**; Statement to Respondent; Request for Discovery, Government Code sections 11507.5, 11507.6 and 11507.7; and two copies of a Notice of Defense.

I hereby request a hearing in said proceeding to permit me to present my defense to the charges contained in said **Accusation**.

DATED: 5-14-99

James H Scott
Respondent

Mailing Address of Respondent
12053 CRESTFIELD CT
(Street Address)
CINCINNATI OHIO 45249
(City) (State) (Zip Code)
513-530-0017
(Telephone No.)

If you plan to be represented by counsel, please fill in the name, address, and telephone number below:

YES. UNDECIDED AS OF THIS DATE
(Name of Counsel)

(Street Address)

(City) (State) (Zip Code)

(Telephone No.)

The agency taking the action described in the **Accusation** may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of such guidelines by requesting them from the agency in writing.

BILL LOCKYER, Attorney General
of the State of California
LINDA K. SCHNEIDER, (State Bar #101336)
Deputy Attorney General
110 West A Street, Suite 700
P. O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 645-3037
Facsimile: (619) 645-2061

Attorney for Complainant

BEFORE THE
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES H. SCOTT, D.O., 12053 Crestfield Court Cincinnati, OH 45249 Osteopath Lic. No. 20A5009 Respondent.	Case No. 99-05 OAH No. L-1999050382 **DEFAULT DECISION AND ORDER** Government Code Section 11520

The Osteopathic Medical Board of California (the "Board") has considered the following evidence contained in the Default Decision Evidence Packet:

EXHIBIT	**DESCRIPTION**
A	License Certification
B	Accusation and Pleading Packet with Notices of Hearing, Certified and Regular Mailing Declarations and return receipts for certified mail

C Division of Investigation Final Report dated January 8, 1999 prepared by David Hiraoka, Senior Investigator

D Report prepared by Dr. Robert Acosta, D.O., dated March 2, 1999

E Medical records of D.B. from Friendly Hills HealthCare Network for treatment rendered to D.B.

F Medical records of D.B. from Edward Owen Terino, M.D. for treatment rendered to D.B.

The Board, after considering the above evidence, makes the following Findings of Fact and Determination of Issues.

FINDINGS OF FACT

1. On or about July 1, 1985, the Board issued Osteopath Certificate No. 20A5009 to James H. Scott. Said certificate is of inactive status (out-of-state practice only), in good standing, with an expiration date of August 31, 2000. [Exhibit **A** - License Certification]

2. On or about April 27, 1999, complainant, Linda J. Bergman, in her official capacity as the Executive Director of the Osteopathic Medical Board of California, filed Accusation No. 99-05 against James H. Scott ("respondent"). [Exhibit **B** - Accusation]

3. On May 6, 1999, respondent was served with Accusation No. 99-05, together with copies of all statutorily required documents by regular mail at respondent's address of record with the Board, which was 8727 Redcloud Court, Apartment

No. 815, Cincinnati, OH 45249. Said mailing was not returned by the U.S. Postal Service. On May 6, 1999, respondent was served with Accusation No. 99-05, together with copies of all statutorily required documents by certified mail at respondent's address of record with the Board. The return receipt card was signed by Sally Scott and returned to the Attorney General's Office on May 14, 1999. [Exhibit **B** - Declaration of Service by Mail; Declaration of Service by Certified Mail, return receipt card for certified mail]

4. Respondent filed his Notice of Defense on May 14, 1999. In respondent's Notice of Defense, he indicated his mailing address was 12053 Crestfield Court, Cincinnati, Ohio 45249. A Notice of Hearing for August 31, 1999 through September 2, 1999 was served on respondent on June 7, 1999. A First Amended Notice of Hearing was served on respondent on June 10, 1999. On July 30, 1999, the Office of Administrative Hearings granted a continuance of the hearing and re-scheduled it for November 16, 1999 through November 18, 1999. On August 4, 1999, respondent was served with a Notice of Continued Hearing for hearing dates November 16, 1999 through November 18, 1999 by regular mail at the address respondent provided on his Notice of Defense, which was 12053 Crestfield Court, Cincinnati, OH 45249. Said mailing was not returned by the U.S. Postal Service. On August 4, 1999, respondent was served with a Notice of Continued Hearing for hearing dates November 16, 1999 through November 18, 1999 by certified mail at the address respondent had provided on his Notice of defense. The return receipt card was signed by respondent and was returned to the Attorney General's Office on

August 6, 1999. [Exhibit **B** - Notice of Defense, Notices of Hearing, Declarations of Service by Mail; Declarations of Service by Certified Mail; signed receipts for certified mail]

5. At the hearing on November 16, 1999, respondent did not appear. On November 16, 1999 at 10:35 A.M., Administrative Law Judge Roy Hewitt entered the default of respondent due to his failure to appear at the hearing.

6. Government Code section 11520 provides in pertinent part:

> "(a) If the respondent either **fails to file a notice of defense or to appear at the hearing**, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without notice to respondent; ..." (Emphasis added.)

7. The Board has determined that respondent has waived his right to a hearing to contest the merits of the Accusation; that respondent is in default; and that the Board has jurisdiction pursuant to section 11520 of the Government Code to take action against respondent based on the evidence in the Default Decision Evidence Packet enumerated on page 1 herein.

8. The Osteopathic Medical Board of California is authorized to revoke respondent's license pursuant to the following statutes and regulations:

Business and Professions Code section 2227 provides:

> "(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty

may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Have any other action taken in relation to discipline as the division or an administrative law judge may deem proper."

Business and Professions Code section 2234 provides:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"b) Gross negligence

"d) Incompetence."

Business and Professions Code section 2266 provides:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

9. Respondent has subjected his license to discipline under Business and Professions Code section 2234 in that respondent was guilty of gross negligence and incompetence in the treatment of a patient. The facts and circumstances of respondent's gross negligence and incompetence were that at or

about 2:00 A.M. on August 25, 1997, respondent, James Scott, D.O., who was then employed as an osteopathic physician at Friendly Hills Health Care Network in the Med-Care Unit, an out-patient urgent care facility, in La Habra, California, performed a major surgical procedure known as an "abdominal lipectomy and re-implantation of the umbilicus," on his co-worker, D.B. Respondent, did not have surgical privileges at Friendly Hills, had never applied for any credentialing to perform surgery at Friendly Hills, did not have the proper medical background, education and training to be qualified and competent to perform the surgery. The surgery was not authorized by Friendly Hills and the staff of Friendly Hills did not have knowledge that the procedure occurred. The surgery was performed in a non-sterile environment; that being a minor surgery room in the Med-Care facility. The surgery was inappropriately performed using only local anesthetic when general anesthetic should have been used and a properly qualified anesthesiologist was not present. There were no properly trained assisting physicians or nurses present at the time of the surgery; only a medical assistant was present for the purpose of observing the surgery. The surgery lasted between 3 and 5 hours. After the surgery was completed, respondent took the patient, D.B., back to his home. Respondent did not make a record of the occurrence of the surgery at or near the time that the surgery took place.

The patient, D.B., sustained injury as a result of the surgery. Ten days following the surgery of August 25, 1997, D.B. required admission to Friendly Hills Hospital and for blood transfusions for anemia caused by the surgery. On September 17,

1997, D.B., required re-admission to Friendly Hills Hospital for surgery for an abdominal wall abscess which resulted from the surgery. D.B. has also suffered cosmetic irregularities as a result of the surgery which may not be repairable.

10. Respondent's conduct, as is more particularly described in the preceding paragraph, violated Code section 2234, by his gross negligence and incompetence in performing a major surgery on a co-worker after working hours in a non-sterile environment; using only local anesthesia; without an anesthesiologist or appropriate medical assistance; without having appropriate credentials and surgical privileges at Friendly Hills Hospital; and without authorization to do so.

11. Respondent's conduct, as is more particularly described in the preceding paragraphs, constitutes unprofessional conduct in violation of Code section 2266, in that he failed to make a medical record of the surgical procedure performed on D.B.

DETERMINATION OF ISSUES

1. Pursuant to Government Code section 11520, the Board hereby takes the within action based on the evidence in Exhibits **A** through **F**.

2. Pursuant to its authority under Government Code section 11520, and based upon the evidence before it, the Board finds that the charges and allegations contained in Accusation No. 99-05, separately and severally, and the Findings of Fact, paragraphs 1 - 11, above, and each of them, separately and severally, are true and correct.

3. Pursuant to its authority under Government Code section 11520, and by reason of the Findings of Fact, paragraphs

1 through 11, above, and Determination of Issues number 1 and 2, above, separately and severally, respondent James H. Scott has subjected his License No. 20A5009 to revocation under Business and Professions Code sections 2266 and 2234 (b) and (d).

DECISION AND ORDER OF THE BOARD

Osteopathic Medical License number 20A5009 issued to James H. Scott, D.O., is hereby revoked.

Pursuant to Government Code section 11520(c), within seven days after service on respondent of this decision, respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The Board in its discretion may vacate the decision and grant a hearing on a showing of good cause.

Good cause includes, but is not limited to, any of the following:

(1) Failure of the person to receive notice served pursuant to Government Code section 11505.

(2) Mistake, inadvertence, surprise, or excusable neglect.

This Decision shall become effective on the 27th day of January, 2000.

Date Signed December 27, 1999.

Richard A. Bond D.O.

RICHARD A. BOND, D.O., PRESIDENT
Osteopathic Medical Board
of California
State of California

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