



State Medical Board of Ohio

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

June 9, 2004

Grant F. Koher, D.O.
23112 Umstead
Chapel Hill, NC 27514

Dear Doctor Koher:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 9, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

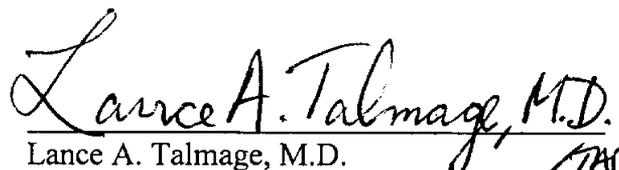
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CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 9, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Grant F. Koher, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D.
Secretary

(SEAL)

June 9, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

GRANT F. KOHER, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 9, 2004.

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

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of Grant F. Koher, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for one year. All but six months of such suspension shall be **STAYED**.
- B. **PROBATION:** Upon reinstatement, Dr. Koher's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three years.
 - 1. **Obey the Law:** Dr. Koher shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - 2. **Declarations of Compliance:** Dr. Koher shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been full compliance with all the conditions of this Order and with the limitations imposed by the North Carolina Board. 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 this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances**: Dr. Koher shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Violation of Terms of Probation**: If Dr. Koher violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Koher's certificate will be fully restored.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Koher shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Koher shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Koher 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. Koher shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Koher shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

(SEAL)


Lance A. Talmage, M.D.
Secretary

June 9, 2004

Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF GRANT F. KOHER, D.O.**

The Matter of Grant F. Koher, D.O., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on March 16, 2004.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated August 13, 2003, the State Medical Board of Ohio [Board] notified Grant F. Koher, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on a prior action against Dr. Koher by the North Carolina Medical Board [North Carolina Board]. In the prior action, the North Carolina Board reprimanded Dr. Koher and limited his certificate based on Findings and Conclusions that, between September 2000 and August 2001, Dr. Koher had prescribed Propecia and Viagra to patients via the Internet without physical examinations and without prior physician-patient relationships.

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

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

- B. Dr. Koher submitted a written hearing request, which the Board received on August 21, 2003. (State’s Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Dominic J. Chieffo, Assistant Attorney General.

- B. On behalf of the Respondent: Dr. Koher, having been apprised of his right to be represented by counsel, appeared at the hearing on his own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

Grant F. Koher, D.O.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1L: Procedural exhibits.
2. State's Exhibit 2: Certified Copy of the October 10, 2002, Consent Order of the North Carolina Medical Board.

B. Presented by the Respondent

Respondent's Exhibit A: A biographical item regarding Tania S. Malik, J.D., purportedly printed from the website, "MomMD – Connecting Women in Medicine Advisory Panel," <http://www.mommd.com/advisors.shtml>, on November 1, 2003.

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. Grant F. Koher, D.O., testified that he had graduated from the Philadelphia College of Osteopathic Medicine in 1982. Thereafter, Dr. Koher completed a rotating internship at Doctor's Osteopathic Hospital in Erie, Pennsylvania. After his internship, he practiced emergency medicine at Jeanette Hospital in Jeanette, Pennsylvania, until approximately 1989. Dr. Koher testified that he had received certification in emergency medicine from the American Board of Emergency Medicine, despite his not completing a residency, due to "grandfather" provisions that had been available at that time. Dr. Koher further testified that he has not recertified because he no longer practices emergency medicine. (Hearing Transcript at [Tr.] 12-13, 53)

Dr. Koher testified that, in 1989, he had started a family practice in Jeanette. While working in family practice, Dr. Koher began performing hair replacement surgery. (Tr. 13, 58)

In 1996, Dr. Koher left his family practice in Jeanette and moved to the Raleigh, North Carolina, area, where he currently practices. He testified that his North Carolina practice has been devoted to cosmetic surgery, “specifically hair restoration surgery and laser services dealing with the skin.” Dr. Koher stated that he is certified by the American Board of Hair Restoration Surgery and the American Board of Laser Surgery. He added that these are independent certifications, which are not recognized by the American Board of Medical Specialties. Finally, Dr. Koher testified that he is certified by the American Osteopathic Board of Family Practice. Dr. Koher is licensed to practice osteopathic medicine and surgery in Ohio, North Carolina, Pennsylvania, Illinois, and Georgia. (Tr. 11-15, 37, 54-56)

2. Dr. Koher entered into a Consent Order with the North Carolina Medical Board [North Carolina Board] on October 10, 2002. The North Carolina Board Consent Order contains Findings and Conclusions which state that, between September 2000 and August 2001, Dr. Koher had prescribed Propecia and Viagra to patients via the Internet without physical examinations or prior physician-patient relationships. Moreover, Dr. Koher had provided these medical services through Virtual Medical Group.com, L.L.C. [VMG]. Specifically, Dr. Koher admitted in the Consent Order that he had prescribed Viagra and Propecia via the Internet twelve times between September 2000 and August 2001. He also admitted that this activity had constituted unprofessional conduct under North Carolina law. (State’s Exhibit [St. Ex.] 2)

Despite these findings and admissions, the North Carolina Board noted the following mitigating circumstances regarding Dr. Koher:

Dr. Koher has offered evidence to the Board that the number of patients in North Carolina for whom he prescribed medications without an actual physical examination was no more than five; that the prescriptions were for lifestyle drugs (Propecia® and Viagra®) only; that because of his reliance upon certain representations by VMG, he misunderstood the Board’s official position in this regard and that upon reading the Position Statement set out in the Board’s quarterly newsletter in September 2001, and prior to any contact by the Board, he immediately and voluntarily ceased issuing any further prescriptions without performing an actual physical examination of the patient; and he accepted no compensation from VMG for his services * * *.

[T]here is no evidence that Dr. Koher's prescribing irregularities, as described above, caused any detrimental effect to any patient * * * .

(St. Ex. 2)

Accordingly, the North Carolina Board reprimanded Dr. Koher. Further, the North Carolina Board prohibited Dr. Koher from prescribing medication to any person in North Carolina without first physically examining that person, except where he already has a physician-patient relationship with that person or where the Board otherwise permits such activity as good medical practice. The North Carolina Board also prohibited Dr. Koher from assisting VMG or any other entity from the unauthorized practice of medicine. (St. Ex. 2; Tr. 17)

3. At his March 16, 2004, hearing in the instant matter, Dr. Koher affirmed his admission to prescribing Propecia and Viagra over the Internet. He explained that he is "a large prescriber" of Propecia, which is used to combat hair loss in men, because his practice is largely devoted to hair restoration surgery. Dr. Koher further explained that a pharmaceutical representative for Merck & Co. had approached him about assisting VMG in prescribing Propecia over the Internet. The pharmaceutical representative introduced Dr. Koher to Steve and Tania Malik; Mr. Malik was the president of VMG and Ms. Malik, an attorney, was legal counsel and CEO of VMG. (Tr. 8-20)

Dr. Koher testified that he had questioned Ms. Malik about the legality of VMG's operation. Ms. Malik advised him that VMG "had the blessing of the North Carolina Medical Board." She assured Dr. Koher that VMG complied with all rules and regulations of North Carolina. She also implied that the North Carolina Board would be issuing a position statement which would validate the prescription of medications over a secure Internet connection without first performing a physical examination. Dr. Koher stated that he had relied upon these representations because he believed that attorneys were required to truthfully advise others about the law. Moreover, Ms. Malik claimed to have an impressive resume demonstrating proficiency in healthcare law. (Tr. 24, 26, 30-33)

Dr. Koher further testified that VMG had seemed legitimate. "They had 30 to 40 employees, a relatively nice office complex in Research Triangle Park, which is considered, if you will, the Silicon Valley of the east * * *." Dr. Koher also explained that, in 2000, it had been thought that the Internet would be the next "breakthrough for the efficient delivery of medical services to patients." In short, Dr. Koher found VMG and its representatives to be credible, and he was intrigued by the prospect of using the Internet in the practice of medicine. (Tr. 27)

4. Dr. Koher testified that he had been involved with VMG from September 2000 through August 2001. He added that, on twelve occasions, he had prescribed Viagra

or Propecia over the Internet via VMG's website; he had prescribed Propecia to four patients, with one refill each, and Viagra to two patients, with one refill each. During this time, Dr. Koher was also helping VMG develop a template for prescribing Propecia via the Internet. (Tr. 23, 37, 40, 48-49)

5. Dr. Koher initially claimed that Propecia and Viagra could be safely prescribed over the Internet. Nevertheless, Dr. Koher admitted upon questioning that the prescription of Viagra over the Internet could be dangerous, because a patient could inaccurately report his blood pressure or use of nitrates. (Tr. 27, 29, 43-44)

Dr. Koher also initially maintained that the information he had received from the Internet patients had been reliable because VMG had a sophisticated way to verify it. Nevertheless, he admitted upon questioning that there had been no way to ensure that the individuals were providing VMG with truthful information. (Tr. 40-44)

6. Dr. Koher testified that he had received no compensation from VMG. He stated that he had worked with VMG because he had been interested in using the Propecia template, which he was helping to develop, to provide Internet prescription services to his own patients. VMG agreed to install the template in Dr. Koher's office in return for his services. (Tr. 37)

Nevertheless, before Dr. Koher received this benefit, he had terminated his relationship with VMG. Dr. Koher testified that, in fall of 2001, he had read an article in the North Carolina Board's quarterly bulletin which advised that prescribing medication over the Internet, based only upon a series of questions and answers, was considered unprofessional conduct. After reading this, he stopped working with VMG. Upon examination, however, Dr. Koher claimed that an "inner voice" had told him that his involvement with VMG was questionable. Moreover, he stated that he had ceased working with VMG because of that "inner voice." (Tr. 37-38, 45-50)

7. Dr. Koher testified that, one year after he had ceased working with VMG, he had received a telephone call from an investigator for the North Carolina Board, who asked Dr. Koher if he had been involved with VMG. Dr. Koher testified that he had admitted his involvement and had cooperated with the North Carolina Board's investigation. (Tr. 38-39)

Dr. Koher further testified that, to the best of his knowledge, no patient had been injured because of his Internet prescribing. Dr. Koher added that he now understands the dangers of Internet prescribing, and avowed that he would never engage in such conduct in the future. (Tr. 19-20, 27-28, 37, 39, 45-46)

FINDINGS OF FACT

On October 10, 2002, the North Carolina Medical Board [North Carolina Board] issued a Consent Order pertaining to Grant F. Koher, D.O. The Consent Order contained Findings and Conclusions stating that Dr. Koher had provided medical services via the Internet through Virtual Medical Group.com, L.L.C., [VMG]. Specifically, the North Carolina Board found that Dr. Koher had prescribed Propecia and Viagra to patients without physical examinations or prior physician-patient relationships between September 2000 and August 2001. The Consent Order reprimanded Dr. Koher and prohibited him from prescribing medication without a prior physical examination of the patient, unless he had a prior physician-patient relationship with the individual, or the North Carolina Board otherwise permitted the prescription. The Consent Order further prohibited Dr. Koher from assisting VMG or any other entity in the unauthorized practice of medicine.

CONCLUSIONS OF LAW

The October 10, 2002, Consent Order of the North Carolina Medical Board pertaining to Grant F. Koher, D.O., constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

Dr. Koher prescribed Propecia and Viagra, over the Internet, to patients whom he had never examined and with whom he had no prior relationship, under circumstances in which the information provided by those patients was inherently unreliable. Dr. Koher testified that representatives of VMG actively mislead him about the legal and ethical status of Internet prescribing; however, the ethical ramifications and dangers of Internet prescribing should be obvious to any physician. Further, Dr. Koher’s testimony that he had continued working with VMG despite an “inner voice” which expressed reservations is worrisome. It demonstrates that Dr. Koher ignored his better judgment in favor of pursuing an attractive opportunity. Dr. Koher’s lack of judgment and failure to recognize the serious dangers of Internet prescribing could justify the permanent revocation of his certificate to practice in this State.

Nevertheless, these facts are mitigated somewhat by the fact that representatives of VMG actively mislead Dr. Koher about the legal and ethical status of Internet prescribing. Further,

Dr. Koher did not engage in this activity for financial gain, but rather in an attempt to eventually improve his own practice with new technology. Moreover, Dr. Koher engaged in this activity only twelve times over the relatively brief period during which he was involved with VMG. In addition, he ceased participating in the business as soon as he learned that it was considered unethical, and cooperated with the investigation by the North Carolina Medical Board. Finally, at hearing, Dr. Koher appeared sincere and contrite. He seems to have learned his lesson, and he is unlikely to engage in similar conduct in the future.

Despite these mitigating circumstances, a serious penalty is warranted because of the great potential for patient harm from Internet prescribing, which Dr. Koher should have recognized.

PROPOSED ORDER

It is hereby ORDERED that:

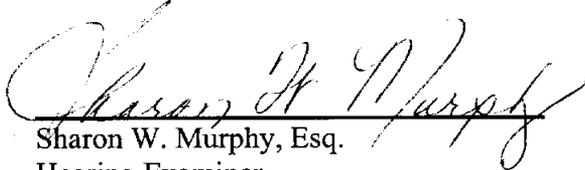
- A. **SUSPENSION:** The certificate of Grant F. Koher, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than two years.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Koher's certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Koher shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Certification of Compliance with the Order of the North Carolina Medical Board:** At the time he submits his application for reinstatement or restoration, Dr. Koher shall submit to the Board certification from the North Carolina Medical Board, dated no earlier than sixty days prior to Dr. Koher's application for reinstatement or restoration, that Dr. Koher has maintained full compliance with the October 10, 2002, Consent Order of the North Carolina Medical Board.
 3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Koher has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

- C. **PROBATION:** Upon reinstatement or restoration, Dr. Koher's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years.
1. **Obey the Law:** Dr. Koher shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Koher shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been full compliance with all the conditions of this Order and with the limitations imposed by the North Carolina Board. 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 this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Koher shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Koher should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Koher 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.
 5. **Violation of Terms of Probation:** If Dr. Koher violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Koher's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Koher shall provide a copy of this Order to

all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Koher shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:**
Within thirty days of the effective date of this Order, Dr. Koher 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. Koher shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Koher shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JUNE 9, 2004

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of Veena V. Sengupta, M.D.; Gary Allen Blahnik, M.T.; Jeffrey Thomas Jones, P.A.; Willie L. Josey, M.D.; Grant F. Koher, D.O.; Barbara A. Reed, M.D.; Irene Shulga, M.D.; and Kristopher N. Wanekwycz, M.T. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

Dr. Davidson 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. Davidson 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.

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GRANT F. KOHER, D.O.

Dr. Davidson directed the Board's attention to the matter of Grant F. Koher, D.O. She advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

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

Dr. Koher thanked the Board for the opportunity to appear before it today. He stated that he has been treated very courteously by all the members of the Attorney General's office and the Hearing Examiner, as well. He apologized for taking the Board's time and resources in this matter. He stated that he appears today in the hope that this brief time may allow the Board to gain a measure of the type of person that he is and to ask any questions the Board may have prior to reaching its decision.

Dr. Koher stated that he certainly takes full responsibility for his actions. He's grateful that no adverse outcomes were associated with these activities. Dr. Koher asked that the Board not suspend his license, and that it accept his deepest apologies and rest assured that he will not engage in this activity in the future.

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

Mr. Chieffo stated that on October 7, 2000, the State of North Carolina, by means of a Consent Order, reprimanded Dr. Koher and issued certain mandates in that reprimand. The Consent Order was the result of his prescribing Propecia and Viagra over the Internet without physical examinations and without prior physician/patient relationships. This Consent Order empowers this Board to discipline the holder of a certificate. The range of discipline was outlined at the beginning of these proceedings.

Mr. Chieffo stated that, at this point, the issue is the severity of the discipline. The Attorney Hearing Examiner patiently heard the evidence in this case and the testimony of Dr. Koher and recommended the discipline set forth in the Report and Recommendation. Based on the evidence and the mitigating factors

offered at that point in time, he believes that the proposed discipline appears to be appropriate.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GRANT F. KOHER, D.O. DR. BHATI SECONDED THE MOTION.

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

Dr. Kumar stated that this is a minimal standards case. Essentially, Dr. Koher prescribed Propecia and Viagra over the Internet. However, this was done only in five cases and also in a very convoluted or strange kind of arrangement with a company that was trying to get Dr. Koher to be the physician. He was given wrong information by the legal counsel for that company. Regardless of that, Dr. Koher never got reimbursed any money for prescribing to the five patients. On top of that, as soon as he read the North Carolina Board's newsletter concerning Internet prescribing, he immediately stopped doing that process, and broke all relationships. Dr. Kumar noted that the other state, apart from listing various other things, essentially only reprimanded Dr. Koher. Dr. Kumar stated that he's not sure that suspending Dr. Koher's license for two years will accomplish anything more. Dr. Kumar stated that he is uncomfortable with a two-year suspension and would be more comfortable with a lesser suspension or a basic reprimand.

Dr. Steinbergh stated that previous speakers have outlined the problems correctly. Her concern, and the Board's concern in terms of Internet prescribing, has always been the fact that a physician makes a decision to prescribe medications without having an appropriate physician/patient relationship. Every trained physician knows that that's inappropriate under any circumstances. That's a problem with judgment.

Dr. Steinbergh added that, based on the fact Dr. Koher did cease what he was doing as soon as he learned it was wrong, and he did not significantly engage himself in the process, this particular Order is too harsh. She agreed with Dr. Kumar that the Board should impose a shorter suspension time. She added that she would hesitate to make it too lenient because she does think that it's important for the Board, as it has when it addressed other Internet prescribing cases, to demonstrate that the Board may impose anything from a simple suspension to a permanent revocation. It's important for physicians to understand that their licenses really are at risk in this state. She stated that she would agree to a lesser suspension, or even a stay of suspension. She believes that Dr. Koher clearly learned his lesson.

Dr. Steinbergh at this time suggested a one-year suspension, staying all but three months.

Dr. Robbins stated that he could pretty much agree with Dr. Steinbergh's suggestion. He added that he does agree with both Dr. Kumar and Dr. Steinbergh. He stated that there are some inferences here that, as things got going, an inner voice, of which most physicians are aware, told Dr. Koher that the involvement with this VMG company was questionable. Dr. Robbins stated that he would argue that that same inner voice should have told him before he started that this was a questionable relationship. To have a pharmaceutical representative from Merck approach him about prescribing a medication over the Internet

should raise an inner voice for all physicians right from the beginning. Dr. Robbins stated that he thinks that some suspension is necessary here, but he agreed that the Proposed Order might be harsh, and Dr. Steinbergh's proposal is appropriate. Dr. Robbins added that he believes that Dr. Koher has learned his lesson, but his getting into this in the first place was a clear lack of judgment.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER TO SUSPEND DR. KOHER'S LICENSE FOR ONE YEAR, STAY ALL BUT THREE MONTHS, WITH THE CONDITIONS FOR REINSTATEMENT AND PROBATION REMAINING THE SAME. DR. KUMAR SECONDED THE MOTION.

Dr. Bhati stated that he has a problem with this amendment. He stated that he doesn't want to send the signal that someone can prescribe over the Internet and get away with a three-month suspension. This was done for financial reasons, not out of the goodness of the heart. Although Dr. Koher realized it was wrong, stopped doing it, and had remorse, the Board doesn't want to send out the wrong message concerning Internet prescribing, which is a growing problem at the present time.

Dr. Steinbergh stated that her reason to alter the order is simply a degree of severity. The Board has had cases where it has permanently revoked a license. In this case she believes that the Board ought to be more lenient than severe.

Dr. Kumar stated that he understands Dr. Bhati's concerns about giving a wrong signal, but in this case the individual's motivation, though it appeared to be financial, he never got any money for those five cases for which he prescribed. Plus, Dr. Koher was to create a template for some of the Internet work he was going to do for his Propecia-prescribing mechanism, perhaps on his own Internet site. Dr. Kumar again stated that he did not see any direct financial benefit to Dr. Koher.

Dr. Bhati stated that Dr. Koher didn't get any financial benefit from this, but he doesn't believe that Dr. Koher did this out of the goodness of his heart, either.

Mr. Browning agreed with Dr. Bhati. He stated that a lesser penalty is reasonable, but to go from two years' suspension to 90 days is going too far in his judgment.

Dr. Steinbergh changed her motion to indicate that all but six months of the suspension would be stayed.

Dr. Bhati stated that that's reasonable.

At this time the Board discussed the mechanics of changing the Proposed Order, including issuing a flat six-month suspension rather than imposing a one-year suspension and staying all but six months and amending other paragraphs within the Proposed Order to fit with the change in suspension. After some discussion, it was suggested that the matter be tabled so that Board members have the opportunity to work with staff on a written revised Order.

MR. BROWNING MOVED TO TABLE THE MATTER OF GRANT F. KOHER, D.O. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

.....

DR. STEINBERGH MOVED TO REMOVE THE MATTER OF GRANT F. KOHER, D.O., FROM THE TABLE. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF GRANT F. KOHER, D.O., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of Grant F. Koher, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for one year. All but six months of such suspension shall be STAYED.

- B. **PROBATION:** Upon reinstatement, Dr. Koher's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years.
1. **Obey the Law:** Dr. Koher shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Koher shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been full compliance with all the conditions of this Order and with the limitations imposed by the North Carolina Board. 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 this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Koher shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Violation of Terms of Probation:** If Dr. Koher violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Koher's certificate will be fully restored.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Koher shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Koher shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

E. REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:

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

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

DR. BHATI SECONDED THE MOTION.

Dr. Egner stated that she wanted to say something on the record about this case in general. What makes this case probably a little different from most Internet prescribing cases is that, generally, they show a defect in the character of greed and a way to make money by selling drugs over the Internet. In this physician's case, Board members are saying that this was not greed; but it certainly still shows a major defect, and that is one of poor judgment. Dr. Egner stated that it is very difficult for her to understand that Dr. Koher didn't realize that in giving drugs to patients that he has never seen, he has no idea whether they are telling the truth about their history, he has no idea whether he can verify any of the information. The thought never crossed Dr. Koher's mind that this was an imprudent thing to do until he read the North Carolina newsletter. Dr. Egner stated that she's glad that Dr. Koher acted once he got the newsletter, but it doesn't really take him out of the realm of this being a major infraction against the Medical Practice Act. Dr. Egner stated that she personally feels that Internet prescribing is an obvious violation, and physicians ought to know that.

Dr. Steinbergh agreed with Dr. Egner's assessment, adding that this is a defect, and she's not sure that it's not greed on Dr. Koher's part. But one of the things that she does feel confident about is that the pressures of practicing medicine today have challenged physicians to make money because they can't make it in traditional ways and everyone is looking to do it a little differently. There are challenges every day coming into her office over her fax asking whether she wouldn't like to do this or that. Dr. Steinbergh stated that this is a slam-dunk for physicians who have been on the Board for many years, but there are physicians who are challenged to make money and have to do it in creative ways. Sometimes they forget, and sometimes they are greedy.

Dr. Steinbergh stated that Dr. Koher has now had action on his license, and he's never going to do this again. The Board has to make an impression upon him and others that this is wrong, and that in Ohio there are a number of different types of orders that may be entered, depending upon the case. Dr. Steinbergh

stated that, in this case, she believes the Board needs to be lenient; and, for this Board, this Proposed Amended Order is lenient.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF GRANT F. KOHER, D.O. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.



State Medical Board of Ohio

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

August 13, 2003

Grant F. Koher, D.O.
23112 Umstead
Chapel Hill, North Carolina 27514

Dear Doctor Koher:

In accordance with R.C. Chapter 119., 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) The North Carolina Medical Board (North Carolina Board) Consent Order dated October 10, 2002, reprimanded you and provided licensure terms including, for patients in North Carolina, that you shall not prescribe medication without first physically examining that person except where you have a physician-patient relationship or where the North Carolina Board otherwise permits such activity, and that you shall not assist the Virtual Medical Group.com, LLC (VMG), or any other entity in the unauthorized practice of medicine.

The Findings and Conclusions by the North Carolina Board included that you provided medical services through VMG, a corporation that renders medical services to include prescriptions, via the Internet and that, between September 2000 and August 2001, you prescribed Propecia® and Viagra® to patients without a physical examination and without any prior physician-patient relationship. The underlying conduct is more fully set forth in the North Carolina Consent Order, a copy of which is attached hereto and incorporated herein.

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

Pursuant to R.C. Chapter 119., 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

Mailed 8-14-03

Grant F. Koher, D.O.

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must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

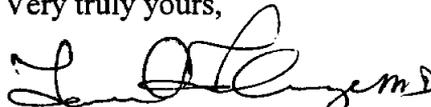
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 5731
RETURN RECEIPT REQUESTED

5005 Rockside Road
Independence, Ohio 44131

CERTIFIED MAIL # 7000 0600 0024 5150 2724
RETURN RECEIPT REQUESTED

JAN 17 2003

Whereas, Dr. Koher authorized such prescriptions without a physical examination of the patients and without any prior physician-patient relationship between Dr. Koher and the patients that might have permitted, depending on good medical practice, issuing a new prescription without a physical examination, and

Whereas Dr. Koher has offered evidence to the Board that the number of patients in North Carolina for whom he prescribed medications without an actual physical examination was no more than five; that the prescriptions were for lifestyle drugs (Propecia® and Viagra®) only; that because of his reliance upon certain representations by VMG, he misunderstood the Board's official position in this regard and that upon reading the Position Statement set out in the Board's quarterly newsletter in September 2001, and prior to any contact by the Board, he immediately and voluntarily ceased issuing any further prescriptions without performing an actual physical examination of the patient; and he accepted no compensation from VMG for his services, and

Whereas, upon reflection, Dr. Koher recognizes that issuing prescriptions in the name of persons whom he has never physically examined could in some instances constitute a potentially dangerous practice, and

Whereas VMG, through Dr. Koher, rendered medical care to

these patients in North Carolina and, thus, VMG likely engaged in the unauthorized practice of medicine, and

Whereas by prescribing medications to patients without a physical examination and in the absence of a prior physician-patient relationship, Dr. Koher engaged in unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

Whereas by assisting in the unauthorized practice of medicine by VMG, Dr. Koher engaged in unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

Whereas there is no evidence that Dr. Koher's prescribing irregularities, as described above, caused any detrimental effect to any patient, and

Whereas Dr. Koher acknowledges he has read this entire document and understands it, and

Whereas Dr. Koher acknowledges he enters into this consent order freely and voluntarily, and

Whereas Dr. Koher would like to resolve this case as set forth below in order to avoid the cost and uncertainty of a formal proceeding, and

Whereas the Board determined it to be in the public interest to resolve this matter as set forth below;

NOW, THEREFORE, the Board enters the following Order:

1. Dr. Koher is hereby REPRIMANDED.

JAN 17 2003

2. Dr. Koher shall not prescribe medication for any person in North Carolina without first physically examining that person, except where he has a physician-patient relationship with that person or where the Board otherwise permits such activity as good medical practice.

3. Dr. Koher shall not assist VMG or any other entity in the unauthorized practice of medicine.

4. Dr. Koher shall obey all laws. Furthermore, Dr. Koher shall obey all regulations related to the practice of medicine.

5. Dr. Koher shall notify the Board in writing of any change in his residence or practice addresses within 30 days of the change.

6. Dr. Koher shall appear before the Board as such times as requested by the Board.

7. If Dr. Koher fails to comply with any of the terms of this Consent Order, that failure shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be grounds, after any required notice and hearing, for the Board to annul, suspend, or revoke his license or to deny any application that he might make in the future or then have pending for a license.

8. Dr. Koher hereby waives any requirement under any law or rule that this Consent Order be served on him.

9. Upon execution by Dr. Koher and the Board, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof. Additionally, the existence of this Consent Order will be reported to person, entities, agencies, and clearing houses, as required by law, including the Healthcare Integrity and Protection Data Bank.

By order of the North Carolina Medical Board this the 10th day of October, 2002.

NORTH CAROLINA MEDICAL BOARD

By: Walter J. Pories
Walter J. Pories
President

ATTEST:

Andrew Watry
Andrew Watry
Executive Director

JAN 17 2003

Consented to this the 7th day of October, 2002.

Grant Franklin Koher
Grant Franklin Koher, D.O.

State of North Carolina

Durham County

I, Teresa B. Wright, a Notary Public for the above named County and State, do hereby certify that Grant Franklin Koher, D.O., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal
This the 7th day of October, 2002.

Teresa B. Wright
Notary Public

(SEAL)

My Commission expires: 1-11-2007

