State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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May 13, 2009

Kathy Lynn Kruger, D.O.
22687 Banner School Road
Defiance, OH 43512

RE: Case No. 09-CRF-016

Dear Doctor Kruger:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Kruger, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 13, 2009, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3160 5588
RETURN RECEIPT REQUESTED

Cc: Thomas W. Hess, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3160 5595
RETURN RECEIPT REQUESTED

Mailed 5-15-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 13, 2009, 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 Kathy Lynn Kruger, D.O., Case No. 09-CRF-016, 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 MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

May 13, 2009
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 09-CRF-016
KATHY LYNN KRUGER, D.O.	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 13, 2009.

Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the 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. **RESTORATION APPLICATION GRANTED**: The application for restoration of the certificate of Kathy Lynn Kruger, D.O., to practice osteopathic medicine and surgery in Ohio is granted, provided that she otherwise meets all statutory and regulatory requirements.

B. **PERMANENT REVOCATION, STAYED; SUSPENSION:** Upon restoration, the certificate of Dr. Kruger to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Kruger's certificate shall be SUSPENDED for a period of six months from the effective date of this Order.

C. **PROBATION**: Upon the expiration of the suspension period, Dr. Kruger'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. Kruger shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in the state in which she is practicing.

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

3. **Personal Appearances**: Dr. Kruger shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Kruger's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Kruger 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 period(s) in which they are completed.

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

5. **Practice Plan**: Before engaging in any medical practice in Ohio, or as otherwise determined by the Board, Dr. Kruger 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. Kruger's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Kruger shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Kruger and her medical practice, and on the review of Dr. Kruger's patient charts. Dr. Kruger shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Kruger's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Kruger must immediately so notify the Board in writing. In addition, Dr. Kruger shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Kruger 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.

6. **Absence from Ohio**: Dr. Kruger shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

7. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Kruger is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

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

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

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Kruger shall provide a copy of this Order to all employers or entities with which she is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where she has privileges or appointments.

   In the event that Dr. Kruger provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Kruger shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Kruger shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which she currently holds any license or certificate.

   Dr. Kruger further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which she applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Kruger receives from the Board written notification of the successful completion of the probation.

3. **Required Documentation of the Reporting Required by Paragraph E**: Dr. Kruger shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

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

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

May 13, 2009
Date

STATE MEDICAL BOARD
OF OHIO

2009 APR 16 P 4: 13

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
		Case No. 09-CRF-016
Kathy Lynn Kruger, D.O.,	*	
		Hearing Examiner Petrucci
Respondent.	*	

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated February 11, 2009, the State Medical Board of Ohio [Board] notified Kathy Lynn Kruger, D.O., that it intends to determine whether to deny her application to restore her certificate to practice medicine and surgery in Ohio, or take other disciplinary action. The Board's proposed action was based on allegations that: (a) Dr. Kruger falsely answered the application question related to resignations, withdrawals or terminations from private or public medical practices; and (b) the Michigan Department of Community Health, Bureau of Health Professions, Michigan Board of Osteopathic Medicine and Surgery [Michigan Board] reprimanded Dr. Kruger and placed her on probation for two years. The Board alleged that Dr. Kruger's acts, conduct, and/or omissions individually and/or collectively constitute:

(a) "Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery * * *; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in Section 4731.22(B)(5), Ohio Revised Code.

(b) "Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery * * * 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 set forth in Section 4731.22(B)(22), Ohio Revised Code.

Finally, the Board notified Dr. Kruger of her right to request a hearing. On February 17, 2009, Dr. Kruger requested a hearing. (State's Exhibit 1 at 1-3, 14)

Appearances

Richard Cordray, Attorney General, by Karen A. Unver, Assistant Attorney General, on behalf of the State of Ohio.

Thomas W. Hess, Esq., on behalf of Dr. Kruger.

Date of Hearing: March 30, 2009

PROCEDURAL MATTER

The Hearing Examiner paginated State's Exhibits 1 and 3 after the hearing in order to refer to those exhibits more easily.

SUMMARY OF THE EVIDENCE

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

Dr. Kruger's Education, Medical Training, and Medical Licensure

1. Kathy Lynn Kruger, D.O., obtained her undergraduate degree at West Liberty State College in West Liberty, West Virginia. Afterward, she took graduate-level courses for several years at Longwood College, in Farmville, Virginia. In 1990, Dr. Kruger entered West Virginia School of Osteopathic Medicine in Lewisburg, West Virginia, and graduated in 1994. Between 1994 and 1998, she completed a one-year "rotating internship" and two years of an obstetrics and gynecology [OB/GYN] residency at Carson City Hospital in Carson City, Michigan. That residency program closed in June 30, 1998, and Dr. Kruger completed a final year of OB/GYN residency training at Ohio University in Athens, Ohio, in 1999. (State's Exhibit [St. Ex.] 2 at 4, 6, 10, 12, 19, 26-27, 36-44, 63, 104-105; Respondent's Exhibit [Resp. Ex.] A at 1; Hearing Transcript [Tr.] at 50)

2. Dr. Kruger has held medical licenses in Michigan, Ohio, Pennsylvania, and West Virginia. All of those licenses/certificates are currently expired. (St. Ex. 2 at 8, 18, 51, 100-104; Tr. at 10, 17, 62; St. Ex. 3 at 1; Resp. Ex. A at 3)

3. In 2007, Dr. Kruger successfully passed the written examination for board-certification from the American College of Osteopathic Obstetricians and Gynecologists. However, she has not yet successfully passed the oral examination, and is not yet board-certified. (Tr. at 34, 45, 60; St. Ex. 2 at 7, 27, 46-47, 51, 99; Resp. Ex. A at 3)

Dr. Kruger's Employment History, 1999-2008

4. After completing her medical training, Dr. Kruger worked as a physician in the following positions between August 1999 and April 2008:

Dates	Position	Employer and Location
August 1999 – October 2002	Sole Practitioner	Linger Medical/Kruger Medical, Inc. in Wheeling, West Virginia
November 2002 – May 2004	Employee of a Medical Practice	Women's Health Specialists in Wheeling, West Virginia
February 2005 – June 2006	Employee of a Medical Practice	Center for Women's Healthcare in Carson City, Michigan
November 2006 – April 2008	Staff Physician and Chair of OB/GYN Department of Hospital	Mercy Jeannette Hospital in Jeannette, Pennsylvania

(St. Ex. 2 at 55, 57, 58; Resp. Ex. A at 3; Tr. at 59-60, 61)

Dr. Kruger's Restoration Application, 2008

5. Dr. Kruger applied to restore her Ohio certificate on August 14, 2008. Dr. Kruger testified that, in 2008, she had received an offer of employment in Defiance, Ohio, and had sought to restore her Ohio certificate in order to practice medicine in Ohio. She further stated that she intends to practice medicine in Ohio permanently. (St. Ex. 2 at 58; Tr. at 11-12)

6. Dr. Kruger testified that she personally had filled out the restoration application form, and signed it. As part of the application, Dr. Kruger verified that the information contained in her certificate application was true. Thereafter, Dr. Kruger provided additional information to the Board and again verified that the information contained in her certification application was true. (St. Ex. 2 at 79, 106, 110; Tr. at 15-21, 28-29, 33)

7. Dr. Kruger answered "No" to Question Three in the Additional Information Section of the restoration application [Question Three]. (St. Ex. 2 at 61; Tr. at 24) Question Three asks:

> Have you ever resigned from, withdrawn from, or terminated, or have you ever been requested to resign from, withdraw from or otherwise been terminated from, a position with a medical partnership, professional association corporation, health maintenance organization, or other medical practice organization, either private or public?

(St. Ex. 2 at 61)

Dr. Kruger's Separation from Prior Employers and Her Explanation[1]

8. At the hearing, Dr. Kruger acknowledged that she had been terminated from both Women's Health Specialists and the Center for Women's Healthcare, and stated that she had been terminated from those positions for the following reasons:

   - Women's Health Specialists: For not generating enough revenues for the practice because she did not see enough patients per day and did not perform enough procedures.

   - Center for Women's Healthcare: For decreased production, not seeing as many patients as her employer wanted her to see, and, possibly, for concerns over bladder injuries that occurred during four hysterectomy surgeries that she had performed.

   (Tr. at 22-23, 25-27, 51-52; see also St. Ex. 4 at condensed page 15)

9. Dr. Kruger acknowledged that her answer to Question Three was incorrect, and she should have answered "Yes" and provided explanations of the terminations. (Tr. at 24) When asked to explain why she did not answer Question Three in the affirmative, Dr. Kruger testified that she did not intend to deceive the Board; rather, she had not reviewed the application questions as carefully as she should have. In particular, she testified:

   Q. Why would you say that you were not being careful in the way you were reviewing and answering the questions?

   A. I knew that there were certain questions that I needed to answer "yes" to. And I specifically looked for those questions, and answered no to other questions that I wasn't specifically looking for. I was looking for specific questions about whether I had malpractice claims, whether I had my state license on probation, that I answered "yes" to those and provided explanations for those, but did not take the time to read the question which asks if I had been terminated.

   Q. You didn't think that might be information that the Board would want to know about?

   A. To be honest with you, I didn't think that that was significant enough for the Board to be worried about, no. I didn't – I didn't – I didn't expect my being terminated from my positions in West

[1]Dr. Kruger's employment with Mercy Jeannette Hospital is not an issue in this matter. However, the record reflects that her employment at that facility ended in April 2008 when the facility closed. (St. Ex. 2 at 107; Resp. Ex. A at 3; Tr. at 17, 60)

> Virginia and Michigan to be anything that the Board would see would be out of the ordinary.

(Tr. at 29-30; see also Tr. at 32-33, 34, 53, 54)

Michigan Board's Disciplinary Action, 2006-2007, and Dr. Kruger's Explanation

10. In 2006, the Michigan Board audited Dr. Kruger regarding her compliance with that state's requirements to obtain continuing education credits. Dr. Kruger was asked to provide evidence that she had obtained 150 hours of continuing education credits during the two-year period of 2003 through 2005. (St. Ex. 3 at 7-8; St. Ex. 2 at 64; Tr. at 47)

11. On November 8, 2006, an administrative complaint was filed against Dr. Kruger, alleging that she had submitted no evidence of earning any acceptable continuing education credits during the audit period. (St. Ex. 3 at 7-9)

12. Dr. Kruger did not respond to the administrative complaint, and the Michigan Board issued a final order on March 8, 2007, imposing sanctions. The Michigan Board reprimanded Dr. Kruger, placed her on probation for two years, required her to obtain 100 hours of Category 1 continuing education credits, and imposed a $1,000 fine. (St. Ex. 3 at 3-6; St. Ex. 2 at 100; Tr. at 12-14)

13. Dr. Kruger explained that, after she had received the audit notice from the Michigan Board, she had notified it that she had not fulfilled the continuing education requirement for the audit period because: (a) she had not practiced in Michigan for the entire audit period, and (b) she had not been required to obtain continuing education credits in West Virginia, which is where she practiced prior to Michigan. Dr. Kruger testified that she had thought that her explanation was sufficient. Within a month of providing that information to the Michigan Board, Dr. Kruger accepted an employment offer in Pennsylvania and moved. She did not notify the Michigan Board of her change of address, and did not receive the administrative complaint or final order. She learned in March 2008 of the Michigan Board action. (Tr. at 47-49, 55-56, 63; St. Ex. 2 at 64)

14. Dr. Kruger testified that, since learning of the final order, she has paid the fine and has obtained the continuing education credits required by the Michigan Board. Her probationary period ended in March 2009. She explained that she had complied with the terms of the Michigan Board's final order because she thought she was required to do so. (Tr. at 48, 50, 56-57; St. Ex. 2 at 64)

Other Information

15. With her restoration application, Dr. Kruger also provided statements regarding her employment history and two gaps therein. She stated the following in two letters:

    (a) "This letter is of explanation for my gap in work from May 2004 to February 2005. I was [sic] decided to take time off after my

employment with Women's Health Specialists ended to be with my family. I then actively searched for and found another position of employment."

(b) "This letter is of explanation for my gap in work from July 2006 to November 2006. I had left my employment with Center for Women's Healthcare in Carson City, Michigan. I actively searched for and found another position of employment with Mercy Jeannette Hospital."

(St. Ex. 2 at 59, 60; Tr. at 21-22) Dr. Kruger testified that those two explanations were not intended to be mischaracterizations, but agreed that they were worded "a lot better" than if she had written that she had been terminated from those two positions. (Tr. at 23-24)

16. Dr. Kruger also provided information in her restoration application reflecting that three malpractice claims have been filed against her, and settlements or awards were given. One of the claims involved a bladder injury during a hysterectomy surgery while she was employed at the Center for Women's Heathcare in Michigan. The other claims were made in 2001 and 2003 and involved allegations of a wrong diagnosis, and respiratory distress and premature fetal delivery. (St. Ex. 2 at 65-68, 70, 73)

17. Dr. Kruger stated that, at the time that she had applied to restore her Ohio certificate, she had received an offer of employment from a clinic in Defiance, Ohio. She explained that that offer of employment has been rescinded because of the period of time involved with evaluating her restoration application and the hearing process. Dr. Kruger testified that she is hopeful that, with a positive outcome in this proceeding, she can obtain that position because it is still available. (Tr. at 53, 62-63; St. Ex. 2 at 57, 58)

FINDINGS OF FACT

1. On August 14, 2008, Kathy Lynn Kruger, D.O., applied to restore her Ohio certificate, and that restoration application remains pending with the Board.

2. In her August 2008 restoration application, Dr. Kruger certified that the information provided therein was true. Also, in the Additional Information section of her restoration application, she answered "No" to Question Three, which asks whether the applicant has "ever resigned from, withdrawn from, or terminated, or * * * ever been requested to resign from, withdraw from or otherwise been terminated from, a position with a medical partnership, professional association corporation, health maintenance organization, or other medical practice organization, either private or public."

3. Prior to completing the August 2008 application for an Ohio certificate, Dr. Kruger was terminated from two medical-practice positions as follows:

   - In May 2004, Dr. Kruger was terminated from her position with Women's Health Specialists located in Wheeling, West Virginia.

   - In June 2006, Dr. Kruger was terminated from her position with the Center for Women's Healthcare in Carson City, Michigan. Her termination from the Center for Women's Healthcare was possibly based in part on her having injured the bladders of four different patients while performing hysterectomies on them from February 2005 to June 2006.

4. On March 8, 2007, the Michigan Department of Community Health, Bureau of Health Professions, Michigan Board of Osteopathic Medicine and Surgery [Michigan Board] issued a final order reprimanding Dr. Kruger and placing her on probation with specified conditions for a period of two years, based upon her failure to provide any evidence that she had obtained the required number of hours of continuing education credits.

CONCLUSIONS OF LAW

1. Dr. Kruger's acts, conduct, and/or omissions, as set forth in Findings of Fact 2 and 3, individually and/or collectively constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in Section 4731.22(B)(5), Ohio Revised Code.[2]

   Dr. Kruger's answer to Question Three constitutes "a false, fraudulent, deceptive, or misleading statement" because it is "a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived," as set forth in Section 4731.22(B)(5), Ohio Revised Code.

2. The Michigan Order, as set forth in Finding of Fact 4, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery * * * 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;

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[2]Evidence of an intent to mislead is a necessary element to proving a violation of Section 4731.22(B)(5), Ohio Revised Code. Intent may be inferred from the surrounding circumstances, and can include when an applicant clearly knows something and fails to disclose it in response to a direct question. *Rajan v. State Med. Bd. of Ohio* (1997), 118 Ohio App. 3d 187; *Hayes v. State Med. Bd.* (2000), 138 Ohio App. 3d 762.

imposition of probation; or issuance of an order of censure or other reprimand," as set forth in Section 4731.22(B)(22), Ohio Revised Code.

Rationale

With regard to Question Three, Dr. Kruger argues that she simply made a mistake on her restoration application and is trying to make amends for doing so. The Hearing Examiner finds that Dr. Kruger made more than a mistake in answering Question Three – she intentionally chose to answer Question Three falsely. This finding is based on several factors. First, Dr. Kruger admitted that she had been terminated twice from positions with medical-practice organizations, and that she should have answered Question Three in the affirmative. Second, Dr. Kruger admitted that she had been carefully looking at the questions in the Additional Information Section of the restoration application because she had known that she would have to respond affirmatively to certain questions and to disclose certain information to the Board. Third, in another statement she provided in her restoration application, Dr. Kruger described her departure from the Center for Women's Healthcare in Michigan, as one in which *she chose* to do. That statement is less than forthcoming and indicative of intent to mislead. Taken altogether, it does not appear credible that Dr. Kruger had answered Question Three without intent to mislead.

The overarching issue with this matter is whether Dr. Kruger's restoration application should be granted and, if so, under what conditions. In that regard, the record contains evidence of several relevant events in Dr. Kruger's history that raise concerns about her abilities. In addition to the false statement on her restoration application, the record reflects: (a) a disciplinary action taken by the Michigan Board; (b) two employment terminations due to performance issues; (c) several injuries to patients during hysterectomy surgeries; and (d) three malpractice claims. Moreover, Dr. Kruger has repeatedly allowed her medical licenses to expire. Although this history is identified in the evidence, the record contains very little information explaining the circumstances surrounding Dr. Kruger's employment performance at Women's Health Specialists and the Center for Women's Healthcare, the bladder injuries to patients, and the malpractice claims. As a result, the allegations of a false statement and Michigan Board action, which have been proven, are the fundamental bases upon which the Proposed Order is recommended.

PROPOSED ORDER

It is hereby ORDERED that:

A. **RESTORATION APPLICATION GRANTED**: The application for restoration of the certificate of Kathy Lynn Kruger, D.O., to practice osteopathic medicine and surgery in Ohio is granted, provided that she otherwise meets all statutory and regulatory requirements.

B. **PERMANENT REVOCATION, STAYED; SUSPENSION:** Upon restoration, the certificate of Dr. Kruger to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Kruger's

certificate shall be SUSPENDED for a period of six months from the effective date of this Order.

C. **PROBATION**: Upon the expiration of the suspension period, Dr. Kruger'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. Kruger shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in the state in which she is practicing.

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

3. **Personal Appearances**: Dr. Kruger shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Kruger's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Kruger 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 period(s) in which they are completed.

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

5. **Practice Plan**: Before engaging in any medical practice in Ohio, or as otherwise determined by the Board, Dr. Kruger 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. Kruger's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Kruger shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Kruger and her medical practice, and on the review of Dr. Kruger's patient charts. Dr. Kruger shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Kruger's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Kruger must immediately so notify the Board in writing. In addition, Dr. Kruger shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Kruger 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.

6. **Absence from Ohio**: Dr. Kruger shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

7. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Kruger is found by the Secretary of the Board to have failed to comply

with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

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

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

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Kruger shall provide a copy of this Order to all employers or entities with which she is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where she has privileges or appointments.

   In the event that Dr. Kruger provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Kruger shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Kruger shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which she currently holds any license or certificate.

   Dr. Kruger further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which she applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Kruger receives from the Board written notification of the successful completion of the probation.

3. **Required Documentation of the Reporting Required by Paragraph E**: Dr. Kruger shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed,

or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

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

Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF MAY 13, 2009

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

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

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of: Emad S. Atalla, M.D.; Menna Berhane, M.D.; Randall Jay Bolar, M.D.; Ralph Arden Hugunin, M.D.; Venkanna Kanna, M.D.; Kathy Lynn Kruger, D.O.; Marietta J. Medel, M.D.; Robert L. Turton, D.O.; and Jeffrey E. White, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye

Dr. Madia 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. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye

Dr. Madia 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. They may, however, participate in the matters of Dr. Bakhshandeh and Dr. Higgs, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....

KATHY LYNN KRUGER, D.O.

.....

DR. VARYANI MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF KATHY LYNN KRUGER, D.O. DR. AMATO SECONDED THE MOTION.

.....

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- nay
	Dr. Madia	- aye

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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med.ohio.gov

February 11, 2009

Case number: 09-CRF-016

Kathy Lynn Kruger, D.O.
22687 Banner School Road
Defiance, OH 43512

Dear Doctor Kruger:

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

(1) On or about August 14, 2008, you caused to be submitted an Application for License Restoration – Medicine or Osteopathic Medicine [Restoration Application] to the Board. Your Restoration Application is currently pending. By signing the Affidavit and Release of Applicant as part of your Restoration Application, you certified that the information provided therein was true.

(2) In the "Additional Information" section of your Restoration Application you answered "NO" to question number 3 which asks the following:

> Have you ever resigned from, withdrawn from, or terminated, or have you ever been requested to resign from, withdraw from, or otherwise been terminated from, a position with a medical partnership, professional association, corporation, health maintenance organization, or other medical practice organization, either private of public?

(a) In fact, in or about June 2006, you were terminated from your position with the Center for Women's Healthcare located in Carson City, Michigan. Your termination from the Center for Women's Healthcare was in part based on your having injured the bladders of four different patients while performing hysterectomies on them from in or about February 2005 to in or about January 2006.

(b) In fact, in or about May 2004, you were terminated from your position with Women's Health Specialists located in Wheeling, West Virginia.

Mailed 2.12.09

(3) On or about March 8, 2007, the Michigan Department of Community Health, Bureau of Health Professions [Michigan Board] issued a Final Order [Michigan Order] reprimanding you and placing you on probation with specified conditions for a period of two years based on your failure to provide any evidence that you completed the required number of hours of continuing educational credit. A copy of the Michigan Order is attached hereto and incorporated herein.

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

The Michigan Order as alleged in paragraph (3) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

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

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

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

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

a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT/DPK/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3068 5185
RETURN RECEIPT REQUESTED

cc: Thomas W. Hess, Esq.
191 West Nationwide Blvd.
Columbus, OH 43215-8120

CERTIFIED MAIL #91 7108 2133 3936 3066 6832
RETURN RECEIPT REQUESTED

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
BUREAU OF HEALTH PROFESSIONS
BOARD OF OSTEOPATHIC MEDICINE AND SURGERY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

KATHY LYNN KRUGER, D.O.
License Numbers: 51-01-012384 **File Number: 51-06-103077**

FINAL ORDER

On November 8, 2006, the Department of Community Health, Bureau of Health Professions, hereafter Department, filed an Administrative Complaint with the Disciplinary Subcommittee of the Michigan Board of Osteopathic Medicine and Surgery, hereafter Disciplinary Subcommittee, charging Kathy Lynn Kruger, D.O., hereafter Respondent, with violating section 16221(h) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq.

The Complaint notified Respondent that pursuant to sections 16231(7) and 16231(8) of the Public Health Code, supra, Respondent's failure to respond to the Complaint within 30 days from the date of receipt would be treated as an admission of the allegations contained in the complaint and would result in the transmittal of the Complaint directly to the Disciplinary Subcommittee for imposition of an appropriate sanction.

STATE OF MICHIGAN-INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Community Health Bureau of Health Professions

Contrary to section 16231(7) of the Public Health Code, supra, Respondent failed to provide a written response to the allegations set forth in the Complaint within 30 days from receipt.

The Disciplinary Subcommittee, having read the Administrative Complaint, considered the within matter at a regularly scheduled meeting held in Lansing, Michigan, on February 1, 2007, and imposed a sanction pursuant to section 16231(8) of the Public Health Code, supra. Now therefore,

IT IS HEREBY ORDERED that for the violations of section 16221(h) of the Public Health Code, supra, Respondent is REPRIMANDED.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, Respondent is placed on PROBATION for a period of TWO YEARS, commencing on the effective date of this Order. The terms of probation shall be as follows:

1. CONTINUING EDUCATION: Respondent shall successfully complete a minimum of 100 hours of category 1 continuing education accepted by the Michigan Board of Osteopathic Medicine and Surgery, hereafter Board. This continuing education shall be completed during the probationary period and **shall not** apply in computing Respondent's continuing education requirements for license renewal.

   Respondent shall mail proof of the successful completion of the continuing education to the Department of Community Health, Bureau of Health Professions, Sanction Monitoring, P.O. Box 30670, Lansing, MI 48909.

STATE OF MICHIGAN-INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Community Health Bureau of Health Professions

2. COMPLIANCE WITH THE PUBLIC HEALTH CODE: Respondent shall comply with all applicable provisions of the Public Health Code and rules promulgated thereunder.

3. COSTS: Respondent shall be solely responsible for payment of all costs incurred in complying with the terms of this Order.

IT IS FURTHER ORDERED that Respondent shall be automatically discharged from probation at the end of the probationary period, PROVIDED Respondent has complied with the terms of this Order and has not violated the Public Health Code.

IT IS FURTHER ORDERED, that in the event Respondent submits to the Department documentation evidencing the successful completion of 100 hours of category 1 continuing education earned between the period of January 1, 2003, and December 31, 2005, Respondent shall be automatically discharged from probation on the date that the Department receives and verifies the submitted documentation.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, Respondent is assessed a FINE in the amount of $1,000.00 to be paid to the State of Michigan within 60 days of the effective date of this Order.

IT IS FURTHER ORDERED that the fine shall be mailed to the Department of Community Health, Bureau of Health Professions, Sanction Monitoring, P.O. Box 30185, Lansing, Michigan. The fine shall be paid by check or money order,

STATE OF MICHIGAN-INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Community Health Bureau of Health Professions

made payable to the State of Michigan, and the check or money order shall clearly display file number **51-06-103077**.

IT IS FURTHER ORDERED that in the event Respondent violates any provision of this Order, and if such violation is deemed to constitute an independent violation of the Public Health Code or the rules promulgated thereunder, the Disciplinary Subcommittee may proceed to take disciplinary action pursuant to 1996 AACS, R 338.1632 and section 16221(h) of the Public Health Code, supra.

IT IS FURTHER ORDERED that this order shall be effective on the date signed by the Disciplinary Subcommittee's Chairperson or authorized representative, as set forth below.

Dated: March 8, 2007

MICHIGAN BOARD OF
OSTEOPATHIC MEDICINE AND SURGERY

By: Melanie B Brim
Melanie B. Brim, Director
Bureau of Health Professions

This is the last and final page of a Final Order in the matter of Kathy Lynn Kruger, D.O., File Number 51-06-103077, before the Michigan Board of Osteopathic Medicine and Surgery, consisting of four pages, this page included.

KMC

STATE OF MICHIGAN-INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Community Health Bureau of Health Professions