

STATE MEDICAL BOARD

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**STATE OF OHIO**  
**THE STATE MEDICAL BOARD**  
**SURRENDER OF CERTIFICATE**  
**TO PRACTICE MEDICINE AND SURGERY**

I, Jeffrey James Fierra, M.D., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, Jeffrey James Fierra, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, No. 35.031774, which is currently inactive, to the State Medical Board of Ohio [Board]. I acknowledge that, as a result of the non-renewal of such certificate, I have not been legally authorized to practice medicine and surgery in Ohio since January 1, 2007. I further acknowledge and understand that, as a result of the surrender herein, I relinquish all rights to practice medicine and surgery in Ohio and will not be permitted to practice medicine and surgery in any form or manner in the State of Ohio in the future.

I agree that I shall be ineligible for, and shall not apply for, reinstatement of certificate to practice medicine and surgery No. 35.031774 or issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, on or after the date of signing this Surrender of Certificate to Practice Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I stipulate and agree that I am taking the action described herein in lieu of continuing compliance with the terms of the Board Order effective on February 4, 2005, as amended and modified by the Board Order effective on April 14, 2006, copies of which are attached hereto and incorporated herein. I am currently in compliance with the terms of that Board Order.

I, Jeffrey James Fierra, M.D., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

It is understood and agreed that this Surrender of Certificate to Practice Medicine and Surgery is not a disciplinary action, and will not be reported to the Federation of State Medical Boards or National Practitioner Data Bank as a disciplinary action. This Surrender of Certificate to Practice Medicine and Surgery shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations and governmental bodies. I,

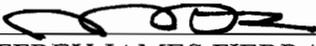
Surrender of Certificate  
Jeffrey James Fierra, M.D.  
Page 2

STATE MEDICAL BOARD

Jeffrey James Fierra, M.D., acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

It is expressly understood that this Surrender of Certificate is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Signed this 5<sup>th</sup> day of JANUARY 2007.

  
JEFFREY JAMES FIERRA, M.D.

  
WITNESS

  
WITNESS

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

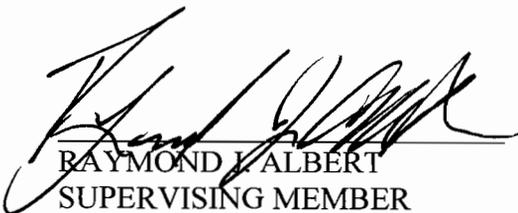
SEAL

\_\_\_\_\_  
NOTARY PUBLIC

**(This form must be either witnessed OR notarized)**

The State Medical Board of Ohio hereby acknowledges that Jeffrey James Fierra, M.D., is in compliance with the terms of the April 12, 2006, Board Order and accepts this surrender:

  
LANCE A. TALMAGE, M.D.  
SECRETARY

  
RAYMOND J. ALBERT  
SUPERVISING MEMBER

3-14-07  
DATE

3/14/07  
DATE



# State Medical Board of Ohio

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

April 12, 2006

Jeffrey James Fierra, M.D.  
1230 Orchard Heights Drive  
Mayfield Heights, OH 44124

Dear Doctor Fierra:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 2006, 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, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8111  
RETURN RECEIPT REQUESTED

Cc: Joyce A. Salisbury, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4329 8135  
RETURN RECEIPT REQUESTED

*Mailed 4-14-06*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 2006, 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 Jeffrey James Fierra, M.D., 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)

April 12, 2006  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

JEFFREY JAMES FIERRA, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 12, 2006.

Upon the Report and Recommendation of Patricia A. Davidson, 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:

The Entry of Order effective on February 4, 2005, in *The Matter of Jeffrey James Fierra, M.D.*, is hereby amended and modified to add to the minimum suspension period of six months an additional thirty days. Thus, Dr. Fierra shall serve an indefinite suspension of not less than seven months, rather than six months as originally set forth in the Order as mailed on February 4, 2005. All other terms and conditions in the Order of February 4, 2005, shall remain unchanged and in full force and effect.

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

(SEAL)



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

April 12, 2006  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF JEFFREY JAMES FIERRA, M.D.**

The Matter of Jeffrey James Fierra, M.D., was heard by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio, on January 30, 2006.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated August 10, 2005, the State Medical Board of Ohio [Board] notified Jeffrey James Fierra, M.D., of proposed disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on allegations that Dr. Fierra had practiced medicine in Ohio during a period of time when his certificate was suspended. The Board charged that Dr. Fierra's conduct was a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code." In addition, the Board alleged that Dr. Fierra's conduct constitutes the "[c]ommission of an act that constitutes a felony in this state,' as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code." Accordingly, the Board advised Dr. Fierra of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On August 16, 2005, Joyce A. Salisbury, Esq., submitted a letter requesting a hearing on behalf of Dr. Fierra. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Joyce A. Salisbury, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Jeffrey James Fierra, M.D.

II. Exhibits Examined

- A. Presented by the State
  - 1. State's Exhibits 1A through 1H: Procedural Exhibits. (State's Exhibit 1A includes a copy of the Patient Key, which has been redacted to remove the patient's name, rather than seal State's Exhibit 1A, as originally planned.)

2. State's Exhibit 2: Certified copies of documents maintained by the Board in *Matter of Jeffrey James Fierra, M.D.*
- \* 3. State's Exhibit 3: Copies of patient records. (Confidential, admitted under seal)
4. State's Exhibit 4: Certification by the Board Secretary regarding the Ohio licensure status of Jeffrey James Fierra, M.D., from August 1969 through August 9, 2005.
- \* 5. State's Exhibit 5: Patient Key. (Confidential, admitted under seal)
6. State's Exhibit 6: Certified mail delivery receipt signed by Dr. Fierra.
7. State's Exhibit 7: Stipulation regarding authentication of patient records.

Note: Exhibits marked with an asterisk (\*) have been sealed to protect patient confidentiality.

### 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.

#### Background

1. Jeffrey James Fierra, M.D., testified briefly regarding his educational and professional background, having testified previously regarding those matters in a hearing in September 2004. Dr. Fierra stated that he had pursued his undergraduate studies at Case Western Reserve University and The Ohio State University, and had graduated from the College of Medicine at The Ohio State University. He testified that he had completed a one-year internship at St. Joseph's Hospital in Phoenix, Arizona, and had completed three years of residency in diagnostic radiology at University Hospital in Cleveland from 1976 to 1979. Dr. Fierra stated that he had engaged in private practice doing industrial medicine and occupational medicine, including work for the Industrial Commission of Ohio. In addition, he testified that he had done radiology work "in a hospital and then some radiology clinics." (Transcript [Tr.] at 15-19, 43-45)

#### The Board's 2005 Order Suspending Dr. Fierra's Certificate

2. In 2004, the Board initiated disciplinary proceedings against Dr. Fierra's certificate with regard to reported convictions on criminal offenses, and a hearing was held in September 2004. (State's Exhibit [St. Ex.] 2 at 27) On November 12, 2004, a Hearing Examiner issued a Report and Recommendation with the following findings and conclusions:

#### FINDINGS OF FACT

On March 22, 2004, in the Cuyahoga Court of Common Pleas, Jeffrey James Fierra, M.D., pleaded guilty to, and was found guilty of, two first-degree misdemeanor counts of Workers' Compensation Fraud, in violation of Section 2913.48, Ohio Revised Code, as amended in Counts 1 and 2, as well as one first-degree misdemeanor count of Aggravated Theft, in violation of

Section 2913.02, Ohio Revised Code. During these proceedings, the court ordered Dr. Fierra to pay restitution of \$150,000.00 to the Ohio Bureau of Workers' Compensation.

Subsequently, on April 23, 2004, Dr. Fierra was sentenced to the county jail for six months on each of the three counts, to be served concurrently. All but 10 days of the sentence [were] suspended. Further, Dr. Fierra was fined \$1000.00 and sentenced to three years of probation.

### CONCLUSIONS OF LAW

The guilty plea, and/or the judicial finding of guilt, of Jeffrey James Fierra, M.D., as set forth in the Findings of Fact, individually and/or collectively constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

(St. Ex. 2 at 33) The Hearing Examiner observed that Dr. Fierra had denied responsibility for the crimes of which he was convicted, but noted that his guilty pleas and convictions served as conclusive proof, under Rule 4731-13-24, Ohio Administrative Code, that he had committed the offenses. The Hearing Examiner proposed an order of stayed permanent revocation with an indefinite suspension of not less than 18 months and a requirement for ethics courses, together with probation for at least five years and other terms. (St. Ex. 2 at 33-38)

3. On January 12, 2005, Dr. Fierra and his attorney attended the meeting at which the Board considered his matter, and Dr. Fierra addressed the Board. After extensive discussion, the Board amended the proposed order and imposed a permanent revocation, stayed, and an indefinite suspension of not less than six months. The Board ordered Dr. Fierra to complete two courses, on professional ethics and billing the Bureau of Workers' Compensation, and imposed a variety of other terms, conditions and limitations, including probation for at least five years. (St. Ex. 2 at 40-48; Tr. at 19-23) The Entry of Order [Order] included the following language:

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jeffrey James Fierra, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Fierra's certificate shall be SUSPENDED for an indefinite period of time, but not less than six months.

\* \* \*

- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise

determined by the Board, Dr. Fierra 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. Fierra shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

\* \* \*

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

(St. Ex. 2 at 21, 25-26)

4. On February 4, 2005, the Board mailed the Order by certified mail. On February 7, 2005, Dr. Fierra received the Order and signed a receipt for it. (St. Ex. 2 at 19; St. Ex. 6)

At the present hearing, Dr. Fierra conceded that he had received the Order on February 7, 2005, and that he had read the language at the end of the Order stating that the Order was “effective immediately upon mailing of notification of approval by the Board.” However, Dr. Fierra testified that, although he knew that the order as a whole was effective on February 4, 2005, he did not know that the suspension began on that date. He explained that, because the text of the Order did not set forth an actual month and day when the suspension began, he was uncertain about the starting date of the suspension. He further testified that, because the Order explicitly stated that he must provide a copy of the Order “within thirty days” to all employers and hospitals with which he was under contract, he had believed that he had thirty days to notify patients and to move their care to other providers. He testified that he had felt he had an ethical duty to his patients not to drop their care abruptly, and had thought that the Board had recognized that duty and had accommodated it by giving him 30 days to wind down his practice. (Tr. at 23-37, 45-48, 53-54)

Dr. Fierra also asserted that he consulted attorneys who advised him that the Order gave him thirty days to cease practicing medicine. Dr. Fierra admitted that he could have contacted the Board for clarification but that he did not. However, he said he had been told not to contact Board members directly and that in his criminal case he had not contacted the court for information.<sup>1</sup> (26-29, 35, 46, 53-55)

5. On February 16, 2005, Dr. Fierra filed a notice of appeal to the Franklin County Common Pleas Court, which was assigned Case No. 05CV-1764. (St. Ex. 2 at 17-18; Tr. at 30-31)

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<sup>1</sup> Dr. Fierra’s testimony regarding legal advice was not entirely believable. One of the attorneys who supposedly told Dr. Fierra that his suspension would not start for 30 days is an attorney who has appeared before the Board regularly for many years, and it is not believable that this attorney gave such advice to Dr. Fierra. (See Tr. at 12, 27-28, 35, 46, 48.)

6. Dr. Fierra admitted that he had practiced medicine on the following days in 2005: February 16, 17, 18, and 23, and March 2. The documentary evidence shows that, on those days, Dr. Fierra evaluated, treated, filed reports on, and/or made recommendations for the patients listed as Patients 1 through 15 on the Patient Key. (St. Exs. 3, 5; Tr. at 32-34)
7. Dr. Fierra testified that his last day of practice was March 2, 2005, and that he saw no patients after that date. After March 2, 2005, he ceased practicing medicine pursuant to the Board's suspension order, according to his testimony. (Tr. at 32)
8. On March 15, 2005, the common pleas court entered an order staying Dr. Fierra's suspension, which the court noted had been effective on February 4, 2005. The court granted the stay on the condition that Dr. Fierra refrain from performing "any services for which a bill for service will be submitted, either directly or indirectly, to the Ohio Bureau of Workers' Compensation." The court entered a second order on May 25, 2005, clarifying that Dr. Fierra was prohibited only from "providing professional services as part of a [patient's] claim with the Ohio Bureau of Workers' Compensation." (St. Ex. 2 at 15-16)
9. On August 10, 2005, the Franklin County Common Pleas Court entered its judgment in *Fierra v. State Medical Board*, Case No. 05CV-1764, affirming the Board's Order of February 4, 2005. (St. Ex. 2 at 4-11)

#### **FINDINGS OF FACT**

1. In an Entry of Order effective on February 4, 2005 [the Order], the State Medical Board of Ohio permanently revoked the certificate of Jeffrey James Fierra, M.D., to practice medicine and surgery in Ohio, but the Board stayed the permanent revocation and suspended Dr. Fierra's certificate for an indefinite period of time but not less than six months. The Order was based on Dr. Fierra's pleas of guilty to, and the judicial finding of guilt of, two misdemeanor counts of workers' compensation fraud and one misdemeanor count of aggravated theft, which constituted a violation of Ohio Revised Code Section [R.C.] 4731.22(B)(11), in that Dr. Fierra had committed a misdemeanor in the course of practice. The Order included the following language:

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jeffrey James Fierra, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Fierra's certificate shall be SUSPENDED for an indefinite period of time, but not less than six months.

\* \* \*

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

3. On February 4, 2005, the Board mailed a copy of the Order to Dr. Fierra. On February 7, 2005, Dr. Fierra received his copy and signed a receipt for it. He had previously appeared at the Board's meeting on January 12, 2005, at which time the Board had unanimously approved the Order suspending his certificate. His attorney had accompanied him to that Board meeting.
4. Despite reading the Order, including the statement regarding the suspension of his certificate and the statement that the Order was effective upon mailing, Dr. Fierra continued to practice medicine after receiving the Order on February 7, 2005. Dr. Fierra admitted, and other evidence established, that he practiced medicine on February 16, 17, 18, and 23, 2005, and on March 2, 2005, by rendering medical services to or for the patients listed as Patients 1 through 15 on the Patient Key, including evaluation and treatment of patients, filing reports, and making recommendations.

### CONCLUSIONS OF LAW

1. The conduct of Jeffrey James Fierra, M.D., as set forth above in Findings of Fact 1 through 4, constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Ohio Revised Code Section [R.C.] 4731.22(B)(15).
2. R.C. 4731.41 provides as follows:

No person shall practice medicine and surgery, or any of its branches, without the appropriate certificate from the state medical board to engage in the practice. \* \* \*

No person shall practice medicine and surgery, or any of its branches, after the person's certificate has been revoked, or, if suspended, during the time of such suspension.
3. R.C. 4731.99 provides: Whoever violates section 4731.41 \* \* \* of the Revised Code is guilty of a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.
4. Dr. Fierra's conduct, as set forth above in Findings of Fact 1 through 4, constitutes the practice of medicine without a certificate in violation of R.C. 4731.41. Thus, his conduct constitutes the "[c]ommission of an act that constitutes a felony in this state," as that clause is used in R.C. 4731.22(B)(10). To violate R.C. 4731.41, it was sufficient that Dr. Fierra knowingly and intentionally practiced medicine in Ohio, and that his certificate was suspended during the time he thus practiced medicine.

\* \* \* \* \*

The Order received by Dr. Fierra stated unequivocally that it was "effective immediately upon mailing." The thirty-day period described in the Order explicitly applies only to the obligation to give notice to employers and hospitals. Nowhere did the Board state in the Order that Dr. Fierra had thirty days to close his practice before the suspension commenced. Nonetheless, despite the

reasonable clarity of the Order, it appears that Dr. Fierra subjectively believed that he had thirty days to close his practice before beginning his suspension. His conduct was completely consistent with that belief. In sum, Dr. Fierra appears to have held a sincere, if erroneous, belief that he had thirty days to wrap up his practice.

It is true that Dr. Fierra now has claimed in two Board matters that he should not be penalized for his errors because he had no idea that he was doing wrong, which gives rise to some concern, as noted by the State's counsel at the hearing. Similarly, the State's counsel observed that it would have been an easy matter for Dr. Fierra to contact the Board's office for clarification. Dr. Fierra, after his experience with the criminal convictions, should have exercised far more care in complying with the Board's Order. His testimony regarding the advice of counsel was partially but not entirely credible.

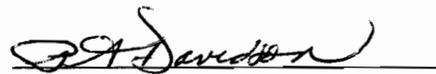
An appropriate order would first account for the period of time that Dr. Fierra continued to practice medicine when his certificate was suspended, so that the Board's intent in its Order of February 2005 is implemented and that Dr. Fierra serves the full minimum period of suspension imposed in that Order. The record reflects that Dr. Fierra's last day of practice was March 2, 2005, whereas he should have ceased practicing immediately upon receiving the Order on February 7, 2005. Thus, Dr. Fierra did not cease practicing medicine until about 23 days after receiving the Order. Second, an indefinite suspension of not less than seven (7) days is sufficient penalty for the violations set forth above in the Conclusions of Law, for a total of 30 days of minimum suspension to be added to the six months of minimum suspension previously imposed in the Order effective on February 4, 2005.

### **PROPOSED ORDER**

It is hereby ORDERED that:

The Entry of Order effective on February 4, 2005, in *The Matter of Jeffrey James Fierra, M.D.*, is hereby amended and modified to add to the minimum suspension period of six months an additional thirty days. Thus, Dr. Fierra shall serve an indefinite suspension of not less than seven months, rather than six months as originally set forth in the Order as mailed on February 4, 2005. All other terms and conditions in the Order of February 4, 2005, shall remain unchanged and in full force and effect.

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

  
Patricia A. Davidson  
Hearing Examiner

[Please note that an errata sheet was filed after the filing of the Report and Recommendation, to correct the description of the procedural exhibits, which are Exhibits 1A through 1I rather than 1A through 1H.]



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF APRIL 12, 2006

### REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that the case of Gary Ray Lutz, D.O., which was scheduled for this meeting, would be considered at a later time due to the inability to achieve timely service of the Report and Recommendation on Dr. Lutz.

Dr. Robbins 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: Amy J. Chaho, M.D.; Jeffrey James Fierra, M.D.; Gary Ray Lutz, D.O.; and David A. Rath, M.D.; A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

Dr. Robbins - aye

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

Dr. Robbins 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.

.....  
JEFFREY JAMES FIERRA, M.D.

.....  
**MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF JEFFREY JAMES FIERRA, M.D. DR. BUCHAN SECONDED THE MOTION.**

.....  
A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

The motion carried.

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

FINAL APPEALABLE ORDER

JEFFREY J. FIERRA, M.D.

Appellant,

v.

STATE MEDICAL BOARD OF OHIO

Appellee

Case No. 05CVF-02-1764

JUDGE SCHNEIDER

TERMINATION NO. 10  
BY KT

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
JANUARY 12, 2005, ORDER PERMANENTLY REVOKING  
APPELLANT'S LICENSE, STAYING THE REVOCATION, AND SUSPENDING  
DR. FIERRA'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO  
FOR NO LESS THAN SIX MONTHS**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the January 12, 2005 Order of the State Medical Board of Ohio which permanently revoked Appellant, Jeffrey J. Fierra, M.D.'s license to practice medicine and surgery in Ohio, stayed the revocation, and suspended his license to practice for no less than six months. For the reasons stated in the decision of this Court rendered and filed on July 25, 2005, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the January 12, 2005 Order of the State Medical Board in the matter of Jeffrey J. Fierra, M.D., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

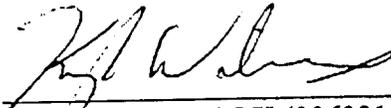
Date

JUDGE SCHNEIDER

FILED  
CLERK OF COURT  
FRANKLIN COUNTY, OHIO  
AUG 10 PM 4:05  
2005 SEP 16 A 11:26  
STATE MEDICAL BOARD OF OHIO

APPROVED:

**JIM PETRO** (0022096)  
Attorney General



**KYLE C. WILCOX** (0063219)  
Assistant Attorney General  
Health & Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
614 466-8600  
614-466-6090 Facsimile

*Submitted - Not Approved*

**KEVIN P. BYERS** (0040253)  
21 East State Street  
Suite 220  
Columbus, Oh. 43215-33428  
614 228-6283  
614 228-6425 (Fax)

Counsel for Jeffrey J. Fierra, M.D.

Counsel for the State Medical Board

STATE MEDICAL BOARD  
OF OHIO  
2005 SEP 16 A 11:26

JUL 29 2005

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

SERVICES SECTION

JEFFREY J. FIERRA, M.D.,

CASE NO. 05CVF02-1764

APPELLANT,

JUDGE SCHNEIDER

VS.

STATE MEDICAL BOARD OF OHIO,

APPELLEE.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
2005 JUL 25 PM 2:51  
CLERK OF COURTS

DECISION ON MERITS OF APPEAL

Entered this 25 day of July, 2005.

This action comes before the court upon appeal filed February 16, 2005 by Jeffrey J. Fierra, M.D. Appellant has appealed the revocation of his license to practice medicine resulting from the decision of the State Medical Board (Board) dated January 12, 2005. The Board, after a hearing, adopted its Hearing Examiner's recommendation to suspend Appellant's license to practice medicine and surgery. Appellant seeks review of the Board's Order under the provisions of Chapter 119. The court granted a stay of the revocation of Appellant's license to practice pending appeal on May 24, 2005. The stay was granted on the condition that Dr. Fierra shall not perform any services for which a bill for service will be submitted, either directly or indirectly, to the Ohio Bureau of Workman's Compensation. The Court, after considering the record, the grounds for appeal set forth by Appellant, and applicable statutory and case law, finds that the decision of the Board should be affirmed.

**PROCEDURAL HISTORY**

Appellant was apprised by letter dated July 14, 2004 that the Board planned to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The action arose after it was brought to the Board's attention that Dr. Fierra had been convicted of two

misdemeanor counts of Worker's Compensation Fraud and one misdemeanor count of Aggravated Theft. The notice informed Dr. Fierra that the misdemeanor convictions constituted a violation of the Medical Practices Act, R.C. Section 4731.22(B)(11) "[a] plea of guilty to, [and] a judicial finding of guilt of...a misdemeanor committed in the course of practice."

Appellant was afforded a hearing on September 22, 2004 before a Hearing Examiner for the Board. Appellant offered testimony on his own behalf and was cross-examined. The Hearing Examiner also received various exhibits, which included certified court documents from the criminal proceedings from which the current matter has risen.

Appellant received his medical degree in 1969 and testified before the Board that he has spent most of his career in the practice of occupational medicine examining patients to determine the extent of their injuries or disabilities. He performed disability exams for the Industrial Commission of Ohio for "roughly" 16 years and also performed examinations for the Bureau of Workman's Compensation through two different companies: Buckeye Therapy, where he primarily examined personal injury patients who had been referred to him by attorneys, and Detroit Avenue Clinic, Inc., where he primarily examined Worker's Compensation patients. Dr. Fierra currently has a private practice in which he continues to specialize in occupational medicine.

The criminal charges that were brought against Dr. Fierra were the result of an FBI investigation of the two clinics where he performed personal injury assessments. Dr. Fierra was initially charged with three third degree felony counts for alleged improper billing practices.

Dr. Fierra testified that at both clinics, he evaluated and documented injuries and ordered treatments, but maintained that he had no involvement in the billing procedures at either clinic and was not aware of any improper billing practices. Dr. Fierra also claimed that the federal

authorities made the charges against him as a was of trying to pressure him into providing them with information about a personal injury attorney named Timothy Misny, who, according to Dr. Fierra, had a relationship with Buckeye Therapy but the investigation had not gone anywhere. No one other than Dr. Fierra was charged with any wrongdoing as a result of the investigation.

On the Friday before Dr. Fierra was scheduled to go on trial, he received a call from the Attorney General's office offering him a plea bargain that involved a reduction of the charges to two misdemeanor counts of Workman's Compensation Fraud and one misdemeanor count of Aggravated Theft as well as a reduction in the amount of restitution in exchange for Dr. Fierra's guilty plea. After discussing the matter with his attorney, Dr. Fierra decided to take the plea offer rather than to go to trial and risk a possible prison sentence. At the plea hearing, Dr. Fierra pled guilty and was convicted of all counts. He was sentenced to the county jail for six months on each of the three counts, to be served concurrently. All but 10 days of the sentence was suspended. In addition, Dr. Fierra was ordered to pay \$150,000 restitution and a fine of \$1,000.

### **Review Standard**

R.C. 119.12 and the multitude of cases addressing that section govern the Court's review of a decision of an administrative agency, such as the Commission. The most often cited case is that of *Univ. of Cincinnati v. Conrad*<sup>1</sup>. The *Conrad* decision states that in an administrative appeal filed pursuant to R.C. 119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law.

The Court states at pages 111 and 112 that "In undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting

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<sup>1</sup> 63 Ohio St. 2d 108, 407 N.E.2d 1265, (1980)

testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. The findings of the agency are not conclusive. Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, the court may reverse, vacate or modify the administrative order. Where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.

The *Conrad* case has been cited with approval numerous times.<sup>2</sup> Although a review of applicable law is de novo, the reviewing court should defer to the agency's factual findings.<sup>3</sup>

## ANALYSIS

Dr. Fierra has based his appeal on the grounds that the Board has failed to meet the first prong of the two-pronged standard for review as required by R.C. 119.12, that the Board's order must be supported by reliable, probative, and substantial evidence.

Dr. Fierra maintains that he did not take part in any wrongdoing and that the only reason that he pled guilty to the charges was out of fear of going to prison and losing his medical license—although he was fully aware that a guilty plea could also result in the loss of his license to practice medicine. He also noted that at no time was it ever alleged that he had any control over the checkbooks at either clinic, nor that his handwriting appeared on any fraudulent reports,

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<sup>2</sup> *City of Hamilton v. State Employment Relations Bd.*(1994), 70 Ohio St. 3d 210, 638 N.E.2d 522; *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591

<sup>3</sup> *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 614 N.E.2d 748. Rehearing denied by: *Pons v. State Medical Bd.* (1993), 67 Ohio St. 3d 1439, 617 N.E.2d 688.

checks, or deposit slips. He avers that because the Board does not have evidence to show that he is guilty of improper billing, the Board order does not comply with 119.12.

R.C. 4731.22(B)(11) provides the Board with the authority to take disciplinary action against the medical license of a physician who has pled guilty to, or has been convicted of, a misdemeanor offense committed in the course of practice.<sup>4</sup>

The Board's position is that evidence to prove the elements of the charges against Dr. Fierra is not required due to the fact that he pled guilty to, and was convicted of, the misdemeanor charges against him, which obviated the need to establish proof of each charge.

The Board had a wide range of sanctions available to them under R.C. 4731.22(B). The minutes of their meeting reflect that they considered alternatives and the consensus was a six-month suspension.

Suffice it to note that this Court is not permitted to invade discretionary determinations of the Board when it acted within its statutory authority.<sup>5</sup> The Board has established that it issued the order to suspend Dr. Fierra's license in accordance with the law and Dr. Fierra has failed to show otherwise. Counsel for Appellee shall prepare a Judgment Entry pursuant to Local Rule 25.01. Counsel shall prepare and submit a Judgment Entry consistent with this decision pursuant to Local Rule 25.01.



Charles A. Schneider, Judge

Appearances:

William T. McGinty  
614 West Superior Avenue  
Suite 1300  
Cleveland, OH 44113  
Attorney for Appellant

<sup>4</sup> *Davidson v. Ohio State Med. Board*, 1998 Ohio App. LEXIS 2104, unreported.

<sup>5</sup> *Kuzas v. Ohio State Medical Board.*, 67 Ohio App. 3d 147, 586 N.E.2d 210 (1990)

Copies cont'd.

Kyle C. Wilcox, Esq.  
Assistant Attorney General  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, OH 43215  
Attorney for Appellee



# State Medical Board of Ohio

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

August 10, 2005

Jeffrey James Fierra, M.D.  
1230 Orchard Heights Drive  
Mayfield Heights, Ohio 44124

Dear Doctor Fierra:

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 medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) By Order of the Board, effective February 4, 2005, [Board Order] your certificate to practice medicine and surgery was permanently revoked; the revocation was stayed; and your certificate was suspended for an indefinite period of time, but not less than six months.

The Board Order was based upon the Conclusions of Law that your pleas of guilty to, and the findings of guilt of, two misdemeanor counts of Workers' Compensation Fraud and one misdemeanor count of Aggravated Theft, constituted violation of Section 4731.22(B)(11), Ohio Revised Code, a misdemeanor committed in the course of practice.

Accompanied by counsel, you were present at the January 12, 2005, Board meeting at which the Board Order was unanimously approved.

On or about February 7, 2005, you signed a receipt for a copy of the Board Order.

A copy of the Board Order is attached hereto and incorporated herein.

- (2) Despite the aforementioned suspension of your certificate, effective on or about February 4, 2005, through on or about March 15, 2005, you continued to practice medicine and surgery in Ohio through at least March 2, 2005. Examples of your continued practice include that you used "M.D." and/or other designations in connection with your name in a manner that represented you as engaged in the practice of medicine and that you rendered medical services (e.g., performing patient examinations, filing medical reports, and recommending treatment) to and/or related to Patients 1 through 15, as identified on the attached confidential Patient Key (Patient Key to be withheld from public disclosure), on or about the dates set forth below:

<u>Date</u>	<u>Patient No.</u>
February 16, 2005	1
February 16, 2005	2

MAILED 8-11-05

February 17, 2005	3
February 18, 2005	4
February 23, 2005	5
February 23, 2005	6
February 23, 2005	7
February 23, 2005	8
February 23, 2005	9
March 2, 2005	5
March 2, 2005	10
March 2, 2005	11
March 2, 2005	12
March 2, 2005	13
March 2, 2005	14
March 2, 2005	15

Your acts, conduct, and/or omissions, as alleged in paragraph (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code. Pursuant to Section 4731.99, Ohio Revised Code, violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.

Further, your acts, conduct, and/or omissions, as alleged in paragraph (2) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), 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 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/blt  
Enclosures

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

Kevin P. Byers  
Kevin P. Byers Co., L.P.A.  
*Fifth Third Center*  
21 East State Street, Suite 220  
Columbus, Ohio 43215

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

Salisbury & Salisbury  
8191 Broadview Road  
Broadview Heights, Ohio 44147

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

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

JEFFREY J. FIERRA, M.D., :  
 :  
 APPELLANT, : CASE NO. 05CVF02-1764  
 :  
 v. : JUDGE SCHNEIDER  
 :  
 THE STATE MEDICAL BOARD OF OHIO, :  
 :  
 APPELLEE. :

**DECISION AND ENTRY GRANTING APPELLANT'S MOTION  
FOR STAY OF AGENCY ORDER FILED FEBRUARY 16, 2005.**

Rendered this 24 day of May, 2005.

Schneider, C., J.

This matter is before the Court on motion of Appellant, Jeffrey J. Fierra, M.D., for a stay of the agency order suspending his medical licensure for a minimum term of six months. It is ordered that his suspension effective February 4, 2005, shall be stayed, conditioned, however, on the following: Dr. Fierra shall not perform any services for which a bill for service will be submitted, either directly or indirectly, to the Ohio Bureau of Workers' Compensation. Appellant is only prohibited from providing professional services as part of a patients claim with the Ohio Bureau of Workers' Compensation.

**IT IS SO ORDERED.**



CHARLES A. SCHNEIDER, JUDGE

FILED  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
2005 MAY 25 AM 8:35  
CLERK OF COURTS

Copies to:

Kevin P. Byers, Esq.  
Richard L. Salisbury, Esq.  
Attorneys for Appellant

Kyle C. Wilcox, Esq.  
Assistant Attorney General  
Attorney for Appellee

STATE MEDICAL BOARD  
OF OHIO  
2005 MAY 31 A 9 09

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

05 MAR 15 PM 4:10

JEFFREY J. FIERRA, M.D.,

CLERK OF COURTS-CV

APPELLANT, :

CASE NO. 05CVF02-1764

v. :

JUDGE SCHNEIDER

THE STATE MEDICAL BOARD OF OHIO, :

APPELLEE. :

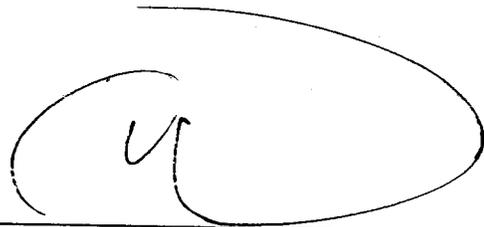
**DECISION AND ENTRY GRANTING APPELLANT'S MOTION  
FOR STAY OF AGENCY ORDER FILED FEBRUARY 16, 2005.**

Rendered this 15 day of March, 2005.

Schneider, C., J.

This matter is before the Court on motion of Appellant, Jeffrey J. Fierra, M.D., for a stay of the agency order suspending his medical licensure for a minimum term of six months. It is ordered that his suspension effective February 4, 2005, shall be stayed, conditioned, however, on the following: Dr. Fierra shall not perform any services for which a bill for service will be submitted, either directly or indirectly, to the Ohio Bureau of Workers' Compensation.

**IT IS SO ORDERED.**



CHARLES A. SCHNEIDER, JUDGE

Copies to:

Kevin P. Byers, Esq.  
Richard L. Salisbury, Esq.  
Attorneys for Appellant

Kyle C. Wilcox, Esq.  
Assistant Attorney General  
Attorney for Appellee

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

Jeffrey J. Fierra, MD,  
1230 Orchard Heights Drive  
Mayfield Heights, Ohio 44124  
**Appellant,**

v.

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315  
**Appellee.**

\*  
**05CVF 02 1764**

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

Appeal from the State Medical Board of Ohio

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**APPELLANT'S NOTICE OF APPEAL**

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Pursuant to RC 119.12, notice is hereby given that Appellant, Jeffrey J. Fierra, MD, appeals the order of the State Medical Board dated January 12, 2005, and mailed February 4, 2005, (copy attached as *Exhibit A.*) The Medical Board order is not supported by the necessary quantum of reliable, probative, and substantial evidence nor is it in accordance with law.

Respectfully submitted,

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

*KBYERS*

Kevin P. Byers 0040253  
Fifth Third Center  
21 East State Street, Suite 220  
Columbus, Ohio 43215  
614.228.6283 Fax 228.6425

and

CLERK OF COURTS  
FRANKLIN COUNTY, OHIO

FILED TO AM 9-22

CLERK OF COURTS

300 20050112  
10:00 AM

SALISBURY & SALISBURY

RICHARD L. SALISBURY / KPB

Richard L. Salisbury 0022517  
8191 Broadview Road  
Broadview Heights, Ohio 44147  
440.838.1222 Fax 838.0954

Attorneys for Jeffrey J. Fierra, MD

FILED  
FEB 16 2005  
CLERK OF COURT  
COLUMBUS, OHIO

Certificate of Service

I certify that the original of the foregoing document was hand delivered this 16th day of February, 2005, to the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315.<sup>1</sup>

KPB/EMS

Kevin P. Byers

<sup>1</sup> In accord with Stulz v. Ohio Dept. of Admin. Svcs (Jan. 20, 2005), Tenth District No. 04AP-602, 2005-Ohio-200 which requires that the original notice be filed with the agency and a only copy thereof may be filed with the court of common pleas.





# State Medical Board of Ohio

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

January 12, 2005

Jeffrey James Fierra, M.D.  
1230 Orchard Heights Drive  
Mayfield Heights, OH 44124

Dear Doctor Fierra:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 12, 2005, 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

CERTIFIED MAIL NO. 7004 0750 0002 3161 5137  
RETURN RECEIPT REQUESTED

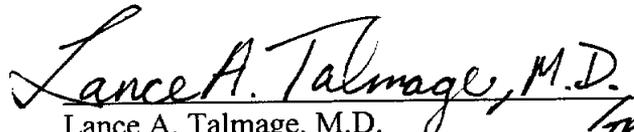
Cc: William J. McGinty, Esq.  
CERTIFIED MAIL NO. 7004 0750 0002 3161 5168  
RETURN RECEIPT REQUESTED

MAILED 2-4-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 12, 2005, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Jeffrey James Fierra, M.D., 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)

January 12, 2005

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

JEFFREY JAMES FIERRA, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 12, 2005.

Upon the Report and Recommendation of Siobhan R. Clovis, 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. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jeffrey James Fierra, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Fierra's certificate shall be SUSPENDED for an indefinite period of time, but not less than six months.
- B. **INTERIM MONITORING:** During the period that Dr. Fierra's certificate to practice medicine and surgery in Ohio is suspended, Dr. Fierra shall comply with the following terms, conditions, and limitations:
  - 1. **Obey the Law and Terms of Criminal Probation:** Dr. Fierra shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of probation imposed by the Cuyahoga County Court of Common Pleas in criminal case number 442349.
  - 2. **Personal Appearances:** Dr. Fierra shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. 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.

3. **Quarterly Declarations**: Dr. Fierra shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which 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.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Fierra's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Fierra shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions**: Dr. Fierra shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Certification of Compliance with the Terms of Criminal Probation**: At the time he submits his application for reinstatement or restoration, Dr. Fierra shall submit to the Board certification from the Cuyahoga County Court of Common Pleas, dated no earlier than sixty days prior to Dr. Fierra's application for reinstatement or restoration, indicating that Dr. Fierra has maintained full compliance with terms of probation in criminal case number 442349.
4. **Professional Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Fierra 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.
5. **Course Requirement**: At the time Dr. Fierra submits his application for reinstatement or restoration, Dr. Fierra shall provide acceptable documentation of satisfactory completion of a course on Bureau of Workers Compensation billing, such course to be approved in advance by the Board or

its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Fierra submits the documentation of successful completion of the course or courses on Bureau of Workers Compensation billing, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Fierra has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Fierra's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Fierra shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
  2. **Practice Plan:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra 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. Fierra's activities and billing will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Fierra shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and billing. Dr. Fierra 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. Fierra's quarterly declaration.

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

3. **Monitoring Physician:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra shall 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 and Supervising Member will give preference to a physician who practices in the same locale as Dr. Fierra and who is engaged in the same or similar practice specialty.

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and bills. Dr. Fierra 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. Fierra's quarterly declaration.

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

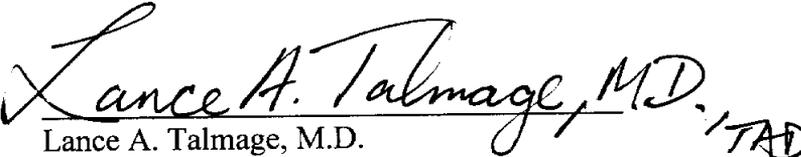
the Board directly of his or her inability to continue to serve and the reasons therefore.

4. **Tolling of Probationary Period While Out of State:** Dr. Fierra 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.
  5. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Fierra 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.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Fierra's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Fierra violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra 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. Fierra 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.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra 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. Fierra 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 or restoration of any professional license. Further, Dr. Fierra shall provide this Board with a copy of

the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

January 12, 2005

Date

2004 NOV 12 P 1:59

**REPORT AND RECOMMENDATION  
IN THE MATTER OF JEFFREY JAMES FIERRA, M.D.**

The Matter of Jeffrey James Fierra, M.D., was heard by Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 22, 2004.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated July 14, 2004, the State Medical Board of Ohio [Board] notified Jeffrey James Fierra, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on the allegation that Dr. Fierra had been convicted of two misdemeanor counts of Workers' Compensation Fraud and one misdemeanor count of Aggravated Theft.

The Board alleged that the acts, conduct, and/or omissions of Dr. Fierra, individually and/or collectively, constitute: "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in R.C. 4731.22(B)(11)."

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

- B. On August 4, 2004, William T. McGinty, Esq., submitted a written hearing request on behalf of Dr. Fierra. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: William T. McGinty, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

Jeffrey James Fierra, M.D.

### II. Exhibits Examined

#### A. Presented by the State

1. State's Exhibits 1A through 1J: Procedural exhibits.
2. State's Exhibit 2: Transcript of a March 22, 2004, plea hearing held in the case of *State v. Fierra*, Cuyahoga Case No. 442349 [*State v. Fierra*].
3. State's Exhibit 3: Transcript of an April 16, 2004, sentencing hearing held in the case of *State v. Fierra*.
4. State's Exhibit 4: Certified copy of a January 13, 2004, "Response to Defendant's Request for Bill of Particulars" filed in *State v. Fierra*.
5. State's Exhibit 5: Certified copy of the September 30, 2003, indictment filed in *State v. Fierra*.
6. State's Exhibit 6: Certified copies of March 26, 2004, and April 23, 2004, entries filed in *State v. Fierra*.

#### B. Board Exhibits

1. Board Exhibit A: Section 2913.02, Ohio Revised Code.
2. Board Exhibit B: Section 2913.48, Ohio Revised Code.

## PROCEDURAL MATTERS

1. At hearing, the State moved to amend the date of Respondent's guilty plea, as set forth in the July 14, 2004, Notice of Opportunity for Hearing, from March 26, 2004, to March 22, 2004. Respondent did not object to the amendment. Further, State's Exhibit 2 demonstrates that Respondent pleaded guilty on March 22, 2004. Accordingly, the State's motion to amend was granted. (Hearing Transcript at 8-9; State's Exhibit 2).

2. Counsel for the State contacted the Hearing Examiner after the hearing, and requested the opportunity to submit an additional exhibit. Specifically, counsel requested the inclusion of State's Exhibit 1J, his September 17, 2004, Notice of Appearance in this case. Respondent did not object to the request. Accordingly, State's Exhibit 1J was admitted to the record. The hearing record closed on September 30, 2004.

### **SUMMARY OF THE EVIDENCE**

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

1. Jeffrey James Fierra, M.D., testified that he had received his undergraduate degree in 1965, and his medical degree in 1969, both from Ohio State University. He stated that, from 1969 through 1970, he had completed a one-year internship at St. Joseph's Hospital in Phoenix, Arizona. He further stated that, beginning in 1970, he had worked for doctors and hospitals performing insurance exams. (Hearing Transcript [Tr.] at 13-14).

Dr. Fierra testified that, from 1976 through 1979, he had completed a residency in diagnostic radiology at University Hospitals in Cleveland. He advised that, after his residency, he had worked for the department of radiology at Lakewood Hospital for a year. He then worked at two private radiology offices. Dr. Fierra stated that, in 1974, he had begun working for the Industrial Commission of Ohio performing disability examinations. He further stated that, from 1985 through 1990, he had worked full-time for the Industrial Commission of Ohio in Cleveland. (Tr. at 14-16).

Dr. Fierra advised that, in or about 1990, the Bureau of Workers' Compensation [BWC] had taken over the medical function of the Industrial Commission of Ohio, and eliminated his position. He testified that, from 1990 through 1992 or 1993, he had worked at a diagnostic radiology office. He advised that he had then begun working for the Industrial Commission again, doing "combined effects reviews," and that he had also begun performing examinations for the BWC through two different companies. (Tr. at 16-17).

Dr. Fierra testified that he had been begun working at Detroit Clinic in 1994 and Buckeye Therapy in 1996, both of which were in Cleveland. He advised that he had worked as an independent contractor for both offices. He stated that he had worked "full-time or even more" at Buckeye Therapy, seeing mostly personal injury patients who had been referred by attorneys. Dr. Fierra further stated that he had worked one-to-two hours a week at Detroit Clinic, seeing worker's compensation patients. He advised that, at both offices, he had evaluated and documented injuries, and ordered treatments. (Tr. at 17-20).

Dr. Fierra testified that he currently practices occupational medicine at two offices run by himself, one in Cleveland and one in Akron. He stated that he sees about 30 patients per week, and that he also performs about 15 independent medical examinations per week. He advised that an independent medical examination is an examination “to determine the extent of impairment of an individual who’s been involved in a Workers’ Compensation injury.” (Tr. at 11-12).

Dr. Fierra testified that he is also licensed to practice medicine in Alabama, Arizona, and California. (Tr. at 13).

2. On March 22, 2004, in the Cuyahoga Court of Common Pleas, Dr. Fierra pleaded guilty to, and was found guilty of, two first-degree misdemeanor counts of Workers’ Compensation Fraud, in violation of Section 2913.48, Ohio Revised Code, as amended in Counts 1 and 2, as well as one first-degree misdemeanor count of Aggravated Theft, in violation of Section 2913.02, Ohio Revised Code. The court ordered Dr. Fierra to pay \$150,000.00 in restitution to the BWC. (State’s Exhibits [St. Exs.] 2, 6).

On April 23, 2004, Dr. Fierra was sentenced, for each count, to a term of six months in county jail, to be served concurrently. All but 10 days of the sentence was suspended. Dr. Fierra was also fined \$1000.00 and sentenced to three years of probation. (St. Ex. 3; St. Ex. 6 at 2).

Dr. Fierra testified that he has already fully paid his restitution and served his time in jail. (Tr. at 24, 46).

3. Dr. Fierra testified that he did not know the details of the accusations against him:
  - A. [Dr. Fierra] I was never quite totally sure what the—I knew what the charges were, but I wasn’t totally sure what they meant specifically.
  - Q. [Mr. Wilcox] What was your understanding of it?
  - A. That they—somebody believed I committed fraud and took money.
  - Q. And how did they explain that to you? How did you take the monies?
  - A. They said I billed the Bureau of Workers’ Compensation and received the payments.
  - Q. Was it basically overbilling that they were telling you, that you billed them too much?

A. I think it was more aberrant than a billing. [sic]

Q. I'm sorry. What do you mean by that?

A. Aberrant. Improper billing.

(Tr. at 25-26).

4. Dr. Fierra denied responsibility for any wrongdoing. He explained that the charges had resulted from an investigation of Buckeye Therapy and Detroit Clinic, and that he had not been responsible for, or had any input in, billing at either location. Dr. Fierra had originally been indicted for three third-degree felonies. A third-degree felony carries a maximum sentence of five years in prison.<sup>1</sup> Dr. Fierra testified that he had pleaded guilty because he “didn’t want to go to trial with three felony counts” and because he had feared prison and the revocation of his medical license. (Tr. at 26-30, 38-39, 46-47, 51, 53-55; St. Ex. 3; Board Exhibits A, B).

Dr. Fierra advised that he had been offered the plea bargain on the Friday before the Monday on which his trial was to start. Dr. Fierra further testified that it had been “very, very hard” to plead guilty because he “didn’t do anything wrong.” He stated that he had never received the \$150,000 in payments that he had been accused of unlawfully obtaining, but rather that the money had been paid to “Detroit Clinic, Inc.” He testified that he had not received the money but had, in fact, been “grossly underpaid \* \* \* [o]r not paid at all” for his work at Detroit Clinic. He stated that he had received a salary which amounted to about seven or eight thousand dollars over four years. (Tr. at 30-31, 36, 39, 50).

5. Dr. Fierra provided some information about his involvement with Buckeye Therapy and Detroit Clinic. He stated that none of the owners of these clinics had been physicians. He also advised that, at both locations, he had had no responsibility for keeping the medical records or for billing. He further advised that, during the relevant time period, most of his practice had been working at these two locations, but that he had also performed independent medical examinations at his own offices in Cleveland and Akron. (Tr. at 19, 26-27, 47).

Dr. Fierra testified that Buckeye Therapy had been owned by Raymond Gardini, and that an office manager had been responsible for the billing. He further testified that his contract with Buckeye Therapy prohibited his involvement in the business aspect of the practice. (Tr. at 18, 27, 56).

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<sup>1</sup> Section 2929.14(A)(3), Ohio Revised Code

Dr. Fierra testified that Detroit Clinic had been owned by Gary Wayne Yano, with some possible ownership interest by Mr. Yano's wife. Dr. Fierra stated that, in 1996, he had begun renting his office space to the Yanos, because Dr. Fierra spent a lot of time outside his office. Dr. Fierra testified that he had only worked for Detroit Clinic for a few hours each week. He also testified that the Yanos had done the billing and that Mr. Yano had "hid[den] everything" from Dr. Fierra. He also stated that the Yanos had never provided him with any income documentation for tax purposes. (Tr. at 18-19, 26-27, 41, 56).

Dr. Fierra stated that, in or about March 2000, he had learned that he had been under investigation when one of the attorneys for Buckeye Therapy advised Dr. Fierra that the FBI had taken some files. He further testified that he had believed that the federal authorities had been seeking information about Timothy Misny, a personal injury attorney who had a "relationship" with Buckeye Therapy. Dr. Fierra testified that he had been questioned about Mr. Misny by the FBI, but that the federal investigation had not "go[ne] anywhere." (Tr. at 21, 31-33).

Dr. Fierra testified that he believes that he was indicted to pressure him for information about Mr. Misny or "the investors of Buckeye Therapy." He stated that he had not had any such information. Despite the suggestion that the owners of these clinics had been responsible for any unlawful activity, Dr. Fierra admitted that no one else that he had worked with at Buckeye Therapy or the Detroit Clinic had been indicted. (Tr. at 22 35, 47).

Dr. Fierra testified that he had never been aware of or approved improper billing practices. He stated that it had never been alleged that he had had any control over the checkbooks at Detroit Clinic or Buckeye Therapy; that his handwriting had appeared on any fraudulent reports; or that his handwriting had appeared on any checks or deposit slips. (Tr. at 34, 46-47).

6. Dr. Fierra testified that he is currently a certified provider for the BWC, but that he has received notice that the BWC has proposed to decertify him after a hearing. (Tr. at 12, 29).
7. Dr. Fierra admitted that he had not "work[ed] with the best people." However, he maintained that he had never harmed or wronged any patients, and that he had never filed any fraudulent reports. He testified that he has never been accused of issuing a false report, or a report that was not full and comprehensive. Dr. Fierra testified that he enjoys being a doctor and that he likes working with people. He stated that he has loved his work for the Industrial Commission and the BWC. Dr. Fierra also testified that he pays particular attention to billing in his own practice. (Tr. at 40, 43-44, 49-50, 58).

### FINDINGS OF FACT

On March 22, 2004, in the Cuyahoga Court of Common Pleas, Jeffrey James Fierra, M.D., pleaded guilty to, and was found guilty of, two first-degree misdemeanor counts of Workers' Compensation Fraud, in violation of Section 2913.48, Ohio Revised Code, as amended in Counts 1 and 2, as well as one first-degree misdemeanor count of Aggravated Theft, in violation of Section 2913.02, Ohio Revised Code. During these proceedings, the court ordered Dr. Fierra to pay restitution of \$150,000.00 to the Ohio Bureau of Workers' Compensation.

Subsequently, on April 23, 2004, Dr. Fierra was sentenced to the county jail for six months on each of the three counts, to be served concurrently. All but 10 days of the sentence was suspended. Further, Dr. Fierra was fined \$1000.00 and sentenced to three years of probation.

### CONCLUSIONS OF LAW

The guilty plea, and/or the judicial finding of guilt, of Jeffrey James Fierra, M.D., as set forth in the Findings of Fact, individually and/or collectively constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

\* \* \* \* \*

Dr. Fierra denies any responsibility for the crimes of which he has been convicted. Nevertheless, his guilty pleas and convictions are conclusive proof that he committed the crimes.<sup>2</sup>

### PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jeffrey James Fierra, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Fierra's certificate shall be SUSPENDED for an indefinite period of time, but not less than eighteen months.
- B. **INTERIM MONITORING:** During the period that Dr. Fierra's certificate to practice medicine and surgery in Ohio is suspended, Dr. Fierra shall comply with the following terms, conditions, and limitations:

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<sup>2</sup> Rule 4731-13-24, Ohio Administrative Code.

1. **Obey the Law and Terms of Criminal Probation:** Dr. Fierra shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of probation imposed by the Cuyahoga County Court of Common Pleas in criminal case number 442349.
  2. **Personal Appearances:** Dr. Fierra shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. 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.
  3. **Quarterly Declarations:** Dr. Fierra shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which 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.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Fierra's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Fierra shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Compliance with Interim Conditions:** Dr. Fierra shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
  3. **Certification of Compliance with the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall submit to the Board certification from the Cuyahoga County Court of Common Pleas, dated no earlier than sixty days prior to Dr. Fierra's application for reinstatement or restoration, indicating that Dr. Fierra has maintained full compliance with terms of probation in criminal case number 442349.
  4. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Fierra 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.

5. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall provide acceptable documentation of successful completion of a course or courses dealing with personal 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.
6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Fierra has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Fierra shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Practice Plan:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra 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. Fierra's activities and billing will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Fierra shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and billing. Dr. Fierra 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. Fierra's quarterly declaration.

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

3. **Monitoring Physician:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra shall 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 and Supervising Member will give preference to a physician who practices in the same locale as Dr. Fierra and who is engaged in the same or similar practice specialty.

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and bills. Dr. Fierra 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. Fierra's quarterly declaration.

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

physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Fierra 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 therefore.

4. **Tolling of Probationary Period While Out of State:** Dr. Fierra 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.
  5. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Fierra 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.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Fierra's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Fierra violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra 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. Fierra 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.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra 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. Fierra 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 or restoration of any professional license. Further, Dr. Fierra shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

A handwritten signature in black ink, appearing to read "Siobhan R. Clovis". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Siobhan R. Clovis, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF JANUARY 12, 2005

### 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: Ghassan Haj-Hamed, M.D.; Valerie Ann McLin, M.D.; Daniel Howard Brumfield, M.D.; Jeffrey James Fierra, M.D.; Steven Franklin Greer, M.D.; Felicia K. Howard-McGrady, M.D.; Willie L. Josey, M.D.; Thomas R. Pickett, M.D.; and John Alexander Tripoulas, M.D. A roll call was taken:

ROLL CALL:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- 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:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- 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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Dr. Garg joined the meeting at this time.

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Dr. Davidson asked Dr. Garg whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations on this month's agenda, and whether he 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. Dr. Garg responded, "yes," to both questions.

.....

Mr. Browning arrived at this time.

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Mr. Dilling asked Mr. Browning whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations on this month's agenda, and whether he 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. Mr. Browning responded, "yes," to both questions.

JEFFREY JAMES FIERRA, M.D.

Dr. Davidson directed the Board's attention to the matter of Jeffrey James Fierra, M.D. She advised that objections were filed to Hearing Examiner Clovis' Report and Recommendation and were previously distributed to Board members.

Dr. Davidson continued that a request to address the Board has been filed on behalf of Dr. Fierra, but was not filed in a timely manner. She asked whether the Board members wished to allow Dr. Fierra's address.

**DR. STEINBERGH MOVED TO ALLOW DR. FIERRA TO ADDRESS THE BOARD.**  
**DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

Dr. Davidson advised that Dr. Fierra would have five minutes for his address.

Dr. Fierra was accompanied by his counsel, Joyce A. Salisbury.

Dr. Fierra thanked the Board for the opportunity to address it today. He advised that he's been a physician for about 35 years and has worked for some clinics as an independent contractor. He had a Workers' Compensation case that involved one clinic. As an independent contractor, he did his medical work and was restricted to that. At the clinic he did not do any billing, nor did he receive any payments from the Bureau of Workers' Compensation. Dr. Fierra added that he didn't have access to the clinic's checking account or savings account. Dr. Fierra stated that he got paid for some of his work, but not all of his work, at a reasonable rate.

Dr. Fierra stated that, when the case came about, the first plea offer was for him to offer information against a personal injury attorney and the investors of another clinic, where he also worked as an independent contractor. He had no knowledge about the particular attorney or the investors of that other clinic. As time went on, right before the trial, they offered him a plea to reduce three felony charges to three misdemeanors and pay a restitution fee of \$150,000. Even though he did not receive any money from the Bureau of Workers' Compensation, he did take the plea. He pled guilty to three misdemeanors, in lieu of the possibility of being in prison for up to 15 years. At his age of 61, going on 62, he figured that was a life sentence.

Dr. Fierra asked that the Board understand what he's been through, and why he did take the plea agreement, so that he can try to go on with his life.

Ms. Salisbury stated that Dr. Fierra was caught up in an investigation of the clinic. He was not the target of the investigation, but his belief is that the investigators were trying to put pressure on him, to find information on their target. Dr. Fierra had no such information. They came up with charges against Dr. Fierra, and he maintained then and maintains now that he was not guilty of any of those charges. When

Dr. Fierra's attorney during the criminal investigation explained to the Prosecutor how the case against Dr. Fierra was suspect, Dr. Fierra thought that that would be the end of it. However, what the Attorney General's office did do is to reduce the charges against him if he would plead guilty to them. Dr. Fierra asked his attorney in that matter why he should plead guilty to something that he never did. His attorney at that time told him that they were reducing three felony charges against him to three misdemeanors, asking for \$150,000 in restitution, not asking for any jail time. Dr. Fierra believed at that time that he may be able to keep his medical license.

Ms. Salisbury advised that Dr. Fierra entered the plea. She asked the Board members to put themselves in Dr. Fierra's position. He'd done nothing wrong, yet he had the possibility of spending 15 years in prison. She asked whether the Board members would entrust 15 years of their lives to a jury on a matter as complicated as issues involving medical billing and coding. Dr. Fierra decided that he wasn't going to risk that. He would enter the plea. He believed that if he were called before the Board, the Attorney General would have to present evidence to the Board and he would be able to show the Board exactly what happened: What he did and didn't do. That opportunity was never presented to him. He was told that, because he had entered a plea to the misdemeanor charges, that that was automatic grounds for suspension.

Ms. Salisbury stated that nowhere along the way has anybody heard any evidence against him. He has never had an opportunity to refute any evidence. Dr. Fierra is standing before the Board today, asking the Board to please look beyond his plea and try to see what he did and didn't do. He's asking that, if the Board, when considering the Hearing Examiner's Recommendation, believes, as he does, that the Recommendation is severe, the Board not revoke his license nor suspend it. Ms. Salisbury asked that, if the Board feels compelled to suspend Dr. Fierra's license, it stay the suspension. Ms. Salisbury stated that the ultimate irony in this case is that Dr. Fierra entered the plea in order to be able to continue with his life and his practice. He never dreamed that he would be before the Board today at a hearing that could result in the suspension of his license.

Dr. Steinbergh asked Dr. Fierra why he chose to do this type of practice with his background in radiology. She also asked whether the billing was done with Dr. Fierra's tax ID number, versus the clinic tax ID number.

Dr. Fierra stated that billing was done with the clinic's tax ID number. He added that radiology required too much visual repetition. He liked dealing with patients a lot better. He liked the communication aspect. He added that he may not have been able to read films as fast as some other radiologists. He was maybe too careful and had some problems with that. He did wind up working for, roughly, three outpatient clinics, and they all went out of business for different reasons, such as mismanagement and so forth.

Dr. Steinbergh noted that Dr. Fierra did say on the record that he very much enjoys the work he's doing now.

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

Mr. Wilcox spoke in support of the Report and Recommendation in this matter. He believes that the record is undisputed that Dr. Fierra pled guilty to two misdemeanor counts of Workers' Compensation fraud and one misdemeanor count of aggravated theft. All of these convictions were directly related to his medical practice. The judge in this case sentenced Dr. Fierra to six months in jail, with Dr. Fierra serving ten days, the remainder of the time being suspended. The Court also ordered Dr. Fierra to pay \$150,000 in restitution.

Mr. Wilcox stated that, although the recommended 18-month suspension is a considerable suspension, he believes that it is warranted because Dr. Fierra did not accept any responsibility for his actions at hearing. As the Board sees today, he still accepts no responsibility for doing anything wrong. In spite of his pleading guilty in the Cuyahoga County Common Pleas Court, which the Judge found to be made knowingly, intelligently and voluntarily, Dr. Fierra came to hearing and denied responsibility for his convictions. Mr. Wilcox advised that the record contains, and he's sure that the Board members have read, the sentencing transcript and the plea hearing transcript. In the plea hearing transcript, the Judge notified Dr. Fierra that this could have adverse effects on his medical license, and that he would report this to the Medical Board. Today Dr. Fierra has denied responsibility and has blamed the charges on the clinics where he worked. Mr. Wilcox stated that if Dr. Fierra wanted a chance to deny the charges, he could have done so at trial. He chose not to do so. He pled guilty. Mr. Wilcox stated that this is a physician who admitted his crimes to a judge in Court and then reversed his spiel today and comes in and tells the Board that he was completely innocent of any improper billing. Mr. Wilcox stated that he doesn't think that this is credible, and he believes that the Order should be supported, as written.

Dr. Bhati asked who owns the clinic. He stated that ownership of the clinic is important because the aggravated charges were against the doctor and not the clinic.

Mr. Wilcox stated that, from his understanding, no one else was indicted in this case and the charges were not against the clinic.

Mr. Browning stated that that doesn't answer Dr. Bhati's question. It's an ownership question. Did Dr. Fierra have an ownership interest in the clinic?

Mr. Wilcox stated that that never came up.

Dr. Steinbergh stated that it's clear who owned the clinics and that Dr. Fierra was being paid by the clinics.

Mr. Wilcox stated that the hearing didn't retry the case. He didn't have any of the witnesses involved. He added that this was a bootstrap hearing, and he had to go by the evidence that he has.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JEFFREY JAMES FIERRA, M.D. MS. SLOAN SECONDED THE MOTION.**

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

Dr. Steinbergh stated that she appreciates this case and Dr. Fierra's guilty pleas. She felt that the hearing record was very complete and answered all of the questions that she had regarding billing. She also thought that in the record Mr. McGinty pointed out in an appropriate way that, if you worked for the Cleveland Clinic, and the Cleveland Clinic did your billing, and there was a problem, would a doctor expect that he'd be liable for the billing errors and mistakes of his or her employer.

Dr. Steinbergh stated that she absolutely believes Dr. Fierra. She sees no evidence of collusion or a scheme to defraud the Bureau of Workers' Compensation by Dr. Fierra. She found no evidence that he financially benefited in any way. For some reason the Board is not aware of any indictments against these two companies who were responsible for the billing and receiving the monies from the Bureau. Dr. Fierra pled guilty for the reasons that he gave, and she absolutely believes them. He's paid restitution of the money, he's spent a little time in jail, and he denies responsibility. Dr. Steinbergh added that she doesn't believe that Dr. Fierra was responsible.

**DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER BY SUBSTITUTING AN ORDER OF REPRIMAND. DR. EGNER SECONDED THE MOTION.**

Dr. Davidson stated that she would entertain discussion on the motion to amend.

Dr. Robbins stated that he has a little different take on this. He stated that Dr. Fierra was employed by the clinic. He was the one doing the care, and he has the responsibility to check those bills, whoever is doing his billing. Dr. Robbins stated that, although he does believe Dr. Fierra when he says that he didn't benefit from this, Dr. Fierra does submit the charges. He does what all physicians do, and he has trust in the billing people that either work for him, or are part of his organization. Dr. Robbins stated that, as far as he's concerned, there is some responsibility there. Dr. Fierra can't just say that he didn't have anything to do with it. Dr. Robbins stated that there is an obligation there that, in his mind, can't be divorced. Dr. Robbins stated that he leans toward the Proposed Order.

Dr. Kumar agreed with Dr. Robbins. If you look at it, BWC, Medicare or Medicaid requires each individual physician to sign an individual attestation that all the billing, etc., that will be done on his or her behalf is appropriate, even in hospitals and places of that nature. There is an individual responsibility to make certain that the billing is correct. Dr. Kumar stated that it is very possible that Dr. Fierra did not pay attention because it was billed by the clinic, but it's still a physician who provides the services. The billing is done in the name of the physician. The individual physician does have a responsibility as to how those bills are being sent. Dr. Kumar stated that he does not support a reprimand in this case.

Dr. Steinbergh agreed with Dr. Kumar, physicians are responsible for their billing; however, in this record, two things impressed her: 1. Dr. Fierra stated in the record that he had no access to the billing. Dr. Steinbergh stated that after seeing Dr. Fierra and listening to him, she honestly believes that. 2. Also in the record was a reference to a report by a Dr. Kennedy, which would have discussed the billing errors.

There was to have been a State's Exhibit No. 7, which was withdrawn, she believes, because of the objections by Dr. Fierra's attorney. Dr. Steinbergh stated that she would love to have seen that report because, quite frankly, the Board doesn't know the exact errors that have been made. She believes that that might possibly change her mind, although she can't say that.

Dr. Steinbergh stated that when she takes a look at the totality of this case, the amount of money, the fact that this physician is an independent contractor for this group who pays his own taxes and this type of thing, he goes in and does the work. Part of his work, of course, would be to submit an encounter form. He circles what he did, it goes off to the billing department, which submits it to the BWC. Dr. Steinbergh stated that she believes that Dr. Fierra isn't seeing the bill. Dr. Steinbergh stated that, because she does believe that, because Dr. Fierra isn't an integral part of the practice, and because a partner or someone else was hired to do billing, she absolutely, positively believes Dr. Fierra, and she believes that the Proposed Order is much too severe. Dr. Steinbergh again stated that Dr. Fierra has paid restitution for money that she doesn't believe he needed to pay. She feels badly that Dr. Fierra had to enter the plea, but she does understand why he did, and added that she would probably have to do so herself, if she were in the same circumstances. Dr. Steinbergh stated that she thinks that Dr. Fierra has been through enough, and a reprimand on his license is sufficient. She doesn't believe that putting him through anything more protects the public at all, and it's just one more thing that the Board would be doing to a physician who she doesn't think deserves it.

Dr. Buchan stated that he does appreciate Dr. Steinbergh's sentiment. As he reviewed this case, he also knows that most of what he appreciates was Dr. Fierra's testimony. The Board doesn't have access to the hard facts because this was a bootstrap case. What the Board does know is that the Courts, having access to all the information, sentenced this physician to six months in jail and fined him \$150,000. Dr. Buchan stated that he doesn't take that lightly. Dr. Buchan stated that he appreciates Dr. Fierra's testimony this afternoon, but noted that most of what the summary of evidence describes and reflects is Dr. Fierra's sentiment. Dr. Buchan stated that he appreciates it, but the fact of the matter is that the hard data suggests that the Board needs to come down on the harder side of things. Although he would agree to a suspension shorter than the proposed 18 months, he can't buy into the proposed reprimand. It's based too much on Dr. Fierra's testimony, which was persuasive, but not in line with what the Court suggested the outcome would be. The Court was firm, and it was hard on this guy.

Dr. Steinbergh asked whether other Board members question why the companies themselves were not indicted. She stated that she doesn't know to this day if they have been, but it bothers her.

Dr. Buchan stated that it bothers him, too, but added that the Board has to base this decision on a limited amount of information. Most of the information he has to trust was reviewed thoroughly by the courts, who had that information. The Board heard the courts speak, and to suggest something different on more limited information is not the direction in which the Board should go.

Dr. Kumar stated that a possible explanation for Dr. Steinbergh's question is that it's very likely that the business or corporate entity went out of business and there was nothing to indict. The corporate structure

protects some of these things. Many times these things do fall on the provider, who actually provided the services. Dr. Kumar stated that even if you're working as in independent contractor, there are forms he must complete appropriately. Dr. Kumar suggested that Dr. Fierra didn't do that. He also agreed that an 18-month suspension is too long, but a reprimand is too mild.

Mr. Browning suggested a six-month suspension as an alternative. He added that accountability is in order here, but there's an issue of intent. Basically, the Board is levying a fine on this person by taking him out of practice for a period of time. The longer it is, the higher the fine. Given the facts in this case, a reasonable middle ground is in order and he recommended six months.

Dr. Davidson called for a vote on Dr. Steinbergh's motion to amend.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Bhati	- nay
	Dr. Buchan	- nay
	Dr. Kumar	- nay
	Mr. Browning	- nay
	Ms. Sloan	- nay
	Dr. Robbins	- nay
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion failed.

**MR. BROWNING MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JEFFREY JAMES FIERRA, M.D., BY CHANGING THE 18-MONTH MINIMUM SUSPENSION IN PARAGRAPH "A" TO A SIX-MONTH MINIMUM SUSPENSION. DR. BUCHAN SECONDED THE MOTION.**

Dr. Robbins spoke in support of the proposed amendment, stating that he's not tied to the 18-month suspension in the original Proposed Order. Dr. Robbins stated that he agrees with Dr. Steinbergh, and as he reads this, he's compelled more toward leniency without any question. However, for this situation to have occurred, there was, at the very least, significant naiveté on Dr. Fierra's part. Dr. Fierra has more of a duty toward billing than to just walk in and abdicate the responsibility to whomever, to charge whatever they want. Dr. Robbins stated that he doesn't think that that's what a reasonable physician in this situation would do. That's a mistake.

Dr. Steinbergh agreed that there was naiveté, but she also feels that the naiveté in this particular physician

was understandable. There are a lot of physicians who are going to be in this man's place because they are naïve and they do not understand their responsibilities. Those who sit at the Board table have a lot more experience, not only in practice and business, but there are a tremendous number of physicians who are under the same type of situation that Dr. Fierra is under who absolutely do not understand. She added that she hopes that this will become a wakeup call for Dr. Fierra and that he'll begin to take courses in the appropriate billing for BWC, Medicare, and so forth, because that will be an educational piece for him.

Dr. Kumar agreed that some courses in CPT recording and billing issues are necessary. He also felt that the Board should require Dr. Fierra to take personal and professional ethics courses.

Dr. Steinbergh suggested she doesn't think he needs a personal ethics course. She thinks he will learn something from a professional ethics course and a BWC course.

**MR. BROWNING ADVISED THAT HE WOULD ACCEPT THE PROFESSIONAL ETHICS AND BWC COURSES AS FRIENDLY AMENDMENTS. DR. BUCHAN, AS SECOND, AGREED. A vote was taken:**

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

The motion carried.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JEFFREY JAMES FIERRA, M.D. DR. BHATI SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye

Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

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

July 14, 2004

Jeffrey James Fierra, M.D.  
1230 Orchard Heights Drive  
Mayfield Heights, Ohio 44124

Dear Doctor Fierra:

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 medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about March 26, 2004, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to, and were found guilty of, two (2) misdemeanor counts of workers compensation fraud, in violation of R.C. 2913.48, M-1, as amended in Counts 1 and 2, as well as one (1) misdemeanor count of aggravated theft, in violation of R.C. 2913.02, M-1, as amended in Count 3. In those proceedings, the Court ordered you to pay restitution of \$150,000.00 to the Ohio Bureau of Workers Compensation.

Subsequently, on or about April 23, 2004, you were sentenced to the County Jail for a term of six (6) months on each of the above three (3) counts, the terms to run concurrent with each other; all but ten (10) days of this sentence was suspended. Further, you were fined \$1,000.00 and sentenced to three (3) years probation.

Your underlying conduct is provided in greater detail in the Indictment, Journal Entry filed March 26, 2004 (plea proceedings) and Journal Entry filed April 23, 2004 (sentencing), copies of which are attached hereto and incorporated herein.

Your plea of guilty, and/or the judicial finding of guilt, as alleged in paragraph one (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in R.C. 4731.22(B)(11).

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 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.

*Mailed 7-15-04*

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 medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), 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/cw  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5142 3066  
RETURN RECEIPT REQUESTED

Duplicate Mailing  
2012 West 25<sup>th</sup> Street, Suite 601  
Cleveland, Ohio 44113-4119

CERTIFIED MAIL # 7000 0600 0024 5142 3059  
RETURN RECEIPT REQUESTED

CC:MLL

THE STATE OF OHIO  
VS.

JEFFREY J. FIERRA, M.D.

A TRUE BILL INDICTMENT FOR

WORKERS COMPENSATION FRAUD R.C. 2913.48  
W/CTS

DATE OF OFFENSE AUGUST 2, 1996 TO JUNE 14, 2000	THE TERM OF SEPTEMBER OF 2003	CASE NO. CR 442349	COUNT 1-3
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The State of Ohio, }  
CUYAHOGA COUNTY } SS.

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, **IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO**, Do find and present, that the above named Defendant(s), on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully

with purpose to defraud or knowing that he was facilitating a fraud on The Ohio Bureau of Workers Compensation, made or presented, or caused to be made or presented false and misleading statements with purpose to secure payment for goods or services rendered under Chapter 4121, 4123, 4127, or 4131 of the Revised Code.

The value of the goods, services, property or money stolen was \$100,000.00 or more.

**COUNT TWO - WORKERS COMPENSATION FRAUD R.C. 2913.48**

The Grand Jurors, on their oaths, further find that the Defendant(s) unlawfully with purpose to defraud or knowing that he was facilitating a fraud on The Ohio Bureau of Workers Compensation, did alter, falsify, destroy, conceal or remove any record or documents that is necessary to fully establish the validity of any claim filed with or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from the bureau of Workers Compensation or a self-insuring employer under Chapter 4121, 4123, 4127 or 4131 of the Revised Code.

The value of the goods, services, property or money was \$100,000.00 or more.

**COUNT THREE - AGGRAVATED THEFT R.C. 2913.02**

The Grand Jurors, on their oaths, further find that the Defendant(s) unlawfully knowingly and by deception obtained or exerted control over money, with the purpose to deprive the owner, The Ohio Bureau of Workers Compensation, of said property or services.

The value of said property or services being \$100,000.00 or more

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

*Stephen F. Rescher*  
Foreman of the Grand Jury

*William A. Mason*  
Prosecuting Attorney

RECEIVED FOR FILING  
SEP 30 2003  
By: *W. E. Puerst* Clerk

THE STATE OF OHIO }  
Cuyahoga County } SS. I. GERALD E. FUERST, CLERK OF  
THE COURT OF COMMON PLEAS  
WITHIN AND FOR SAID COUNTY.  
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY  
TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL  
Indictments CR: 742349  
NOW ON FILE IN MY OFFICE.  
WITNESS MY HAND AND SEAL OF SAID COURT THIS 10<sup>th</sup>  
DAY OF June A.D. 2004  
GERALD E. FUERST, Clerk  
By Lisa Jones Deputy

~~\_\_\_\_\_~~  
OHIO STATE MEDICAL BOARD  
JUN 14 2004

442349020761220040322113040326PLEA



STATE OF OHIO,  
CUYAHOGA COUNTY

SS.

IN THE COURT OF COMMON PLEAS

JANUARY TERM, 2004  
22 2004

STATE OF OHIO  
VS.

PLAINTIFF

TO-WIT: MARCH  
NO. CR 442349

DEFENDANT

INDICTMENT WORKERS COMP FRAUD, AGG THEFT

JEFFREY J FIERRA M.D.

JOURNAL ENTRY

DEFENDANT IN COURT WITH COUNSEL HENRY HILOW. PROSECUTING ATTORNEY STEVEN CANFIL OF ATTORNEY GENERAL'S OFFICE AND COURT REPORTER PRESENT. DEFENDANT WAS ADVISED OF ALL CONSTITUTIONAL RIGHTS AND PENALTIES. ON RECOMMENDATION OF THE PROSECUTOR COUNTS 1, 2 AND 3 ARE AMENDED BY DELETING THE VALUE SENTENCE.

DEFENDANT RETRACTS FORMER PLEA OF NOT GUILTY AND ENTERS A PLEA OF GUILTY TO WORKERS COMPENSATION FRAUD ORC 2913.48 M-1 AS AMENDED IN COUNTS 1 AND 2; AGGRAVATED THEFT ORC 2913.02 M-1 AS AMENDED IN COUNT 3.

COURT FINDS THE DEFENDANT GUILTY. DEFENDANT TO PAY RESTITUTION OF \$150,000.00 TO BUREAU OF WORKMEN'S COMPENSATION OF \$50,000.00 TO BE PAID BY SENTENCING DATE.

THE DEFENDANT IS REFERRED TO THE COUNTY PROBATION DEPARTMENT FOR A PRE-SENTENCE INVESTIGATION AND REPORT. DO NOT SEND PRE-SENTENCE INVESTIGATION TO STATE. PRE-SENTENCE INVESTIGATION REPORT DUE TO COURT BY APRIL 15, 2004.

ORIGINAL BOND CONTINUED.

SENTENCING SET FOR APRIL 16, 2004 AT 11:00 A. M.

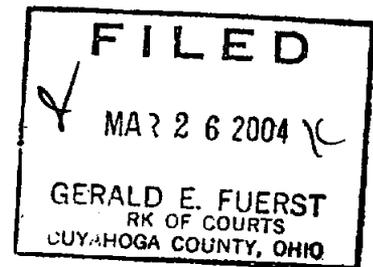
THE STATE OF OHIO } I. GERALD E. FUERST, CLERK OF  
Cuyahoga County } SS. THE COURT OF COMMON PLEAS  
WITHIN AND FOR SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY  
TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL  
Journal Entry CR 442349

NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 29<sup>th</sup>  
DAY OF April A.D. 2004

GERALD E. FUERST, Clerk  
By Lisa A. Jones Deputy



03-22-2004

PLEA CAL 03/24/04 12:17

JUDGE

Nancy Margaret Russo  
NANCY MARGARET RUSSO

COPIES SENT TO:

Sheriff \_\_\_\_\_

Other \_\_\_\_\_

Defendant \_\_\_\_\_



STATE OF OHIO,  
CUYAHOGA COUNTY

SS. IN THE COURT OF COMMON PLEAS

JANUARY TERM, 2004  
16 2004

STATE OF OHIO  
VS.

PLAINTIFF  
DEFENDANT

TO-WIT: APRIL  
NO. CR 442349

INDICTMENT WORKERS COMP FRAUD, AGG THEFT

JEFFREY J FIERRA M.D.  
1230 ORCHARD HEIGHTS DR  
CLEVELAND, OH 44124  
05/01/43  
ITN: 79822P

JOURNAL ENTRY

DEFENDANT IN COURT WITH COUNSEL WILLIAM MCGINTY AND COURT REPORTER.  
ON A FORMER DAY DEFENDANT ENTERED PLEA OF GUILTY TO WORKER'S COMPENSATION  
FRAUD R. C. 2913.48 M-1 SENATE BILL TWO, AS AMENDED IN COUNTS ONE AND TWO;  
AGGRAVATED THEFT R. C. 2913.02 M-1 SENATE BILL TWO, AS AMENDED IN COUNT THREE.  
PROSECUTOR ADDRESSES THE COURT.

THE COURT CONSIDERED ALL OF THE REQUIRED FACTORS OF THE LAW.

IT IS THEREFORE ORDERED AND ADJUDGED THAT SAID DEFENDANT, JEFFREY J.  
FIERRA, IS SENTENCED TO COUNTY JAIL FOR A TERM OF SIX MONTHS ON EACH OF COUNTS  
ONE, TWO AND THREE, COUNTS TO RUN CONCURRENT WITH EACH OTHER; ALL BUT TEN DAYS  
OF THIS SENTENCE SUSPENDED. DEFENDANT TO RECEIVE JAIL CREDIT OF TWO DAYS TO  
DATE. DEFENDANT TO REPORT APRIL 19, 2004 TO SERVE TEN DAY COUNTY JAIL SENTENCE.

AFTER COMPLETION OF COUNTY JAIL SENTENCE, DEFENDANT IS TO SERVE THREE  
YEARS PROBATION WITH THE FOLLOWING CONDITIONS: DEFENDANT TO ABIDE BY THE RULES  
AND REGULATIONS OF THE PROBATION DEPARTMENT; SUBMIT TO REGULAR DRUG AND ALCOHOL  
TESTING EACH REPORT DATE, ARREST ON FIRST POSITIVE/FAILURE TO REPORT/NEW CASE;  
OBTAIN/MAINTAIN EMPLOYMENT OF 30 HOURS PER WEEK/VERIFIED.

DEFENDANT TO PAY SUPERVISION FEE OF \$300.00 ONLY. DEFENDANT TO PAY  
\$100,000.00 IN RESTITUTION AND \$1,000.00 FINE. DEFENDANT TO PAY COURT COSTS.  
DEFENDANT TO PAY 1/3 OF HIS FINANCIAL OBLIGATIONS EACH YEAR OF HIS THREE YEAR  
PROBATION TERM. ALL FINANCIAL OBLIGATIONS ORDERED PAID IN FULL BY MARCH 19,  
2007.

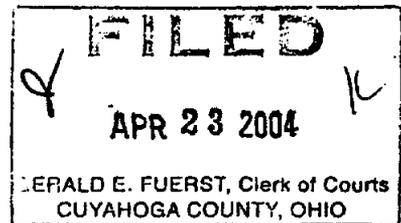
\*\*THIS ENTRY IS NOT A JUDGMENT SUBJECT TO COLLECTION. CLERK PROHIBITED  
FROM RELEASING ANY PORTION OF THIS ENTRY TO ANY AGENCY OR CORPORATION WHO SEEKS  
ITS USE TO COLLECT THESE MONIES AS A DEBT.

THE STATE OF OHIO } I. GERALD E. FUERST, CLERK OF  
Cuyahoga County } SS. THE COURT OF COMMON PLEAS  
WITHIN AND FOR SAID COUNTY

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY  
TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL  
JOURNAL ENTRY CR 442349  
NOW ON FILE IN MY OFFICE 298  
WITNESS MY HAND AND SEAL OF SAID COURT THIS 16  
DAY OF April A.D. 2004

GERALD E. FUERST, Clerk

By Lisa A. Jones Deputy



04-16-2004  
SENT BXM 04/21/04 14:09

JUDGE Nancy Margaret Russo  
NANCY MARGARET RUSSO

COPIES SENT TO:

Sheriff BC 4-23-04  
 Defendant

Other Cost