

The Supreme Court of Ohio

RECEIVED
Attorney General's Office
AUG 26 1993
Health & Human
Services Section

1993 TERM

To wit: August 25, 1993

Pablo A. Pons, M.D.,
Appellee,

Case No. 92-115

v.

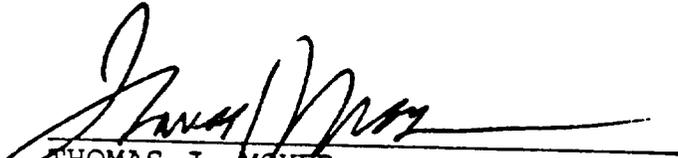
REHEARING ENTRY

State Medical Board of Ohio,
Appellant.

(Franklin County)

IT IS ORDERED by the Court that rehearing in this case be,
and the same is hereby, denied.

(Court of Appeals No. 91AP746)


THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio **COPY**

1993 TERM

— To wit: July 7, 1993

Pablo A. Pons M.D.,
Appellee,

:
:

Case No. 92-115

v.

:

MANDATE

State Medical Board of Ohio,
Appellant.

:
:

To the Honorable Court of Common Pleas

Within and for the County of Franklin, Ohio.

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Judgment of the court of appeals is reversed consistent with the opinion rendered herein.

COSTS:

Motion Fee, \$40.00, paid by Attorney General of Ohio/
Susan Walker.

(Court of Appeals No. 91AP746)



THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

RECEIVED
ATTORNEY GENERAL'S OFFICE

JUL 13 1993

LABOR & HUMAN
SERVICES SECTION

1993 TERM

To wit: July 7, 1993

Pablo A. Pons M.D.,
Appellee,

v.

State Medical Board of Ohio,
Appellant.

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Case No. 92-115

JUDGMENT ENTRY

APPEAL FROM THE
COURT OF APPEALS

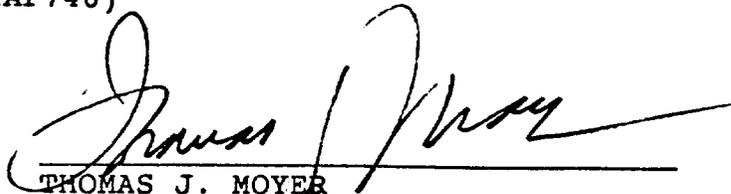
This cause, here on appeal from the Court of Appeals for Franklin County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed consistent with the opinion rendered herein.

It is further ordered that the appellant recover from the appellee its costs herein expended; and that a mandate be sent to the Court of Common Pleas for Franklin County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin County for entry.

COSTS:

Motion Fee, \$40.00, paid by Attorney General of Ohio/
Susan Walker.

(Court of Appeals No. 91AP746)


THOMAS J. MOYER
Chief Justice

PONS, APPELLEE, v. OHIO STATE MEDICAL BOARD, APPELLANT.

[Cite as *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619.]

Physicians—State Medical Board—Disciplinary proceeding—When reviewing medical board's order, courts must accord due deference to board's interpretation of technical and ethical requirements of its profession.

When reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession.

See: West's Ohio Digest, Physicians and Surgeons ⇨11.3(5).

(No. 92-115—Submitted March 16, 1993—Decided July 7, 1993.)

APPEAL from the Court of Appeals for Franklin County, No. 91AP-746.

In 1970, appellee, Pablo A. Pons, M.D., became licensed to practice medicine in Ohio. Since then, he has specialized in obstetrics and gynecology. On November 9, 1989, appellant, Ohio State Medical Board ("board"), notified Dr. Pons that it proposed to take disciplinary action against him for violations of R.C. 4731.22(B)(6) (a departure from, or failure to conform, to minimal standards of care) and former R.C. 4731.22(B)(15) and its successor former R.C. 4731.22(B)(14)¹ (violations of medical ethics) in his treatment of a woman referred to as "Patient 1."

On January 30, 1990, a hearing was held before a hearing officer with regard to the board's allegations. The testimony and exhibits received at this proceeding and as noted in the findings of fact, revealed that Dr. Pons was the treating physician of Patient 1 from around 1973 to March 26, 1984. Sometime in 1976, Dr. Pons began a sexual and emotional relationship with her. This relationship lasted until 1983.

Dr. Pons first saw Patient 1 in 1973, when he had been called as a consult by her family physician to perform a therapeutic abortion for her. In large part, the medical indication for the abortion was Patient 1's severe anxiety, anxiety which arose from the birth of a previous child with Down's Syndrome. Dr. Pons was aware of this previous history of psychiatric problems, including Patient 1's treatment and subsequent hospitalization for these problems.

Prior to the beginning of their sexual relationship, Dr. Pons continued to treat Patient 1 for periods of depression and anxiety. At one point, in 1975,

1. Pursuant to amendments to R.C. Chapter 4731, the section numbers of this provision have changed at least four times since its enactment in 1967.

Dr. Pons counseled Patient 1 and her husband regarding their marital difficulties.

From 1974 to March 1984, Dr. Pons served as Patient 1's exclusive physician. He treated her for all her gynecological problems. He also provided non-gynecological medical care, such as treatment for back pain (severe enough to warrant hospitalization), and the removal of a mole or cyst from Patient 1's shoulder because Patient 1 refused to see other physicians.

When Patient 1 became pregnant with his child in 1983, Dr. Pons ended his sexual relationship with her, yet continued to professionally treat her throughout the pregnancy, serving as her attending obstetrician at the birth. Dr. Pons terminated his professional relationship with Patient 1 in March 1984. At this time, Patient 1 was exhibiting severe depression and Dr. Pons recommended psychiatric treatment.

Expert medical testimony was also provided. The expert witness, Dr. George P. Leicht, opined that Dr. Pons' overall care departed from the minimum standards of care of similar practitioners under the same or similar circumstances because the sexual relationship placed Dr. Pons in a very compromising position in which, as an objective individual, he would have difficulty in rendering appropriate guidance and care.

In addition, Dr. Leicht believed Dr. Pons violated several provisions of the American Medical Association Principles of Medical Ethics for his failure to deal objectively and honestly with the patient and exhibiting a lack of respect for her dignity. Also, Dr. Pons failed to adhere to ethical principles when he neglected to seek a consultation regarding Patient 1's apparent psychiatric problems.

After hearing this evidence, the hearing examiner concluded that Dr. Pons had violated R.C. 4731.22(B)(6), (14) and (15). He filed his report and recommendations to that effect. After considerable discussion, the board approved and confirmed the findings of fact and conclusions of law, yet adopted an amended order. The board's order revoked Dr. Pons' certificate to practice medicine and surgery, stayed the revocation, and indefinitely suspended his certificate for not less than one year, subject to conditions.²

Pursuant to R.C. 119.12, Dr. Pons filed an administrative appeal to the Franklin County Common Pleas Court. The common pleas court affirmed, finding that the board's order was supported by reliable, probative and substantial evidence, and was in accordance with law. Upon further appeal, the court of appeals vacated the judgment of the common pleas court and

2. The hearing officer recommended an indefinite suspension for not less than two years.

remanded the cause to the board with instructions that the finding as to violations of R.C. 4731.22(B) be reversed and the disciplinary action dismissed.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

Porter, Wright, Morris & Arthur, William M. Todd and Terri-Lynne B. Smiles, for appellee.

Lee I. Fisher, Attorney General, *Susan C. Walker* and *Diane M. Weaver*, Assistant Attorneys General, for appellant.

Katrina Miller English, urging reversal for *amicus curiae*, Ohio State Medical Association.

David Orentlicher, urging reversal for *amicus curiae*, American Medical Association.

David Goldberger and *Robin Thomas*, urging reversal for *amici curiae*, Ohio National Organization for Women, Citizen Action, Committee Against Sexual Harassment, Ohio Coalition on Sexual Assault, Project Woman, Senator Linda Furney, and Representative Raymond Miller.

FRANCIS E. SWEENEY, SR., J. In an appeal from a medical board's order, a reviewing trial court is bound to uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12; *In re Williams* (1991), 60 Ohio St.3d 85, 86, 573 N.E.2d 638, 639. The appellate court's review is even more limited than that of the trial court. While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, *i.e.*, being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for those of the medical board or a trial court. Instead, the appellate court must affirm the trial court's judgment. *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 260-261, 533 N.E.2d 264, 266. See, also, *Rosford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707, 590 N.E.2d 1240, 1241.

Moreover, when reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. The policy reason for this was noted in *Arlen v. State* (1980), 61 Ohio St.2d 168, 173, 15 O.O.3d 190, 194, 399 N.E.2d 1251, 1254-1255: " * * * The purpose of the General Assembly in providing for

administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [people] equipped with the necessary knowledge and experience pertaining to a particular field. * * *” (Quoting *Farrand v. State Med. Bd.* [1949], 151 Ohio St. 222, 224, 39 O.O. 41, 42, 85 N.E.2d 113, 114.)

Thus, the narrow issue before us today is to determine whether the appellate court correctly determined that the trial court abused its discretion in affirming the board's decision. For the following reasons, we hold that it did not. Accordingly, we reverse its decision.

I

The board concluded that the acts, conduct, and/or omissions of Dr. Pons fell below the minimum standards of care in violation of R.C. 4731.22(B)(6): “A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.” The board never alleged that Dr. Pons' surgical skills were remiss or that he lacked basic medical knowledge. However, the board felt that the care a doctor renders to a patient includes more than just procedures performed or medications prescribed. The overall care consists of the entire treatment relationship between the physician and patient.

In finding that Dr. Pons' overall care of Patient 1 was deficient, the board specifically found that Dr. Pons exhibited extremely poor medical judgment by entering into an emotional and sexual relationship with Patient 1 when he had reason to believe she was in a vulnerable, unstable, emotional state. The basis of this belief was that the sexual relationship began after Dr. Pons had received over one year's worth of complaints from Patient 1 of depression, anxiety, and marital discord. Additionally, he knew of her previous psychiatric hospitalization, he had prescribed anti-depressants for her, and he had counseled Patient 1 and her husband for their marital difficulties. Dr. Pons knew, or should have known, that Patient 1 placed a great deal of trust in him, and that by entering into an emotional relationship with her this was likely to be detrimental to Patient 1's already unstable condition. In doing so, Dr. Pons was not acting in Patient 1's best interest.

Also, the board determined that Dr. Pons failed to maintain the level of objectivity that minimal standards of care dictate by advising Patient 1 on various forms of birth control while engaging in a sexual relationship with her, thus serving his own personal desire that she not become pregnant with his child. In addition, he lacked objectivity when he failed to insist she see specialists for her back pain and psychiatric care or counseling for her marital

problems. Indeed, the board felt Dr. Pons took personal advantage of the fact that Patient 1 and her husband were having marital difficulties, an intimate fact learned through the professional relationship.

A medical disciplinary proceeding is a special statutory proceeding conducted by twelve persons, eight of whom are licensed physicians. R.C. 4731.01. Thus, a majority of the board members possess the specialized knowledge needed to determine the acceptable standard of general medical practice. *In re Williams, supra*, at 87, 573 N.E.2d at 640. Hence, the medical board is quite capable of interpreting technical requirements of the medical field and quite capable of determining when conduct falls below the minimum standard of care. *Arlen, supra*, at 173, 15 O.O.3d at 194, 399 N.E.2d at 1254.

Dr. Pons' testimony, Patient 1's medical records, and the expert witness' testimony support the board's finding that Dr. Pons failed to conform to minimal standards of care. The common pleas court, finding reliable, probative, and substantial evidence existed in the record, properly upheld the board's order. The appellate court incorrectly found an abuse of discretion and improperly substituted its judgment for those of the board and the trial court on this finding.

II

The board also found Dr. Pons' behavior violated R.C. 4731.22(B)(14) and (15). R.C. 4731.22(B)(14) and (15) authorize the board to discipline physicians for violations of ethical standards adopted by national professional organizations such as those promulgated by the American Medical Association ("AMA").

The specific provisions Dr. Pons was charged with violating include Sections 1, 4, 6, and 8 of the AMA Principles of Medical Ethics in effect until July 1980, and Sections I, II, and IV of the AMA Principles of Medical Ethics in effect after July 1980. These provisions require a physician to provide competent medical service with compassion and respect for human dignity, deal honestly and objectively with a patient, uphold the dignity and honor of the medical profession, seek consultation where appropriate, and safeguard the public against physicians deficient in moral character.

The board concluded that Dr. Pons' conduct was neither honorable nor ethical. The board believed that the necessity of physician objectivity underlies all the enumerated provisions. Where there is a lack of objectivity there can be no assurance that the doctor is acting in the patient's best interest.

In addition, Dr. Pons' conduct was deceitful because he used information acquired through the relationship to his own personal advantage. The board

felt it was implausible that Dr. Pons recommended marriage counseling after beginning his sexual relationship with Patient 1.

The board also believed Dr. Pons was obligated to obtain a consultation with a mental health specialist or insist that Patient 1 accept a referral for these problems.

The board also determined Dr. Pons failed to uphold the dignity and honor of his profession by maintaining this dual relationship and exploiting Patient 1's trust.

We find the board was well within its statutory authority and had the discretion to weigh the evidence and make the decision that Dr. Pons violated the medical profession's Code of Ethics and would be sanctioned pursuant to R.C. 4731.22(B)(14) and (15). Cf. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 687, 590 N.E.2d 1223, 1226: "It takes no citation of authority to safely state that sexual relations between any professional and a client . . . are universally prohibited by the ethical regulations of practically every profession."

In view of the foregoing, we uphold the order of the medical board. Accordingly, the judgment of the court of appeals is reversed.

Judgment reversed.

MOYER, C.J., A.W. SWEENEY, DOUGLAS, WRIGHT and RESNICK, JJ., concur.

PFEIFER, J., dissents.

PFEIFER, J., dissenting. I dissent from the majority's decision. The court of appeals correctly found that the trial court abused its discretion in affirming the Ohio State Medical Board's decision to suspend Dr. Pons for one year.

We grant the medical board the power to discipline doctors in this state, trusting the board more than the courts to be able to determine what constitutes acceptable medical practice. While we have granted the board great discretion, there is a limit to what it can do. We do not require Ohio's doctors to give up all their due process rights in order to practice medicine in Ohio. Orders of the board must be supported by reliable, probative and substantial evidence, and must be in accordance with the law.

In this case, the board went beyond its statutory constraints. Dr. Pons had engaged in a consensual sexual relationship with a patient, and the board found that to be objectionable. Since there is no prohibition of such activity in the Ohio Revised Code, the board was forced to become creative in order to effectively vent its moral outrage. It did so with all the subtlety of the proverbial eight-hundred-pound gorilla that it has become.

The board forced square pegs into round holes, first claiming that Dr. Pons failed to conform to "minimal standards of care of similar practitioners under the same or similar circumstances." As it did in so much of the case against Dr. Pons, the board relied not on facts but on inferences stacked on top of inferences. There was no testimony from Patient 1. There was no testimony from any patient who received any substandard care from Dr. Pons. All of the medical care Dr. Pons administered to Patient 1 was appropriate and met applicable medical standards, and the board did not contend otherwise. Dr. Pons testified that his medical judgment was not clouded by his personal involvement with Patient 1. However, the board conclusorily determined that Dr. Pons' relationship with Patient 1 "clouded Dr. Pons' judgment and caused him to lose his objectivity." However, there was nothing in the record or in the history of Dr. Pons' treatment of Patient 1 which indicated that he actually did use poor medical judgment. The board's determination raises the question as to how any doctor could ever treat a family member or friend without violating R.C. 4731.22(B)(6).

Dr. Pons also supposedly fell below the minimal standards of care by having a "sexual relationship with a married patient who he had reason to believe was suffering from psychiatric, psychological, or emotional problems." Patient 1 was not "Sybil," as the board would like to portray her. There was some evidence that she occasionally was depressed and suffered some anxiety during the course of their affair. There was no evidence presented that any such problems were serious enough to merit treatment. What is more interesting is the board's inclusion of the word "married" in the description of what Dr. Pons did wrong. Why is it relevant that the patient with whom Dr. Pons had his relationship was married? Is the board saying that if Patient 1 had not been married that Dr. Pons' behavior would have been acceptable? If the board is going to start suspending adulterous doctors, this nation is going to have a bigger health care problem than we thought.

The board also found that Dr. Pons' behavior violated R.C. 4731.22(B)(14) and (15) by breaching the AMA's ethical principles. However, those principles, at the time relevant herein, did not prohibit consensual sexual relationships between doctors and their patients. Not until 1991, long after the board heard this case, did the AMA's Council on Ethical and Judicial Affairs announce for the first time in an article entitled "Sexual Misconduct in the Practice of Medicine" (Nov. 20, 1991), 266 J.A.M.A. 2741, 2745, that sexual contact or a romantic relationship concurrent with the physician-patient relationship is unethical.

Since there was no prohibition of such activity, the board again had to twist the law and the facts to suit its decision, claiming that Pons was deceitful and

The Supreme Court of Ohio

1992 TERM

To wit: June 10, 1992

Pablo A. Pons, M.D., : Case No. 92-115
Appellee, :
v. : REHEARING ENTRY
State Medical Board of Ohio, : (Franklin County)
Appellant. :

92-115-303

This cause came on for further consideration upon appellant's motion for rehearing; the motion of Ohio National Organization of Women et al. for leave to appear amicus curiae; and appellee's motion to strike. Upon consideration thereof,

IT IS ORDERED by the Court that said motion for rehearing and motion for leave to appear amicus curiae be, and the same are hereby, granted.

IT IS FURTHER ORDERED by the Court that said motion to strike be, and the same is hereby, denied.

IT IS FURTHER ORDERED by the Court, sua sponte, that the motion to certify and the claimed appeal as of right from said Court are allowed.

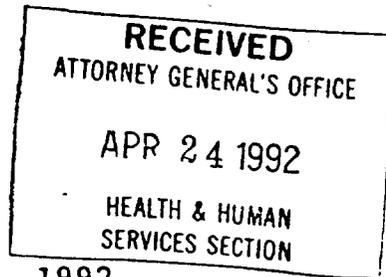
(Court of Appeals No. 91AP746)


THOMAS J. MOYER
Chief Justice

000047

The Supreme Court of Ohio

1992 TERM



To wit: April 22, 1992

Pablo A. Pons, M.D.,
Appellee,

v.

State Medical Board of Ohio,
Appellant.

Case No. 92-115

E N T R Y

Upon consideration of the motion for an order directing the Court of Appeals for Franklin County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, \$40.00, paid by Attorney General of Ohio/Susan Walker.

(Court of Appeals No. 91AP746)

A handwritten signature in cursive script, appearing to read "Thomas J. Moyer".

THOMAS J. MOYER
Chief Justice

003053

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

92-115

IN THE MATTER OF:

PABLO A. PONS, M.D.,

Appellant,

(THE STATE MEDICAL
BOARD OF OHIO,)

Appellee.

CASE NO. 91AP-746
(Regular Calendar)

NOTICE OF APPEAL

Appellee, The State Medical Board of Ohio hereby gives notice of its appeal to the Supreme Court of Ohio from the final judgment of the Court of Appeals of Franklin County, Ohio, dated November 18, 1991.

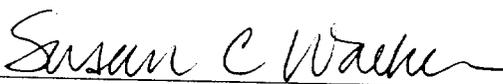
This case is of public and great general interest and involves substantial constitutional questions.

Respectfully submitted,

ATTORNEY GENERAL LEE FISHER



JOHN C. DOWLING (0003806)
Assistant Attorney General



SUSAN C. WALKER (0046714)
Assistant Attorney General
30 East Broad Street
15th Floor
Columbus, Ohio 43266-0410
(614) 466-8600

STATE MEDICAL BOARD
CLERK

92 MAY 29 PM 6:25

FILED
92 MAY 29
JAN 17 1992
MARCIA J. MENDEL, CLERK
SUPREME COURT OF OHIO

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CLERK OF COURTS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO
DEC 18 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was sent via regular U.S. Mail this 18th day of December, 1991 to William M. Todd, Esq., Terri-Lynne B. Smiles, Esq., Porter, Wright, Morris & Arthur, 41 South High Street, Columbus, Ohio 43215.



SUSAN C. WALKER
Assistant Attorney General

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

RECEIVED
ATTORNEY GENERAL'S OFFICE
NOV 15 1991
HEALTH & HUMAN
SERVICES SECTION

In the matter of: :
Pablo A. Pons, M.D., :
Appellant-Appellant, :
(The State Medical Board of Ohio, :
Appellee-Appellee). :

No. 91AP-746

(REGULAR CALENDAR)

O P I N I O N

Rendered on November 14, 1991

PORTER, WRIGHT, MORRIS & ARTHUR, MR. WILLIAM M. TODD and
MS. TERRI-LYNNE B. SMILES, for appellant.

MR. LEE FISHER, Attorney General, MR. JOHN C. DOWLING
and MS. SUSAN C. WALKER, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

Pablo A. Pons, M.D., became licensed to practice medicine in Ohio in 1970. He had attended medical school in his native country of the Dominican Republic and then had interned at various hospitals in the United States, including three and one-half years at Toledo Hospital. He specialized in obstetrics and gynecology.

In October of 1974, Dr. Pons was asked to assist a woman who will be referred to as "Patient 1." Patient 1 was then a twenty-four-year-old woman who

was pregnant for the third time. Her first child had been born with Down's Syndrome and had been turned over to Wood County Children's Services for adoption. Patient 1 suffered serious emotional problems as a result of this birth and adoption, and had been hospitalized under the care of a psychiatrist.

In October of 1974, Dr. Pons and Patient 1's family physician felt that Patient 1 qualified for a therapeutic abortion because of her anxiety resulting from the situation involving her first child and because Patient 1 had had extensive x-rays during the first weeks of pregnancy, with an attendant risk of serious damage to the fetus.

Approximately three months later, Patient 1 went to see Dr. Pons at his office. She was generally doing well, but she was periodically experiencing anxiety which Dr. Pons considered to be secondary to the birth control pills he had prescribed for her at the time of her earlier consultation. Therefore, he changed her prescription.

On February 21, 1975, Patient 1 returned to see Dr. Pons, complaining of depression. She also described herself as having marital difficulties. Dr. Pons stopped her birth control prescription and gave her a prescription for triavil, a mild anti-depressant.

A week later, Patient 1 and her husband came to see Dr. Pons. She repeated some of her earlier complaints, including that her husband was overly demanding of her sexual attention. He wanted to have sexual relations three or four times a day, she claimed.

On April 14, 1975, Dr. Pons inserted an intrauterine device ("IUD") at Patient 1's request. Given the problems associated with two of her three earlier pregnancies, she did not wish to become pregnant again. Dr. Pons' office records do not indicate that Patient 1 was still registering complaints about anxiety or depression from this April 14 date forward until February 7, 1984.

Apparently during 1976, Dr. Pons and Patient 1 began a sexual relationship which lasted until the winter of 1983. Throughout that time frame, Dr. Pons continued to serve as Patient 1's obstetrician/gynecologist ("OB-GYN"), treating her for a variety of medical problems. In the fall of 1982, Patient 1 became pregnant by Dr. Pons, although Dr. Pons was not fully convinced of his parentage until later blood tests indicated that he was the father. Dr. Pons provided prenatal care for the infant and was the primary physician at the time of the delivery.

Patient 1 attempted to resume her sexual relationship with Dr. Pons after the delivery, but he refused. She began in February of 1984 to show signs of a recurrence of emotional problems, specifically postpartum depression. Dr. Pons asked her to go see a psychiatrist. He also prescribed valium for her. Apparently, Patient 1 did not return to the care of her former psychiatrist or seek the help of any other mental health professional.

On April 20, 1984, Patient 1 returned to Dr. Pons' office. His notes reflect that she was behaving very badly. She was upset with both her husband and the infant. She cried a lot. Dr. Pons then decided to terminate his

physician-patient relationship with Patient 1. He also advised her husband that she was in need of psychiatric help.

Over a year later, Dr. Pons received correspondence from an attorney for Patient 1 and her husband. Eventually, he was served with civil complaints to establish parentage and to recover damages resulting from his relationship with Patient 1. The parentage action was settled and summary judgment was awarded to Dr. Pons on the suit for damages.

Over five and one-half years after Dr. Pons terminated the physician-patient relationship with Patient 1, and almost seven years after Dr. Pons had ended the sexual aspect of their relationship, the State Medical Board of the State of Ohio (hereinafter "the Medical Board") served Dr. Pons with a letter charging him with professional misconduct for his relationship with Patient 1 and placing him on notice that he was in danger of losing his medical license.

In December of 1988 and, therefore, almost a year prior to actually charging Dr. Pons with misconduct, the Medical Board had conducted a deposition of Dr. Pons during which he was questioned about all aspects of his relationship with Patient 1. He was called upon to answer questions about events which had occurred over twelve years earlier. He acknowledged that he could not be completely accurate about some details, given the extended lapse of time, and he relied on his office records to assist his memory. He testified that the relationship had begun to include sex by the time of an office appointment in April of 1977 and that, if he had to estimate when the sexual aspects commenced,

he would estimate sometime in 1976. He indicated that she at times was depressed but did not indicate that the depression was so severe as to require a psychiatrist's attention until 1985, when he did in fact insist that she get psychiatric help. By that 1985 time, he had discontinued the sexual aspect of their relationship for approximately one year.

A hearing was conducted on the Medical Board charges against Dr. Pons on January 30, 1990 before an attorney examiner/hearing officer. Dr. Pons testified in person, as did Scott Shook, the senior vice president of Riverside Hospital in Toledo. Mr. Shook related that Dr. Pons had been a model physician during the nine years Mr. Shook had been affiliated with the hospital. Mr. Shook also told of the extensive medical assistance Dr. Pons provided as a volunteer, both for the benefit of those in the inner city neighborhood where the hospital was located and in the Dominican Republic where Dr. Pons had been born.

Also before the hearing officer was the investigative deposition of Dr. Pons, a deposition of George P. Leicht, M.D., medical records and office records pertaining to Patient 1, and other pertinent documents.

The hearing officer filed a report recommending that Dr. Pons be found guilty of misconduct, that his license be revoked, and that he not be permitted to apply for reinstatement for at least two years, subject to a number of conditions.

The Medical Board considered the report and recommendations of the hearing officer on April 11, 1990. After considerable discussion, the Medical

Board accepted the report and recommendations but reduced the period before which Dr. Pons could seek reinstatement from two years to one year. During the presentation to the Medical Board, the representative of the Attorney General's Office which serves as counsel to the Medical Board apparently advised the Medical Board that there was never any dispute about the facts of the case, only a legal question as to whether the facts constitute a violation of the applicable statutes. A similar comment was made by a member of the Medical Board.

Dr. Pons then pursued an appeal to the Court of Common Pleas for Franklin County, Ohio, which affirmed the action of the Medical Board. Dr. Pons (hereinafter "appellant") then initiated the present appeal, assigning three errors for our review:

"I. It was an abuse of discretion to affirm the order in the absence of any evidence of a failure to meet the applicable standard of care or of a violation of medical ethics.

"II. The Medical Board's order is outside the scope of its statutory authority.

"III. The Medical Board's order deprives Dr. Pons of his constitutionally protected rights."

Such additional factual information as will be helpful to an understanding of the respective assignments of error is presented under the appropriate assignment of error.

Appellant was specifically charged with violating R.C. 4731.22(B)(6) and what is now R.C. 4731.22(B)(18). R.C. 4731.22(B)(6) reads:

"The board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code and by a vote of not less than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

"***

"A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established ***[.]"

R.C. 4731.22(B)(18) reads:

"The violation of any provision of a code of ethics of a national professional organization as specified in this division. 'National professional organization' means the American medical association, the American osteopathic association, the American podiatric medical association, and such other national professional organizations as are determined, by rule, by the state medical board. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The practitioner whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to his profession."

In addressing the alleged violations of R.C. 4731.22(B)(6), the question to be answered is whether appellant's sexual relationship with Patient 1 in and of itself constituted a failure to provide medical treatment and advice in accordance with the minimal standards of care applicable to OB-GYN practitioners carrying on a medical practice under the same or similar circumstances. We find that no evidence was presented below which indicated that appellant's

medical advice for and treatment of Patient 1 was substandard in any way. A careful reading of the record indicates that Patient 1 was released from the care of her psychiatrist some months before her relationship with appellant changed from that of purely physician-patient. Appellant's office records, which seem to have been carefully kept, indicate that even the complaints of marital conflict were no longer being repeated, at least in an office or professional setting, after January 8, 1976. The record simply does not indicate that appellant's sexual relationship affected the care Patient 1 received or even her mental health in a negative way. Therefore, to the extent that the first assignment of error addresses a violation of R.C. 4731.22(B)(6), the assignment of error is sustained.

The second portion of the first assignment of error submits that the record below does not support a finding that appellant violated applicable codes of medical ethics. The principles of medical ethics of the American Medical Association in effect until July of 1980 included four provisions which have been cited as potentially applicable. They are:

"Section 1[:] 'The principal objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion';

"Section 4[:] 'The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines.

They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession';

"Section 6[:] 'The physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment and skill or tend to cause a deterioration of the quality of medical care'; and

"Section 8[:] 'A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical service may be enhanced thereby.'" (Brief of Appellant, Appendix J.)

During the approximately four years that these principles were potentially applicable (the 1976 commencement of the affair until July 1, 1980), the evidence below indicated that appellant carried on a sexual relationship with Patient 1 while providing the following medical services at other times: (1) maintaining her for approximately two and one-half years on an IUD previously provided; (2) providing routine care for a vaginal infection; and, (3) providing care for back pain without surgical intervention.

To the extent the principles of medical ethics set forth above suggest a compromising of the medical care given Patient 1 is necessary, no violation occurred. To the extent that they require a compromising of appellant's judgment in giving medical advice, no violation was demonstrated.

Our conclusion as to compromising of judgment is supported by the deposition testimony of Dr. Leicht presented to the Medical Board by the Board's representative. Dr. Leicht indicated that providing advice and/or treatment to one's own family was in fact appropriate for routine, non-life threatening

matters. The treatment rendered by Dr. Pons during the 1976-to-1980 time frame was for such medical conditions.

Although an attempt was made before the Medical Board to imply that the decision by Patient 1 and Dr. Pons to maintain the IUD was self-serving for appellant, the continuation of such birth control was clearly desired by and in the best interests of Patient 1. She had delivered one child with Down's Syndrome and had had another pregnancy terminated because of her concerns and anxiety related to the pregnancy. Birth control was clearly indicated for her.

Further, the record does not support a finding that appellant failed to make needed referrals as alleged in regard to Section 8 above. A referral of Patient 1 to another physician for hemorrhoids was made, but resisted and ultimately the treatment refused by Patient 1. An attempt to have someone else look into her back pain was resisted. Patient 1 already had contact with the psychiatrist who had treated her earlier and who apparently was available for additional consultation, if desired.

Having an extramarital affair with an interested companion does not make a physician so deficient in moral character as to warrant suspension of his or her medical license where the actual advice, care or judgment was not shown to have been compromised, unless Section 4 is construed in such a way as to render it overbroad for due process purposes, as will be discussed in more detail below.

In sum, placing an appropriate legal construction on the first four ethical principles, as the legal advice to the Medical Board indicated that the courts would do, the four principles in effect until July 1, 1980 which were alleged to have been violated by appellant were not violated.

The principles in effect from July 1, 1980 alleged to have been violated were I, II, and IV. These state:

"***

"I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

"II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.

"***

"IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law." (Brief of Appellant, Appendix K.)

The comments as to the standards in effect prior to July 1, 1980 in large part are applicable to those enacted effective July 1, 1980. The evidence below simply does not indicate that Patient 1's medical care was ever compromised. No evidence indicates that appellant lacked in either compassion or respect for the dignity of Patient 1, nor did he fail to respect her rights.

The observation above about the extramarital affair not being sufficient in and of itself as to disqualify a doctor from practicing is equally

applicable here. Further, Patient 1 was never shown to have felt that her care was compromised by appellant. In fact, only when Patient 1's problems began to extend beyond the scope of appellant's expertise and he insisted that she seek psychiatric help did Patient 1's attitude toward appellant begin to change from positive to negative. Perhaps, had Patient 1 testified before the Medical Board and actually shown some effect on her care or dissatisfaction with her care, a different situation would be presented. As the record stands, negative effect is pure speculation. Likewise, had a practitioner of obstetrics or gynecology testified to the Medical Board or had a professional member of the Medical Board made an indication that some specific treatment was deficient, a different situation might be presented. The testimony of Dr. Leicht does not constitute such testimony but is most fairly summarized as Dr. Leicht's discomfort with the morality of the situation.

To the extent that the first assignment of error addresses a violation of medical ethical standards, given the appropriate construction of such standards, the first assignment of error is sustained. Thus, the first assignment of error is sustained in toto.

The second assignment of error suggests that the Medical Board exceeded the scope of its statutory authority in its handling of appellant's case. To the extent that the Medical Board attempted to construe the phrase "standard of care" found in R.C. 4731.22(B)(6) to include ethical principles, the construction placed upon the phrase was inappropriate and the Medical Board was

in error. To the extent that the Medical Board attempted to construe the applicable ethical standards to apply to situations where sexual contact between consenting adults, in and of itself, can be the basis for suspending a doctor's license to practice, the Medical Board misconstrued the permissible reach of the ethical standards in effect during the 1976-to-1983 time frame.

A right of privacy has been interpreted to be a part of the Constitution of the United States and actively applied to the individual states for over twenty-five years. The right was the basis for striking down Connecticut's laws on birth control in Griswold v. Connecticut (1965), 381 U.S. 479, and was the foundation for Roe v. Wade (1973), 410 U.S. 113. While the exact scope of the right of privacy and the interests which may be weighed against it have been the subject of much recent debate, that debate does not seem to question the idea that a right of privacy exists and that private sexual contact between consenting heterosexual adults is protected thereby. Governmental entities, be they the United States Congress or the Medical Board, must act carefully at such times as they seek to sanction or penalize the bedroom conduct of consenting adults.

First, the sanction must be narrowly crafted to further a compelling governmental interest. Second, the sanction must be clearly set forth, so those upon whom it is to be imposed are on notice of the risks they are taking. In the context of the Medical Board, the sanction must serve to deter substandard care by licensed physicians in Ohio. Further, in order to provide proper notice, the

sanction must be specific -- not a case-by-case determination that some broad ethical principle has been violated in a way that makes some or all members of the Medical Board uncomfortable several years after-the-fact.

No sanction specifically tied to sexual activity between patients and physicians was in effect during the time frame 1976 to 1983. Therefore, neither of the above requirements has been satisfied here. As a result, the only situation where discipline could legitimately be meted out for consensual sexual contact between an adult patient and physician is where the right of privacy is outweighed by a clear showing of substandard medical advice or care resulting from or linked to the consensual sexual conduct. Since no showing of substandard advice or care was present in the record as to Dr. Pons, the Medical Board was not justified in violating Dr. Pons' right of privacy under the Constitution of the United States.

Appellant submits that the Medical Board may have applied to him a "Proposed Addition #7," which would have satisfied the specificity requirement. "Proposed Addition #7" states:

"Sexual involvement with patients is never ethically acceptable behavior for physicians." (Brief of Appellant, Appendix N.)

However, the record before the Medical Board does not indicate that "Proposed Addition #7" was applied. Indeed it could not have been, because it was not in effect during the 1976-to-1983 period. Any attempt to apply it to conduct which

happened before its enactment would run afoul of the Ohio Constitution, which bars retroactive application of laws.

Therefore, to the extent that this assignment of error addresses issues of overbreadth and legal interpretation of the potentially applicable ethical standards, it is sustained. To the extent that it talks of "Proposed Addition #7," it is overruled.

The third assignment of error, as expounded in appellant's brief, suggests that the interpretation of the Medical Board as to the statutes in question made them vague and overbroad. This issue has been discussed above. Our construction of the applicable standards and statutory provisions in effect at the time, which were only general in nature, avoids such potential constitutional infirmities by requiring the demonstration of a nexus between patient care and the ethical violation for the purported ethical violation to be the basis for discipline. To constitute a violation of the applicable statutes, the alleged misconduct must in some way affect past, present or future patient care negatively. A physician's sexual conduct which does not so affect care and is not otherwise illegal does not fall within the legitimate ambit of R.C. 4731.22(B). Since the Medical Board construed the statute otherwise, the assignment of error is sustained.

The first and third assignments of error having been sustained in toto and the second assignment of error having been sustained in part, the judgment of the court of common pleas is vacated and this cause is remanded to

the Medical Board with instructions that the finding as to violations of R.C. 4731.22(B) be reversed and the disciplinary action dismissed.

Judgment vacated;
cause remanded with instructions.

YOUNG and REILLY, JJ., concur.

REILLY, J., retired, of the Tenth Appellate District,
assigned to active duty under authority of Section
(6)(C), Article IV, Ohio Constitution.

COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

RECEIVED
MAY 21 1990
HEALTH, EDUCATION &
HUMAN SERVICES SECTION

In the Matter of: :
Pablo A. Pons, M.D., :
Appellant, :
vs. :
State Medical Board of Ohio, :
Appellee. :

Case No. 90CVF0554

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
MAY 16 PM 4:21
HONORABLE J. ENRIGHT
CLERK OF COURTS

DECISION

Rendered this _____ day of May, 1990.

MARTIN, J.

This matter is before the Court upon appellant's motion for suspension of an order of the appellee, State Medical Board of Ohio.

Apparently, the appellant's license to practice medicine was suspended after he had engaged in an extra-marital affair with a female patient. The one-year suspension is to become effective on May 25, 1990.

As noted earlier, the appellant has moved the Court to suspend enforcement of the appellee's order pending resolution of the matter on appeal.

The Court, finding that the appellant has met the statutory criteria of Ohio Revised Code §119.12, hereby SUSTAINS the appellant's motion for stay of enforcement.

Counsel for appellant shall submit an appropriate entry.

PAUL W. MARTIN, JUDGE

STATE MEDICAL BOARD
OF OHIO
MAY 22 AM 10:44

Copies to:

Harland M. Britz
Attorney for Appellant

John C. Dowling, A.A.G.
Attorney for Appellee

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COMMON PLEAS COURT
FRANKLIN CO. OHIO
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THOMAS J. ENRIGHT
CLERK OF COURTS

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ATTORNEY GENERAL'S OFFICE
NOV 21 1991
HEALTH & HUMAN
SERVICES SECTION

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

COURT OF APPEALS
FRANKLIN COUNTY
NOV 18 AM 9:30

In the matter of:
Pablo A. Pons, M.D.,

Appellant-Appellant,

(The State Medical Board of Ohio,

Appellee-Appellee).

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C/O CVF - 025 - 3354

No. 91AP-746

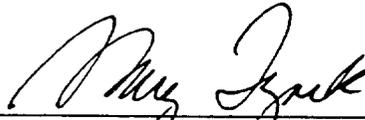
(REGULAR CALENDAR)

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on November 14, 1991, the first and third assignments of error are sustained, the second assignment of error is sustained in part, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is vacated, and this cause is remanded to the State Medical Board of Ohio with instructions that the finding as to violations of R.C. 4731.22(B) be reversed and the disciplinary action dismissed.

YOUNG, TYACK & REILLY, JJ.

By



Judge G. Gary Tyack

REILLY, J., retired, of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

cc: William M. Todd and
Terri-Lynne B. Smiles
John C. Dowling and
Susan C. Walker

original

*copied to RQB, WJS, LL, HC's, EC's
original to JWP.*

91 AP-746

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Pablo A. Pons, M.D.,

Appellant,

vs.

Case No. 90CVF-05-3354

The State Medical Board of Ohio,

Judge Martin

Appellee.

NOTICE OF APPEAL

Notice is hereby given that Appellant Pablo A. Pons, M.D. hereby appeals to the Court of Appeals on Franklin County, Ohio, Tenth Appellate Judicial District, from the Judgment Entry entered in this action on June 10, 1991.



Terri Lynne B. Smiles (SMI 91)
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215
(614) 227-2168
Attorneys for Pablo A. Pons, M.D.

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FRANKLIN CO OHIO

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THOMAS J. ENRIGHT
CLERK OF COURTS

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FRANKLIN CO OHIO

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FRANKLIN CO OHIO



91 AP-746

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was served by regular U.S. Mail, postage prepaid, this 16th day of July, 1991, upon counsel:

John C. Dowling
Assistant Attorney General
Health, Education and Human
Services Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43266-0410



Terri-Lynne B. Smiles

KIN/2288

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COMMON PLEAS COURT
FRANKLIN CO. OHIO
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STATE MEDICAL BOARD
OF OHIO

91 MAY 31 AM 9:22

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

PABLO A. PONS, M.D.,

] CASE NO. 90CVF05-3354

Appellant,

] JUDGE MARTIN

vs.

]

THE STATE MEDICAL BOARD OF
OHIO,

]

]

Appellee.

]

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ATTORNEY GENERAL'S OFFICE
MAY 30 1991
HEALTH, EDUCATION &
HUMAN SERVICES SECTION

DECISION

Rendered this 20 day of May, 1991.

MARTIN, J.

This case comes before the Court on a Revised Code 119.12 administrative appeal from an order of the State Medical Board of Ohio revoking Appellant's certificate to practice medicine and surgery in Ohio. The record reflects the following undisputed facts and procedural history.

In 1970, Appellant, Pablo A. Pons, M.D., received his certificate to practice medicine and surgery in Ohio. Since then, Appellant has practiced obstetrics and gynecology in Toledo, Ohio.

In October 1974, Patient No. 1 (whose identity will not be disclosed, in order to preserve patient confidentiality) became Appellant's patient. At that time, Appellant knew that Patient No. 1 had a history of psychiatric problems, that she had received medical treatment for those psychiatric problems, and that she had been hospitalized for those psychiatric problems. Throughout the period of Appellant's ensuing physician-patient

relationship with Patient No. 1, Patient No. 1 regularly
complained to Appellant of depression and anxiety arising out of
marital problems. On several occasions throughout the period of
the physician-patient relationship, Appellant prescribed anti-
depressant medication for Patient No. 1. The physician-patient
relationship continued until March 1984, a period of nearly ten
years. During that period of time, Patient No. 1 refused to
treat with any physician other than Appellant.

In 1976, two years after Patient No. 1 became Appellant's
patient, Appellant began a sexual relationship with Patient No.
1, a relationship which lasted for six or seven years. During
the course of that sexual relationship, Appellant continued to
serve as Patient No. 1's exclusive physician, treated Patient No.
1 for all of her gynecological problems, performed several
gynecological surgeries on Patient No. 1, and prescribed and
provided intrauterine birth control devices for Patient No. 1, so
that she did not become pregnant as a result of her sexual
relationship with Appellant. During the course of that sexual
relationship, Appellant also provided non-gynecological medical
care to Patient No. 1, because Patient No. 1 refused to treat
with any other physician for her non-gynecological problems. For
example, in 1978, Appellant treated Patient No. 1 for back pain
and had her hospitalized for that back pain. On another
occasion, Appellant surgically removed a cyst from Patient No.
1's shoulder.

In February 1983, Patient No. 1 discovered that she was

pregnant with what turned out to be Appellant's child, Appellant having previously discontinued Patient No. 1's use of the IUD. When Appellant learned of the pregnancy, he terminated his sexual relationship with Patient No. 1. Appellant did not, however, at that time terminate his physician-patient relationship with Patient No. 1. To the contrary, Appellant continued to serve as Patient No. 1's exclusive physician throughout the course of her pregnancy. In August 1983, Patient No. 1 gave birth to Appellant's child. Appellant attended the delivery as Patient No. 1's obstetrician. After the child was born, Appellant continued to serve as Patient No. 1's exclusive physician.

In February 1984, Appellant observed that Patient No. 1 was suffering from severe postpartum depression. At that time, Appellant recommended that Patient No. 1 seek psychiatric care for her depression, but she refused to do so. In March 1984, Appellant terminated his physician-patient relationship with Patient No. 1.

On April 13, 1990, the State Medical Board of Ohio: (1) revoked Appellant's certificate to practice medicine and surgery in Ohio; (2) stayed the revocation and suspended Appellant's certificate for an indefinite period of time of at least one year; (3) conditioned the reinstatement of Appellant's certificate on several prerequisites; and (4) placed Appellant on probation for five years following reinstatement. The grounds for the Board's order were that, in his treatment of Patient No. 1, Appellant had violated R.C. 4731.22(B)(6) and what is now R.C.

4731.22(B)(18). The relevant Revised Code section provides as follows:

THOMAS J. ENRIGHT
CLERK OF COURTS

"4731.22 Grounds for discipline.

"* * *

"(B) The board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code and by a vote of not less than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

"* * *

"(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

"* * *

"(18) The violation of any provision of a code of ethics of a 'national professional organization' as specified in this division. National professional organization means the American medical association, the American osteopathic association, the American podiatric medical association, and such other national professional organizations as are determined, by rule, by the state medical board."

Between 1957 and July 1980, the Principles of Medical Ethics of the American Medical Association provided, in pertinent part, as follows:

"Section 1

The principle objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

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FRANKLIN CO. OHIO

"* * *

"Section 4

The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

"* * *

"Section 6

A physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment and skill or tend to cause a deterioration of the quality of medical care.

"* * *

"Section 8

A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical service may be enhanced thereby."

From July 1980 through January 1990, the Principles of Medical Ethics of the AMA provided, in pertinent part, as follows:

- "I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.
- "II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.
- "* * *
- "IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within

and shall safeguard patient confidentiality within the constraints of the law."

Appellant timely appealed the Board's revocation order to this Court. On May 22, 1990, this Court suspended the Board's order pending this Court's decision in this case.

In support of his appeal, Appellant argues: (1) that the Board's order is not supported by reliable, probative, and substantial evidence; (2) that the Board's order falls outside the scope of the Board's statutory authority; and (3) that the Board's order deprives Appellant of his constitutional rights. Before addressing the merits of Appellant's arguments, it is important to set forth the standard of review which governs this appeal. Revised Code 119.12 provides, in pertinent part, as follows:

"The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law."

In reviewing an order of the State Medical Board of Ohio pursuant to R.C. 119.12, the function of this Court is limited to determining whether the order is supported by reliable, probative, and substantial evidence and is in accordance with law. Mofu v. State Medical Bd. (1984), 21 Ohio App. 3d 182, paragraph one of the syllabus. Thus, this Court may not reverse

an order of the Board which has support from reliable, probative, and substantial evidence. Id.

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THOMAS J. ENRIGHT
CLERK OF COURTS

Turning to Appellant's first argument, the Court finds that the Board's order is, indeed, supported by reliable, probative, and substantial evidence. Appellant engaged in a long-term sexual relationship with a psychiatrically troubled OB/GYN patient and thereby placed himself in a position whereby his patient became emotionally dependent upon him, and whereby Appellant could not possibly render objective medical care to his patient. Appellant's treatment of that patient was clearly a departure from minimal standards of care of similar practitioners under the same or similar circumstances, and therefore violated R.C. 4731.22(B)(6), supra, as was determined by the Board.

A medical disciplinary proceeding is a special statutory proceeding conducted by individuals, primarily physicians, possessing the expertise to determine whether a physician has failed to conform to minimal standards of care within the medical profession. Snyder v. State Medical Bd. (1984), 18 Ohio App. 3d 47, paragraph three of the syllabus. In Arlen v. State (1980), 61 Ohio St. 2d 168, 173, the Ohio Supreme Court observed, in pertinent part, as follows:

"It is provided in R.C. 4731.01 that the State Medical Board consist of ten members, eight of whom shall be physicians and surgeons licensed to practice in Ohio, seven of whom must hold the degree of doctor of medicine ***. The board members are selected by the Governor, with the advice and consent of the Senate. This distinguished medical board is capable of interpreting technical requirements of the medical field and is

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quite capable of determining when certain
conduct falls below a reasonable standard of
medical care."

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CLERK OF COURTS

In the instant case, the Board's finding that Appellant failed to conform to minimal standards of care is amply supported by reliable, probative, and substantial evidence, and this Court will not disturb that finding on appeal.

Furthermore, there is reliable, probative, and substantial evidence in the record that, in his treatment of his patient, Appellant did not provide medical care with full respect for the patient's human dignity, did not uphold the dignity and honor of his profession, rendered services to his patient under conditions which tended to interfere with or impair the free and complete exercise of his medical judgment and skill, did not seek a psychiatric consultation regarding his patient, and did not deal honestly with his patient. Appellant violated Sections 1, 4, 6, and 8 of the AMA Principles in effect between 1957 and July 1980, and Sections I, II, and IV of those Principles in effect from July 1980 through January 1990, and thereby violated what is now R.C. 4731.22(B)(18). Accordingly, Appellant's first argument is found to be not well-taken.

Turning to Appellant's second argument, the Court finds that the Board's order does not fall outside the scope of the Board's statutory authority and is not, therefore, contrary to law. The Board was presented with abundant evidence that Appellant's treatment of his patient departed from minimal standards of care, and that Appellant violated a number of AMA ethical principles.

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CLERK OF COURTS

The Board acted well within its statutory authority when it sanctioned Appellant for his conduct. Accordingly, Appellant's second argument is found to be not well-taken.

Turning to Appellant's final argument, the Court finds that the Board's order does not deprive Appellant of any of his constitutional rights. The provisions of R.C. 4731.22(B) are not unconstitutionally vague and the Board's order, which is based upon such statutory authority, does not deprive Appellant of due process of law or due course of law. The Board's order does not violate Appellant's constitutional right to privacy. Accordingly, Appellant's final argument is found to be not well-taken.

The April 13, 1990 revocation order of the State Medical Board of Ohio is therefore AFFIRMED. Counsel for Appellee shall prepare an appropriate journal entry in accordance with Local Rule 39.01.



PAUL W. MARTIN, JUDGE

Appearances:

HARLAND M. BRITZ, Esq.
WILLIAM M. TODD, Esq.
TERRI-LYNNE B. SMILES, Esq.
Counsel for Appellant

JOHN C. DOWLING, AAG
Counsel for Appellee

Respectfully submitted,
BRITZ AND ZEMMELMAN
Attorneys for Appellant

BY: Harland M. Britz
Harland M. Britz
Sup. Ct. #0009367
414 N. Erie Street, Suite 100
Toledo, Ohio 43624
(419) 242-7415

CERTIFICATION OF MAILING

This is to certify that a copy of the foregoing Notice of Appeal has been mailed this 14 day of May, 1990 to John C. Dowling, Assistant Attorney General, 30 East Broad Street, 15th Floor, Columbus, Ohio, 43266-0410.

Harland M. Britz
Attorney for Appellant Pablo A. Pons

STATE OF OHIO
THE STATE MEDICAL BOARD
77 South High Street
17th Floor
Columbus, Ohio 43266-0315

(614)466-3934

April 13, 1990

Pablo A. Pons, M.D.
2739 Navarre Avenue
Oregon, Ohio 43616

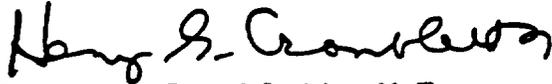
Dear Doctor Pons:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on April 11, 1990, including Motions approving and confirming the Findings of Fact and Conclusions of Law 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 may be taken to the Franklin County Court of Common Pleas only.

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

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 746 514 720
RETURN RECEIPT REQUESTED

cc: Harland M. Britz, Esq.

CERTIFIED MAIL RECEIPT NO. P 746 514 721
RETURN RECEIPT REQUESTED

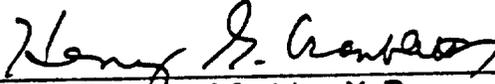
STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on April 11, 1990, including Motions approving and confirming the Findings of Fact and Conclusions of Law 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 Pablo Pons, 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.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

April 13, 1990

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

PABLO A. PONS, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of April, 1990.

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

It is hereby ORDERED:

1. That the certificate of Pablo A. Pons, M.D., to practice medicine and surgery in Ohio shall be REVOKED. Such revocation shall be stayed, and Dr. Pons' certificate shall be SUSPENDED for an indefinite period of time, but not less than one (1) year.
2. The State Medical Board shall not consider reinstatement of Dr. Pons' certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Pons shall submit to the Board an application for reinstatement, accompanied by all appropriate fees. Such application shall not be submitted until at least one (1) year from the effective date of this Order.
 - b. Dr. Pons shall provide documentary evidence acceptable to the State Medical Board that his psychiatric and mental status has been evaluated and that he has been found capable of practicing according to acceptable and prevailing standards of care. Acceptable documentation shall include written evaluations of Dr. Pons' psychiatric and mental status by two physicians approved in advance by the Board, which physicians were provided with copies of the Board's Findings of Fact, Conclusions, and Order in this matter prior to such evaluation. These written evaluations must address:

Pablo A. Pons, M.D.

- (i) The existence or nonexistence of a psychiatric or psychological disorder underlying the behavior exhibited by Dr. Pons in this matter;
 - (ii) The amenability of such disorder, if any, to treatment; the treatment, if any, completed by Dr. Pons; and the need, if any, for additional treatment;
 - (iii) The likelihood of recurrence of the type of behavior exhibited by Dr. Pons in this matter; and
 - (iv) Dr. Pons' ability to practice according to acceptable and prevailing standards of care.
- c. Dr. Pons shall provide documentation of successful completion of programs of approved Category I Continuing Medical Education in medical ethics. The exact number of hours and the specific content of the programs shall be subject to the prior approval of the Board or its designee, but shall not be less than twenty (20) hours. These programs shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
- d. Due to the fact that Dr. Pons will not have been engaged in the active practice of medicine or surgery for a period in excess of two years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Pons' fitness to resume practice.
3. Upon reinstatement, Dr. Pons' certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
- a. Dr. Pons shall obey all federal, state, and local laws and all rules governing the practice of medicine in Ohio.
 - b. Dr. Pons shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

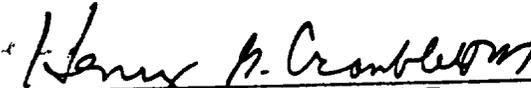
Pablo A. Pons, M.D.

- c. Dr. Pons shall appear in person for interviews before the full Board or its designated representatives at six (6) month intervals, or as otherwise requested by the Board.
 - d. In the event that a plan of treatment is recommended pursuant to the requirements set forth in paragraph 2B, above, Dr. Pons shall continue such treatment at such intervals as are deemed appropriate by the treating physician or counselor but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating physician or counselor. Dr. Pons shall insure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
 - e. Dr. Pons shall provide documentation of successful completion of a program of at least five (5) hours of Continuing Medical Education credit in medical ethics for each year of probation, such courses to be approved in advance by the Board. These credits shall not apply to the credits required for biennial relicensure.
 - f. In the event that Dr. Pons should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Pons must notify the State Medical Board in writing of the dates of departure or return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
4. If Dr. Pons violates the terms of this Order in any respect, the Board, after giving Dr. Pons notice and an opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.
 5. Upon successful completion of probation, Dr. Pons' certificate shall be fully restored, except for any limitations as required by paragraph 2, above.

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Pablo A. Pons, M.D.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the interim, Dr. Pons shall not undertake the care of any patient not already under his care.



Henry G. Cramblett, M.D.
Secretary

(SEAL)

April 13, 1990

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF PABLO A. PONS, M.D. 89 MAR -1 PM 4: 12

The Matter of Pablo A. Pons, M.D., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 30, 1990.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter dated November 9, 1989 (State's Exhibit #1), the State Medical Board notified Pablo A. Pons, M.D. that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based upon the following facts. The Board alleged that Dr. Pons, an obstetrician and gynecologist, was the treating physician of Patient #1 from on or about 1973 to on or about March 26, 1984. While acting as Patient #1's physician, and with knowledge of her mental and emotional condition - including, but not limited to, marital difficulties, depression, and history of psychiatric treatment - he nevertheless engaged in a sexual relationship with Patient #1 beginning sometime on or about 1976 and ending sometime on or about 1983. On or about August 17, 1983, Patient #1 gave birth to a child fathered by Dr. Pons. The fact that Dr. Pons remained Patient #1's treating physician while involved in a sexual relationship with her presented numerous conflicts in his role as treating physician including, but not limited to, surgical treatment and care adjunct to pregnancy, and treatment of conditions in which he failed to either offer, procure, and/or insist on appropriate consultation.

The Board alleged that the above acts, conduct, and/or omissions of Dr. Pons, constituted:

1. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and
2. "The violation of any provision of a code of ethics of a national professional organization," as that clause is used in: Section 4731.22(B)(15), Ohio Revised Code (as in effect prior to August 31, 1982), to wit: American Medical Association Principles of Ethics: Section 1, Section 4, Section 6 and Section 8; and as that clause is used in Section 4731.22(B)(14), Ohio Revised Code (as in effect from August 31, 1982 until March 17, 1987), to wit: American Medical Association Principles of Ethics: Section I, Section II, and Section IV.

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- B. By letter received by the Medical Board on November 28, 1989 (State's Exhibit #3), Harland M. Britz, Esq., requested a hearing on behalf of Dr. Pons.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by John C. Dowling, Assistant Attorney General.
- B. On behalf of the Respondent: Harland M. Britz, Esq.

III. Testimony Heard

A. Presented by the State

1. George P. Leicht, M.D., by deposition on January 29, 1990
2. Pablo A. Pons, M.D., as on cross-examination

B. Presented by the Respondent

1. Scott Shook - Senior Vice-President, Riverside Hospital, Toledo, Ohio
2. Pablo A. Pons, M.D.

IV. Exhibits Examined

In addition to those listed above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #2: Certified mail return and receipt card showing service of State's Exhibit #1.
2. State's Exhibit #4: November 30, 1989 letter to Dr. Pons from the State Medical Board advising that a hearing initially set for December 11, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
3. State's Exhibit #5: December 15, 1989 letter to Dr. Pons from the State Medical Board scheduling the hearing for January 30, 1990.
4. State's Exhibit #6: State's Motion for Leave to Take Deposition in lieu of Live Testimony, filed by Mr. Dowling on January 25, 1990.

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5. State's Exhibit #7: Entry dated January 26, 1990 granting the State's Motion for Leave to Take Deposition in lieu of Live Testimony.
 - * 6. State's Exhibit #8: Investigative deposition of Pablo A. Pons, M.D., taken on December 19, 1988.
 - * 7. State's Exhibit #9: Dr. Pons' patient record for Patient #1.
 8. State's Exhibit #10: Curriculum vitae of George P. Leicht, M.D.
 9. State's Exhibit #11: American Medical Association Principles of Medical Ethics, in effect from 1957 - July 1980.
 10. State's Exhibit #12: American Medical Association Principles of Medical Ethics, in effect from July 1980 - present.
- B. Presented by the Respondent
- * 1. Respondent's Exhibit A: Affidavit of Kalman Gold, M.D.
 - * 2. Respondent's Exhibit B: Judgment Entry from Common Pleas Court in Patient #1's civil suit against Dr. Pons.
 - * 3. Respondent's Exhibit C: Agreement between Patient #1, Patient #1's husband, and Dr. Pons, regarding the satisfaction of child support arrearages owed by Dr. Pons, and the adoption by Patient #1's husband of the child of Patient #1 and Dr. Pons.
 - * 4. Respondent's Exhibit D: Satisfaction of Judgment from Common Pleas Court in Patient #1's paternity suit against Dr. Pons.

NOTE: THE ABOVE EXHIBITS MARKED WITH AN ASTERISK (*) HAVE BEEN SEALED IN ORDER TO PROTECT PATIENT CONFIDENTIALITY.

FINDINGS OF FACT

1. Pablo A. Pons, M.D., a practicing obstetrician and gynecologist, engaged in a sexual and emotional relationship with Patient #1 (so identified to protect patient confidentiality) from 1976 through early 1983. Over this same period of time, Dr. Pons was Patient #1's treating obstetrician and gynecologist, and throughout this same period of time, Dr. Pons and Patient #1 were both married.

These facts are established by the testimony of Dr. Pons (Tr. 13-14, 16, 61) and State's Exhibit #8.

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2. Dr. Pons first saw Patient #1 in October 1974. He had been called as a consult by Patient #1's family physician to perform a therapeutic abortion for her. The medical indication for the abortion was Patient #1's extreme anxiety, anxiety which arose from the birth of a previous child with Downs Syndrome and from the receipt of a significant amount of x-rays in the early weeks of this pregnancy.

These facts are established by the testimony of Dr. Pons (Tr. 35) and State's Exhibits #8 and #9.

3. Following the abortion, Dr. Pons became Patient #1's treating obstetrician and gynecologist. At some time prior to, or contemporaneous with becoming Patient #1's treating obstetrician/gynecologist, Dr. Pons had learned that Patient #1 had been hospitalized for psychiatric problems following the birth of her Downs Syndrome child. He also learned that Patient #1 had seen a psychiatrist prior to commencing treatment with him. He believed, however, that she had not seen a psychiatrist, or any other physician, after becoming his patient.

The patient record reveals that Patient #1 had continuing emotional and psychiatric problems. In an office visit on January 10, 1975, Patient #1 complained of anxiety spells that Dr. Pons speculated were related to the birth control pills he had prescribed for her on November 22, 1974. On February 21, 1975, Patient #1 reported that she had stopped taking the birth control pills because of depression. She complained that she was still depressed and was having marital difficulties. Dr. Pons prescribed Triavil, an anti-depressant, and told Patient #1 to bring her husband with her to the office. On February 28, 1975, Dr. Pons met with Patient #1 and her husband to discuss their marital difficulties. On May 19, 1975, Patient #1's husband had called Dr. Pons and asked him to see his wife because she was very depressed. On January 5, 1976, Dr. Pons and Patient #1 discussed her "problems at home".

These facts are established by State's Exhibit #9 and by the testimony of Dr. Pons (Tr. 14-15, 36, 54-55).

4. Discussions of marital problems occurred from time to time during office visits and would not necessarily show up in the patient record. Dr. Pons admitted that he and Patient #1 probably also discussed her marital problems during their personal relationship. He further testified that in his practice it is not unusual for a patient to complain of marital difficulties and that he makes numerous referrals for marital counseling. He had been fairly sure that he offered to refer Patient #1 and her husband to a marriage counselor. However, she had never gone to a counselor throughout their professional and personal relationship.

These facts are established by State's Exhibit #8 and by the testimony of Dr. Pons (Tr. 16-18, 58).

5. Dr. Pons testified in his deposition that as early as February 1975 he had recommended to Patient #1 that she see a psychiatrist. He further testified that he had made such a recommendation many times "because she came to the office complaining all the time about the same thing, her husband and the family and her - the way their relation was going on..."

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However, at hearing Dr. Pons testified that throughout the course of his treatment of her, he had not felt that Patient #1 needed psychiatric or psychological counseling. There are no references in the patient record to attempts to refer Patient #1 to a psychiatrist until February, 1984.

These facts are established by State's Exhibit #8 (pgs. 13-14) and by the testimony of Dr. Pons (Tr. 18, 38, 59).

6. Dr. Pons testified that during their sexual relationship, Patient #1 had called him two to three times per week, several times a day. She had called him both at his office and the hospital in order to arrange meetings. Dr. Pons further testified that even after he had terminated their sexual relationship, and after the birth of their child, Patient #1 had come to his office requesting that they resume their personal relationship; she had been crying and very upset on these occasions.

These facts are established by the testimony of Dr. Pons (Tr. 45-46, 57).

7. Dr. Pons performed the following gynecological and obstetrical services for Patient #1: physical examinations; prescribing of oral contraceptives; insertion and removal of IUD; advisement on abstinence method of birth control; dilation and curettage; surgery for ectopic pregnancy; removal of a cyst or a mole on the shoulder; inpatient treatment for lower back pain; prenatal and postnatal care; and cryosurgery.

These facts are established by State's Exhibit #9.

8. Patient #1's hospital admission for back pain occurred on June 2, 1978. Dr. Pons admitted at hearing that he would not normally treat one of his patients for lower back pain on an inpatient basis. Patient #1 had pressured him not to send her to another doctor. He testified that he had attempted to refer Patient #1 to a specialist, but that she had refused to see any physician other than himself.

On July 8, 1983, Dr. Pons removed a cyst or a mole from Patient #1's shoulder. This was done in his office. Dr. Pons testified that it was not unusual for him to remove moles or cysts for patients who were already under anesthesia. However, there is nothing in the record to indicate that Patient #1 had been anesthetized that day because of a gynecological or obstetrical procedure.

These facts are established by the testimony of Dr. Pons (Tr. 19-20, 53-54) and by State's Exhibit #9.

9. Dr. Pons admitted in his investigative deposition that when he had advised Patient #1 on various methods of birth control, he had also served his own interests; he had not wanted her to become pregnant. He gave her a temperature chart on February 9, 1979 so that she could time ovulation. He testified that she was not to have sex with him while she was ovulating.

These facts are established by State's Exhibit #8 (pg. 28) and by State's Exhibit #9.

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10. In early 1983, Dr. Pons learned that Patient #1 was pregnant. Because of her previous Downs Syndrome child and because of her age (32), Dr. Pons ordered an amniocentesis. That test was done on February 24, 1983 and on that same day Patient #1 was admitted to the hospital due to unusual bleeding.

Dr. Pons testified that after the amniocentesis Patient #1 had told him that the child she was carrying was his. He further testified that he had not believed her at this time.

Dr. Pons' entry on the Physician's Orders for February 25, 1983 states that he had recommended another physician to Patient #1 and that he was discharging all responsibility for her care.

These facts are established by State's Exhibits #8 and #9 and by the testimony of Dr. Pons (Tr. 44-45).

11. In his deposition, Dr. Pons testified that when Patient #1 had told him that he was the father of her child he had become scared. He decided to terminate their sexual relationship at this point because he "didn't want any problems" (p. 64).

These facts are established by State's Exhibit #8 (pgs. 63-65).

12. Despite the entry in the hospital record, Dr. Pons did continue to care for Patient #1 throughout her pregnancy. He admitted Patient #1 to the hospital for toxemia on July 29, 1983, and for false labor on August 4, 1983. On August 17, 1983, Patient #1 gave birth to a boy fathered by Dr. Pons. The baby was named after Dr. Pons. Dr. Pons had intended to be present for the delivery but was not. He arrived shortly after the baby's birth and delivered the placenta.

These facts are established by State's Exhibit #9 and by the testimony of Dr. Pons (Tr. 16, 47).

13. Dr. Pons continued to act as Patient #1's obstetrician/gynecologist after the birth of their son. On November 15, 1983 he recommended cryosurgery because of an ulceration on her cervix, and it was performed on November 22, 1983. On February 7, 1984 Dr. Pons discussed with Patient #1 her severe post partum depression. He noted in the patient record for that day that Patient #1 had stated that the baby looked like him and had his name. Patient #1 had crossed out his original notation of those remarks in the patient record and Dr. Pons had been forced to write them again in the margin. That date's entry concludes with Dr. Pons' notation that he would continue seeing Patient #1 temporarily to see if she would go to a psychiatrist. On February 8, 1984, and on February 29, 1984, Dr. Pons prescribed Valium for Patient #1. On March 7, 1984, he performed a dilation and curettage because Patient #1 had been bleeding and spotting between periods.

These facts are established by State's Exhibits #8 and #9.

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14. There is some discrepancy in the record regarding the date of Patient #1's last office visit with Dr. Pons. Dr. Pons testified that it was on March 20, 1984; however, the patient record indicates that it was on April 20, 1984. On that last visit, Patient #1 had been very depressed and "upset with husband and child". Dr. Pons had told Patient #1's husband that she needed a psychiatrist. In a letter dated March 20, 1984, and addressed to Patient #1's husband, Dr. Pons notified them of his decision to terminate his treatment of Patient #1 due to his inability to provide effective care. He recommended three other physicians who could assume Patient #1's care. Dr. Pons did not see Patient #1 again on a professional basis.

These facts are established by State's Exhibit #9.

15. Dr. Pons testified that he had never had a sexual relationship with a patient prior to Patient #1 and had not had one since. Dr. Pons had been involved in an extra-marital relationship with a hospital employee in the early 1960's during his internship in Iowa. This relationship produced a child fathered by Dr. Pons.

These facts are established by State's Exhibit #8 and by the testimony of Dr. Pons (Tr. 40, 56-57).

16. Patient #1 filed two civil suits against Dr. Pons, one for malpractice and one to establish paternity. It was not until he saw the results of a blood test that Dr. Pons had been willing to acknowledge that he was the father of Patient #1's child. The malpractice suit was dismissed and the paternity suit was settled.

These facts are established by the testimony of Dr. Pons (Tr. 48-50), State's Exhibits #8 and #9, and by Respondent's Exhibits B and C.

17. George P. Leicht, M.D., board certified in obstetrics and gynecology, offered expert testimony based upon his review of the patient record and Dr. Pons' investigative deposition. In addition to his private practice, Dr. Leicht is an Assistant Clinical Professor at Case Western Reserve University School of Medicine. In that capacity he has had teaching responsibilities, including teaching principles of medical ethics to interns.

In Dr. Leicht's opinion, Dr. Pons' overall care of Patient #1 departed from minimal standards of care of similar practitioners under the same or similar circumstances. Dr. Leicht felt that Dr. Pons' sexual relationship with Patient #1 had placed Dr. Pons in a very compromising position where Dr. Pons would have had difficulty in giving appropriate guidance and care because of a lack of objectivity.

In Dr. Leicht's further opinion, Dr. Pons' conduct with Patient #1 constituted numerous violations of the American Medical Association Principles of Medical Ethics, specifically, Sections 1, 4, 6 and 8 of the Principles in effect until 1980, and Sections I, II and IV of the

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Principles in effect since July, 1980. Dr. Leicht stated that the Principles impose an obligation of objectivity on the part of the physician. In his opinion, a physician must refrain, as much as possible, from any subjective involvement with a patient. A subjective emotional relationship disables a physician from the use of his full professional capabilities and his judgment becomes impaired. Furthermore, by engaging in a dual relationship with Patient #1, Dr. Pons had acted deceitfully toward her. Dr. Pons acted contrary to ethical principals when he failed to seek a consultation regarding Patient #1's apparent psychiatric problems. Dr. Leicht stressed that Dr. Pons had shown a disregard for Patient #1's rights as a patient and a lack of respect for her dignity.

These facts are established by the testimony of Dr. Leicht (Tr. of Deposition 4-22).

18. Kalman Gold, M.D., an obstetrician/gynecologist, in an affidavit dated January 22, 1990, stated that he had studied the investigative deposition of Dr. Pons and Dr. Pons' medical records for Patient #1. In Dr. Gold's opinion, the medical treatment rendered by Dr. Pons to Patient #1 comported with normal standards of care. Dr. Gold specifically limited his opinion to the question of the nature of the medical treatment and offered no opinion regarding the propriety or impropriety of any personal relationship that had developed between Dr. Pons and Patient #1.

These facts are established by Respondent's Exhibit A.

19. Scott Shook, Senior Vice President at Riverside Hospital in Toledo, Ohio, testified regarding his knowledge of Dr. Pons and of Dr. Pons' relationship with Riverside Hospital. Dr. Pons is on staff at Riverside and he has a good reputation. Mr. Shook is not aware of any complaints received or disciplinary actions taken by Riverside against Dr. Pons during the nine years that Mr. Shook has been employed there.

These facts are established by the testimony of Scott Shook (Tr. 27-31).

CONCLUSIONS

1. The acts, conduct, and/or omissions of Pablo A. Pons, M.D., as set forth in Findings of Fact #1 through #14, above, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," in violation of Section 4731.22(B)(6), Ohio Revised Code.

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Dr. Pons attempted to maintain a physician-patient relationship with Patient #1 as well as a sexual and emotional one. However, the existence of the sexual and emotional relationship clouded Dr. Pons' judgment and caused him to lose his objectivity. Dr. Pons further violated minimal standards of care by engaging in a sexual relationship with a married patient who he had reason to believe was suffering from psychiatric, psychological, or emotional problems.

The "care" a physician renders to a patient encompasses more than just procedures performed or medications prescribed. It consists of the entire treatment relationship between a patient and a physician, the omissions as well as the commissions. It is not concluded that Dr. Pons' surgical skills were remiss, or that he lacked basic medical knowledge. It is concluded, however, that the overall care rendered by Dr. Pons to Patient #1 fell below minimal standards. Minimal standards dictate the objective exercise of sound medical judgment with the patient's best interest serving as the physician's benchmark. Dr. Pons' "care" of Patient #1 fell far short.

Dr. Pons exhibited extremely poor medical judgment by entering into a personal, sexual relationship with Patient #1 when he had reason to believe she was in a vulnerable, unstable emotional state. Their sexual relationship began after Dr. Pons had received over a year's worth of complaints from Patient #1 of depression, anxiety, and marital difficulties. He knew of her previous psychiatric hospitalization, he had prescribed anti-depressants for her, and he had counseled Patient #1 and her husband regarding marital difficulties. Dr. Pons knew, or should have known, that an emotional relationship with her doctor, an individual in whom she obviously put a great deal of trust, was likely to be detrimental to Patient #1's already unstable emotional condition. Dr. Pons failed to act in Patient #1's best interest.

Dr. Pons failed to maintain the level of objectivity that minimal standards of care dictates. He advised Patient #1 on various methods of birth control while engaged in a sexual relationship with her, serving his own personal desire that she not become pregnant with his child. He failed to insist that Patient #1 see a specialist for her back pain. His testimony that it was not unusual for him to treat patients for conditions unrelated to his speciality is unpersuasive. In fact, he admitted that inpatient treatment for a problem outside of his specialty was unusual, yet he hospitalized Patient #1 for her back problems. He further failed to insist that Patient #1 seek psychiatric care or counseling for her depression, anxiety and marital problems. Indeed, he took personal advantage of the fact that Patient #1 and her husband were having marital difficulties, a fact that he learned through the professional relationship.

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2. The acts, conduct, and/or omissions of Pablo A. Pons, M.D., as set forth in Findings of Fact #1 through #14, above, constitute: "the violation of any provision of a code of ethics of a national professional organization," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code (as in effect prior to August 31, 1982) and Section 4731.22(B)(14), Ohio Revised Code, (as in effect from August 31, 1982 until March 17, 1987), specifically the following sections of the American Medical Association Principles of Medical Ethics:

A. As in effect until July 1980

1. Section 1 - "The principle objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion";
2. Section 4 - "The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession";
3. Section 6 - "The physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment and skill or tend to cause a deterioration of the quality of medical care"; and
4. Section 8 - "A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical service may be enhanced thereby."

B. As in effect from July 1987 to the present

1. Section I - "A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity";
2. Section II - "A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or confidence, or who engage in fraud or deception"; and
3. Section IV - "A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law."

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These ethical principles are "standards of conduct which define the essentials of honorable behavior for the physician." (Preamble, current Principles) A patient places a tremendous amount of trust in his or her physician, and in return is entitled to expect ethical behavior. Dr. Pons' behavior with regard to Patient #1 was neither honorable nor ethical.

The necessity of physician objectivity underlies all of the above listed ethical principles. If a physician cannot be objective, then there can be no assurance that he acts in the patient's best interest rather than in his own. Evidence of Dr. Pons' lack of objectivity can be found in Findings of Fact #4, #5, #8, and #9, above.

To conduct a personal as well as a professional relationship with Patient #1 was deceitful. Patient #1 had the right to expect that Dr. Pons, when acting as her physician, would act with her best medical interests in mind. However, the facts in this Matter indicate that Dr. Pons was less than completely objective when it came to Patient #1's care and acted to further his own personal interests. Dr. Pons abused the physician-patient relationship by using information acquired through that relationship to his own personal advantage.

Patient #1 exhibited psychological or emotional difficulties. Once his sexual relationship with Patient #1 began, it was impossible for Dr. Pons to render any effective treatment in that regard. He was ethically obligated to obtain a consultation with a specialist or to insist that Patient #1 accept a referral. He failed to do so. Furthermore, it is not plausible that Dr. Pons recommended marital counseling after commencing his sexual relationship with Patient #1.

A physician fulfills his ethical duty to respect the dignity of a patient by scrupulously avoiding any violation of that patient's rights. Patient #1's right to an objective physician, capable of rendering a full measure of service and devotion and ready to seek consultation when necessary, was violated by Dr. Pons.

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The facts would suggest that Dr. Pons terminated his professional relationship with Patient #1 out of fear of the situation he had created for himself rather than for true concern for Patient #1's emotional well being. Dr. Pons offered no explanation suggesting mitigating circumstances with regard to his unprofessional conduct, and expressed no remorse. Despite Dr. Pons' assertions, this Board has no assurance that Dr. Pons will not develop a sexual relationship with a patient in the future. It is possible that Dr. Pons' highly inappropriate conduct is a symptom of a psychiatric or psychological disorder which may be amenable to treatment or counseling.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Pablo A. Pons, M.D., to practice medicine and surgery in Ohio shall be REVOKED. Said revocation shall be stayed, and Dr. Pons' certificate shall be suspended for an indefinite period of time, but not less than two (2) years.
2. The Board shall not consider reinstatement of Dr. Pons' certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Pons shall submit an application for reinstatement accompanied by appropriate fees. Such application shall not be submitted until at least two (2) years from the effective date of this Order.
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 - (i) The existence or nonexistence of a psychiatric or psychological disorder underlying the behavior exhibited by Dr. Pons in this Matter;
 - (ii) The amenability of such disorder, if any, to treatment; the treatment, if any, completed by Dr. Pons; and the need, if any, for additional treatment;
 - (iii) The likelihood of recurrence of the type of behavior exhibited by Dr. Pons in this Matter; and
 - (iv) Dr. Pons' ability to practice according to acceptable and prevailing standards of care.
 - c. Dr. Pons shall provide documentation of successful completion of programs of approved Category I Continuing Medical Education in medical ethics. The exact number of hours and the specific content of the programs shall be subject to the prior approval of the Board or its designee, but shall not be less than twenty (20) hours. These programs shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.

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- d. Due to the fact that Dr. Pons will not have been engaged in the active practice of medicine or surgery for a period in excess of two years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Pons' fitness to resume practice.
3. Upon reinstatement, Dr. Pons' certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Pons shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Pons shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Pons shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals or as otherwise requested by the Board.
 - d. In the event that a plan of treatment is recommended pursuant to the requirements set forth in paragraph 2b, above, Dr. Pons shall continue such treatment, at such intervals as are deemed appropriate by the treating physician or counselor but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating physician or counselor. Dr. Pons shall insure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
 - e. Dr. Pons shall provide documentation of successful completion of a program of at least five (5) hours of Continuing Medical Education credit in medical ethics for each year of probation, such courses to be approved in advance by the Board. These credits shall not apply to the credits required for biennial relicensure.
 - f. In the event that Dr. Pons should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Pons must notify the State Medical Board in writing of the dates of departure or return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.

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4. If Dr. Pons violates the terms of this Order in any respect, the Board, after giving Dr. Pons notice and an opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.
5. Upon successful completion of probation, Dr. Pons' certificate will be fully restored, except for any limitations as required by paragraph 2, above.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the interim, Dr. Pons shall not undertake the care of any patient not already under his care.


Joan Irwin Fishel
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF APRIL 11, 1990

REPORTS AND RECOMMENDATIONS

Dr. Kaplansky advised that the Findings and Orders appearing on this day's agenda are those in the matters of Pablo Pons, M.D.; Eugene J. Coles, M.D.; Bruce Dawson, M.D.; Clarence B. Alston, M.D.; and William C. Downing, M.D.

Dr. Kaplansky asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Pablo Pons, M.D.; Eugene J. Coles, M.D.; Bruce Dawson, M.D.; Clarence B. Alston, M.D.; and William C. Downing, M.D.

ROLL CALL:

Dr. Cramblett	- aye
Dr. O'Day	- aye
Dr. Gretter	- aye
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Ross	- aye
Mr. Albert	- aye
Dr. Daniels	- aye
Ms. Rolfes	- aye
Dr. Agresta	- aye
Dr. Kaplansky	- aye

REPORT AND RECOMMENDATION IN THE MATTER OF PABLO PONS, M.D.

Dr. Kaplansky stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

Dr. Kaplansky advised that a request to orally address the Board has been submitted by Dr. Pons' attorney. Three affirmative votes are necessary to grant this motion.

DR. ROSS MOVED TO GRANT MR. BRITZ' REQUEST TO ADDRESS THE BOARD. MR. ALBERT SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:

Dr. Cramblett	- abstain
Dr. O'Day	- aye
Dr. Gretter	- nay
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Ross	- aye
Mr. Albert	- aye
Dr. Daniels	- aye
Ms. Rolfes	- nay
Dr. Agresta	- aye

The motion carried.

Mr. Britz stated that Dr. Pons wished to personally address the Board.

Dr. Kaplansky advised Mr. Britz and Dr. Pons that there is not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. They indicated that they did not have any objection to the absence of a court reporter.

Dr. Pons stated that his attorney has presented the board with legal arguments in support of his position, and he does not intend to repeat that material. He would like to tell the Board something about himself, which he feels is important for the Board to know.

Mr. Jost stated that it would not be appropriate for Dr. Pons to relate additional evidence at this time. He stated that if new evidence has arisen that was not available at the time of the hearing, Dr. Pons can request that the matter be remanded. Dr. Pons may only address matters in the hearing record.

Mr. Britz stated that it was his understanding that the Board only wanted to hear matters not already contained in the hearing record.

Dr. Kaplansky stated that it is his decision as to whether or not Dr. Pons may proceed with his statement. He stated that he will allow Dr. Pons to proceed, but if he feels that it is going beyond what is appropriate, he will stop the statement.

Dr. Pons stated that he believes it is important for the Board to be aware of some of the things that have happened to him. Patient 1 bore his child almost seven years ago. Six years ago he terminated his treatment of her. Five years ago her attorney threatened him with legal action. Two months later, Dr. Pons was served with a lawsuit. The suit dragged on for four years until it was resolved. Shortly after he was sued, something happened to him that nobody should have to endure. His son was arrested for murder and the State demanded the death penalty. The details of the murder were shocking and created a public sensation. The local media gave the case considerable and graphic attention. Dr. Pons stated that he was forced to dig into his savings and to borrow a considerable amount of money to pay for his son's defense. Ultimately, his son was convicted and was spared the death penalty, but was sentenced to prison for life.

This episode took place simultaneously with the lawsuit and consumed the better part of 1985 and 1986. His family was the focus of intense publicity. His practice dropped about 25%. Only recently has he returned to his former living. The episode caused great anguish and embarrassment to him and to his family.

Dr. Pons referred to Ms. Fishel's recommendation that he undergo psychiatric treatment. Dr. Pons stated that his entire family required psychiatric treatment as a result of his son's case. He underwent three years of psychotherapy, and his wife is still in therapy. Dr. Pons stated that he thought the worst was over when his son's case was concluded, but lawsuits continued. Damage claims against him were all thrown out of court, and only the paternity case continued. When the tests proved paternity and he admitted to paternity in court, he began to negotiate a cash settlement. Unfortunately, the mother wanted him to bear the responsibility of

paternity but did not want him to share the child despite advice that she couldn't have it both ways. Finally the mother agreed to a lump sum settlement, and he consented to allow her husband to adopt the child.

Dr. Pons stated that he thought that his life would return to normal after the settlement. Although he gave a sworn statement to the Board in 1988, he heard nothing for a year, and felt he could go on with his life. Then he received the Board's notice of formal charges, and once again his life was in turmoil, especially after seeing the recommendation for a two-year suspension.

Dr. Pons stated that he is not proud of what happened. It was a mistake for him to become involved with a married woman. He does feel that the finding that he lacks remorse for what happened is wrong. There was no allegation that he departed from any standard of medical care. He never did anything but give Patient 1 the best care he could. Unfortunately, he yielded to temptation. He sincerely regrets this, and has paid heavily for it. Much is made in the examiner's report that the patient had emotional problems. Those problems were primarily those of depression, which was never serious. She did undergo severe postpartum depression after the child was born, but their personal relationship by that time was terminated.

Dr. Pons stated that he has lived through hell for the past five years, and to suspend him from practice for two more years would prolong his personal agony. Dr. Pons stated that he can accept a probationary period if the Board sees fit to penalize him; but, based on the entire picture and the fact that he has practiced in Toledo for over 20 years without a complaint, a suspension is harsh.

Dr. Kaplansky asked Mr. Dowling if he wished to respond.

Mr. Dowling advised that he doesn't think there has ever been any dispute about the facts of the case. Dr. Pons has admitted the factual allegations. The only issue is the legal aspect and whether it is a violation of the Medical Practice Act. Mr. Dowling stated that he believes that the Report and Recommendation is based upon a fair reading of the facts and the law, and he supports the hearing examiner's proposed Order.

MR. JOST MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF PABLO PONS, M.D. DR. GRETTER SECONDED THE MOTION.

Dr. Kaplansky asked if there were any questions concerning the proposed findings of fact, conclusions, and order in the above matter.

MS. ROLFES MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF PABLOS PONS, M.D., AS FOLLOWS:

1. To change the probationary period created in paragraph 3 from five (5) years to eight (8) years.
2. To delete the following language from the first sentence of subparagraph 3d:

"...until such time as the Board determines that no further treatment is necessary."

3. To add the following subparagraph to paragraph 3:

- g. Dr. Pons shall have a third party present at all times while examining, treating and/or counseling patients.

MR. JUST SECONDED THE MOTION.

Ms. Rolfes stated that, for the protection of the public, if Dr. Pons is to continue in medicine, a third party should be present at all times. A precedent has been set for other doctors who have been charged with sexual imposition. Ms. Rolfes stated that she felt this was a serious case. The defense that was offered was that this was a consensual relationship. Ms. Rolfes stated that she has a real problem accepting that defense considering the emotional condition of the patient, who was under psychiatric care at the time. This was not an equal situation, but involved the issue of power. There was no way the relationship could have been consensual, especially with the patient's emotional problems of which Dr. Pons was aware. Ms. Rolfes stated that the patient was exploited and used, and a two-year suspension with additional probationary conditions is appropriate.

Dr. O'Day asked if she could offer another amendment or amend the amendment.

Dr. Ross asked if the original order can be discussed if the amendment passes.

Dr. Cramblett stated that a decision is needed from the Board's parliamentarian on how the Board should proceed. The Board has before it an Order and a proposed amendment.

Mr. Bumgarner stated that, unless Dr. O'Day is proposing an amendment to the amendment, she is out of order. Discussion should be confined to the proposed amendment or to any amendment to the amendment.

Dr. O'Day stated that she would like to change the suspension period to a year.

Mr. Bumgarner stated that she should delay making her motion until the current proposed amendment is discussed and voted on.

Dr. Gretter stated that he saw nothing in the record concerning anything about the practice pattern that would require having a third party present as required in the amendment. The allegations against Dr. Pons have nothing to do with how he practices in his office on a day-to-day basis.

Ms. Rolfes stated that several of his intimate relationships occurred within the confines of the office. She thought it appropriate that his practice be supervised.

Dr. Gretter stated that he understood from reading the testimony that if anything did happen it was not during practice hours.

Ms. Rolfes stated that she wants a third party present even during discussion with patients, noting that most of the times he met with Patient 1, there had to have been some type of agreement.

Dr. Gretter asked if the Board had guidelines concerning a third party being present. Dr. O'Day stated that it does.

Ms. Rolfes stated that her amendment is in accord with those guidelines.

Mr. Jost stated that the guidelines state that the physician must offer the patient the opportunity to have a third party present. The proposed amendment requires the presence of a third party. Mr. Jost stated that what troubles him about this case is that Dr. Pons has indicated that he regretted having committed adultery. That is not why he is before the Board. What concerns the Board is that Dr. Pons took advantage of a patient with a serious, long-lasting, pre-existing, continuous psychiatric problem. Mr. Jost stated that he reviewed the record when he first received it and again the previous evening. In Dr. Pons' own testimony he talked about his patient suffering from psychiatric problems throughout the relationship. Dr. Pons took advantage of his professional relationship with the patient to make overtures to initiate a sexual relationship. Mr. Jost stated that he still doesn't think Dr. Pons realizes that that was wrong. He doesn't understand that it was unprofessional. Mr. Jost stated that Ms. Rolfes' proposed amendment addresses that. He also would feel more comfortable if Dr. Pons were required to have a third party present at all times.

A roll call vote was taken on Ms. Rolfes' motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- nay
	Dr. Gretter	- nay
	Dr. Stephens	- nay
	Mr. Jost	- aye
	Dr. Ross	- nay
	Mr. Albert	- aye
	Dr. Daniels	- nay
	Ms. Rolfes	- aye
	Dr. Agresta	- nay

The motion failed.

Dr. Ross stated that, regardless of the severity of the woman's psychiatric problems, it seems that Dr. Pons did initiate treatment as if he were caring for her psychiatric problem. He asked what the precedent has been for a psychiatrist in terms of his license and his entering into a sexual relationship with a patient. He noted that Dr. Pons prescribed medication as though he were a caregiver for her psychiatric condition. Dr. Pons did counsel Patient 1. He stated that this should be framed in the same context as a psychiatrist having an affair with a patient.

Ms. Rolfes stated that Dr. Pons has denied caring for her in that role. His stated

reason for prescribing antidepressants was that the birth control medication might have been causing her problems. She stated that she thought the transcript made it clear that Dr. Pons was not serving in a psychiatric caregiver role.

Dr. Ross stated that prescribing antidepressants is indicated for psychiatric problems. Ms. Rolfes noted that Dr. Pons has indicated that he also prescribed them for other patients. Dr. Ross stated that he would propose that the Board's order in this case be consistent with orders used for a psychiatrist entering into a relationship with a patient.

Dr. Stephens stated that there is no difference.

Dr. Cramblett stated that the Board has looked at the position of the American Psychiatric Association, which says that psychiatrists should not enter into personal relationships with patients.

Dr. Agresta stated that, as he read this case, he didn't think there was any question about Dr. Pons' practice ability. This was an question of ethics. Dr. Pons' actions were unethical, and that is how the Board should address the issue.

Dr. Gretter stated that that is the essence of this case. Part of the proposed sanction talks about ethics. Experts have testified that "ethics" is a code of practice setting standards of behavior. Clearly those standards state that physicians don't take advantage of patients. Dr. Pons continued to medically treat Patient 1 while carrying on activities of concern. Dr. Gretter stated that to his way of thinking, this violates the Code of Ethics.

DR. O'DAY MOVED TO AMEND THE PROPOSED ORDER TO CHANGE THE PERIOD OF SUSPENSION FROM 2 YEARS TO 1 YEAR. DR. ROSS SECONDED THE MOTION.

Dr. O'Day stated that she was in agreement with the Order until she heard Dr. Pons' statement. One of the reasons a person is permitted to give a statement to the Board is to give mitigating circumstances to influence the Board's decision. The Attorney Hearing Examiner's Report and Recommendation was beautifully written. Dr. Pons must be aware that it was an ethical violation and that he has a responsibility to not violate the patient's trust. She is not trying to change the intent of the Order. Dr. O'Day stated that she is sorry that Dr. Pons has gone through what he has with respect to his family, and she does not want to penalize him further. A 1-year suspension would give Dr. Pons the opportunity to take a medical ethics course and get therapy. Dr. O'Day stated that she does not want to be unduly punitive when there is no evidence of other practice violations.

Mr. Bumgarner asked Dr. O'Day if her motion advocates a minimum 1-year suspension. She stated that it does.

Ms. Rolfes asked if Dr. O'Day would be willing to make the requirement of a third party presence part of her amendment. Dr. O'Day stated that she does not think that that would serve any purpose. This case involves significant ethical violations that need to be addressed through an ethics course and Dr. Pons' insights into what happened.

Ms. Rolfes stated that in the transcript Dr. Pons equated the situation to the movie, "Fatal Attraction". She just wondered what impact an ethics course would have on that viewpoint. The Board's duty is to protect the public. It must guarantee the public that doctors who have licenses will give appropriate care. She disagreed that there was no harm done in this case. A patient's trust was damaged, and the profession was hurt because of this. The patient went into a deep post-partum depression.

Dr. Stephens, Dr. Agresta, and Dr. O'Day objected to Ms. Rolfes' statements, stating that no one has said that there was no harm done in this case.

Dr. O'Day stated that she feels there was a significant violation in this case, but nothing will be served by requiring the presence of a third party during examinations, treatments, or counseling. Having a chaperone present will not prevent a physician from having an affair with a patient.

Dr. Agresta added that the Board cannot "guarantee" anything. It can only make sure that the law is enforced and protect the public as best it can. Nothing can be guaranteed.

Ms. Rolfes stated that the Board must do everything it can to guarantee protection of the public. She stated that having a third party present would help.

Dr. O'Day stated that she does not want the third party requirement as part of her motion as she does not feel it would serve a purpose. Having a third party present during a pelvic examination is one thing, but having one present during counseling is another.

A roll call vote was taken on Dr. O'Day's motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- nay
	Dr. Ross	- aye
	Mr. Albert	- aye
	Dr. Daniels	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.

Mr. Jost responded to Mr. Britz' objection to the Board's referring to the A.M.A. Code of Ethics. Mr. Jost stated that, ultimately, that decision is up to the courts; however, he feels it is totally appropriate for the Board to refer to National and State standards of professional associations, just as it looks to expert witnesses for professional standards. Ohio statutes elsewhere defer to non-governmental professional agencies. For example, State hospital licensure

statutes rely on JCAHO accreditation. He sees nothing inappropriate about this.

Dr. Gretter added that compliance with ethics standards is mandated in the statutes.

Mr. Jost stated that Mr. Britz is arguing that the statute is unconstitutional. Mr. Jost stated that, in his opinion, it is not unconstitutional, and is appropriate.

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF PABLO PONS, M.D. DR. O'DAY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Mr. Albert	- aye
	Dr. Daniels	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

November 9, 1989

Pablo A. Pons, M.D.
2739 Navarre Avenue
Oregon, OH 43616

Dear Doctor Pons:

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

- (1) You were the treating physician of patient 1, as identified in the attached patient number key (key to be withheld from public disclosure), from on or about 1973 to on or about March 26, 1984.

While acting as patient 1's treating physician specializing in obstetrics and gynecology, and with knowledge of the patient's mental and emotional condition - including, but not limited to, marital difficulties, depression, and history of psychiatric treatment - you nevertheless engaged in a sexual relationship with patient 1 beginning sometime on or about 1976 and ending sometime on or about 1983. This relationship produced a child born to patient 1 on or about August 17, 1983, of whom you were the biological father. It was not until on or about March 20, 1984 that you terminated the professional relationship by sending a letter to patient 1's husband stating that you would no longer be responsible for the care of patient 1 as of March 26, 1984.

Further, the fact that you remained patient 1's treating physician while involved in the aforementioned sexual relationship presented numerous conflicts in your role as treating physician - including, but not limited to surgical treatment and care adjunct to pregnancy (before, during, and after), and treatment of conditions in which you failed to either offer, procure, and/or insist on appropriate consultation.

Pablo A. Pons, M.D.
Page Two

Such acts, conduct, and/or omissions as alleged in the above paragraph (1), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Such acts, conduct, and/or omissions as alleged in the above paragraph (1), individually and/or collectively, constitute "(t)he violation of any provision of a code of ethics of a national professional organization", as that clause is used in Section 4731.22(B)(15), Ohio Revised Code (as in effect prior to August 31, 1982) because it violates one or more of the following sections of the American Medical Association Code of ethics: Section 1, Section 4, Section 6 and Section 8, and as that clause is used in Section 4731.22(B)(14), Ohio Revised Code (as in effect from August 31, 1982 until March 17, 1987) of the American Medical Association Code of Ethics: Section I, Section II, and Section IV.

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, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P 746 510 077
RETURN RECEIPT REQUESTED