



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

November 15, 1996

Robert D. Kukla, M.D.  
300 Rainbow Drive, Suite 104  
Florence, SC 29001

Dear Doctor Kukla:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 1996, including Motions approving and confirming the Findings of Fact, and the 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 a copy of that Notice of Appeal to 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

Thomas E. Gretter, M.D.  
Secretary

TEG:em  
Enclosures

Certified Mail Receipt No. P 152 982 817  
Return Receipt Requested

cc: Francis X. Gardner, Esq.

Certified Mail Receipt No. P 152 982 818  
Return Receipt Requested

*Mailed 12-3-96*



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## 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 Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 1996, including Motions approving and confirming the Findings of Fact, and the 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 Robert D. Kukla, 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)

Thomas E. Gretter, M.D.  
Secretary

11/20/96

Date



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

ROBERT D. KUKLA, M.D.

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## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 13th day of November, 1996.

Upon the Report and Recommendation of Sharon W. Murphy, 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 of Ohio for the above date.

It is hereby ORDERED that:

- A. The certificate of Robert D. Kukla, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite time, but not less than one year. Such suspension shall be stayed, subject to the following **PROBATIONARY** terms, conditions and limitations for at least five (5) years:
1. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing.
  2. Dr. Kukla shall not request modification of the terms, conditions, or limitations of his probation for at least one year after imposition of these probationary terms, conditions, and limitations.
  3. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative within three months of the effective date of this Order and upon his request for termination of the probationary period, or as otherwise requested by the Board.
  4. Dr. Kukla shall submit quarterly declarations, under the penalty of Board disciplinary action or criminal prosecution, stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board.
  5. Dr. Kukla shall comply with all terms, conditions, and limitations imposed by the South Carolina Board of Medical Examiners [South Carolina Board]. Moreover, Dr. Kukla shall cause to be submitted to the Board copies of any reports that he submits to the South Carolina Board whenever the South Carolina Board requires such submission.
  6. Dr. Kukla shall notify the Board of any action in any state taken against a certificate to practice medicine held by Dr. Kukla in that state. Moreover, Dr. Kukla shall provide acceptable documentation verifying the same.

7. Dr. Kukla shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
8. Dr. Kukla shall immediately notify the Board in writing of any modification or change to any terms, condition, or limitation imposed by any other state medical board.
9. Within one (1) year of the effective date of this Order, Dr. Kukla shall provide the Board with documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee, but shall not be less than ten hours. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
10. Within sixty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Kukla shall commence appropriate treatment, as determined by an informed assessment of Dr. Kukla's current needs. Such assessment and treatment shall be by a provider or providers approved in advance by the Board. Dr. Kukla may request that the Board consider Robert K. Hotchkiss, M.D., as an approved provider, on the condition that Dr. Hotchkiss continues to be accepted by the South Carolina Board of Medical Examiners under the terms of Dr. Kukla's probation in that state.

Prior to the assessment of Dr. Kukla's current status, Dr. Kukla shall submit to the approved provider copies of the Board's Order, including the Summary of the Evidence, the Findings of Fact, the Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that provider. Within ten days after the completion of the initial assessment, Dr. Kukla shall cause a written report to be submitted to the State Medical Board from the approved provider, which report shall include:

- i. A detailed plan of recommended treatment based upon the provider's informed assessment of Dr. Kukla's current needs; and
  - ii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
11. Dr. Kukla shall provide the Board with acceptable documentation evidencing compliance with the plan of recommended treatment required under paragraph 9, above, on a quarterly basis, or as otherwise directed by the Board.
  12. Dr. Kukla shall continue counseling with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month. The sessions shall be in person and may not be conducted by telephone or other electronic means.

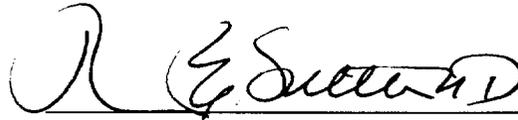
Dr. Kukla shall continue in counseling until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Kukla shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

13. Upon submitting renewal applications for each Ohio biennial registration period occurring during the period of probation, Dr. Kukla shall also submit acceptable documentation of Category I Continuing Medical Education credits completed. At least ten hours of such Continuing Medical Education for each

registration period, to be approved in advance by the Board or its designee, shall relate to the violations found in this matter.

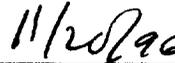
14. Dr. Kukla shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio, the Board may place Dr. Kukla's certificate under additional terms, conditions, or limitations, including the following:
    - a. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
    - b. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative at three month intervals, or as otherwise requested by the Board.
    - c. Dr. Kukla shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Kukla's activities will be directly supervised and overseen by another physician approved by the Board.
    - d. Dr. Kukla shall have a third party present while examining or treating female patients.
    - e. Within thirty days of commencement of practice in Ohio, Dr. Kukla shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Kukla's patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Dr. Kukla's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring physician becomes unable or unwilling to so serve, Dr. Kukla shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.
    - f. Dr. Kukla shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
    - g. In the event that Dr. Kukla has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to commencement of practice in Ohio, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kukla's fitness to resume practice.
  15. If the South Carolina Board should terminate Dr. Kukla's probationary terms, conditions, and limitation before Dr. Kukla completes a five year probationary period in that state, the Board may place Dr. Kukla's certificate under additional terms, conditions, or limitations as set forth in paragraph 14, above.
  16. If Dr. Kukla violates probation in any respect, the Board, after giving Dr. Kukla notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Kukla's certificate to practice.
- B. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Kukla's certificate will be fully restored.
  - C. The terms, conditions, and limitations of this Order shall supersede the terms, conditions, and limitations of the order In the Matter of Robert D. Kukla, M.D., entered on the Journal of the State Medical Board of Ohio on October 11, 1995.

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

A handwritten signature in cursive script, appearing to read "T. E. Greter", written over a horizontal line.

Thomas E. Greter, M.D.  
Secretary

(SEAL)

A handwritten date "11/20/96" written over a horizontal line.

Date

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**REPORT AND RECOMMENDATION  
IN THE MATTER OF ROBERT D. KUKLA, M.D.**

The Matter of Robert D. Kukla, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on September 10, 1996.

**INTRODUCTION**

**I. Basis for Hearing**

A. By letter dated July 10, 1996, the State Medical Board of Ohio [Board] notified Robert D. Kukla, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on the following allegations:

1. On or about October 11, 1995, the Board imposed conditions on Dr. Kukla's certificate to practice medicine and surgery in Ohio based on a February 1994 action taken by the South Carolina Board of Medical Examiners against Dr. Kukla's certificate to practice in that state.
2. On or about June 1, 1995, the South Carolina Board of Medical Examiners approved a second Final Order concerning Dr. Kukla's certificate to practice in that state. This action was based upon allegations of "inappropriate sexual advances towards a patient."

The Board alleged that the June 1, 1995, Final Order of the South Carolina Board of Medical Examiners constitutes "[t]he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to March 5, 1996, to wit: Section 4731.22(B)(6) and (B)(18), to wit: Principles of Medical Ethics I, II, and IV, American Medical Association." (State's Exhibit 1).

In addition, the Board advised Dr. Kukla of his right to request a hearing in this matter. (State's Exhibit 1) (Note: Pages of State's Exhibit 1 numbered by Attorney Hearing Examiner).

- B. On July 29, 1996, Francis X. Gardner, Esq., filed a written hearing request on behalf of Dr. Kukla. (State's Exhibit 2).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by James M. McGovern, Assistant Attorney General.
- B. On behalf of Respondent: Dr. Kukla, having been apprised of his right to be represented by counsel, appeared on his own behalf.

**EVIDENCE EXAMINED**

I. Testimony Heard

Robert D. Kukla, M.D.

II. Exhibits Presented

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

A. Presented by the State

1. State's Exhibit 3: Copy of a July 30, 1996, letter to Mr. Gardner advising that a hearing had been scheduled in this matter for August 12, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: Copy of a July 31, 1996, letter to Mr. Gardner from the Board scheduling the hearing for September 10, 1996. (2 pp.)
3. State's Exhibit 5: Copy of an April 17, 1996, letter to the Board from Dr. Kukla responding to letters of inquiry. (3 pp.)
4. State's Exhibit 6: Copy of a May 23, 1996, letter to Dr. Kukla from the Board requesting transcripts of the South Carolina proceedings. (2 pp.)

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5. State's Exhibit 7: Copy of a July 5, 1996, letter to the Board from Dr. Kukla pertaining to the transcripts of the South Carolina proceedings. (3 pp.)
  6. State's Exhibit 8: Copy of the transcript of testimony in the proceedings against Dr. Kukla by the South Carolina Board of Medical Examiners which commenced on April 5, 1995. (161 pp.) (Note: Exhibit sealed to protect patient confidentiality).
  7. State's Exhibit 9: Copy of the May 16, 1995, Final Order Hearing before the South Carolina Board of Medical Examiners, with attachments. (46 pp.) (Note: Exhibit sealed to protect patient confidentiality).
  8. State's Exhibit 10: Certified copy of the May 16, 1995, Final Order of the South Carolina Board of Medical Examiners regarding Dr. Kukla. (8 pp.) (Note: Pages numbered by Attorney Hearing Examiner).
  9. State's Exhibit 11: Withdrawn.
  10. State's Exhibit 12: Copy of the Principles of Medical Ethics of the American Medical Association.
- B. Presented by Respondent

Respondent's Exhibit A: Collection of documents pertaining to Dr. Kukla. (15 pp.)

### PROCEDURAL MATTERS

1. At hearing, Dr. Kukla testified regarding a portion of Respondent's Exhibit A, in which Dr. Kukla requested that the Board impose no more than the minimum penalty under the Board's Disciplinary Guidelines. However, because it appeared that Dr. Kukla had based his request on an erroneous assumption, the Attorney Hearing Examiner explained to Dr. Kukla that: (a) the Board is not limited to imposing the penalties listed in the Disciplinary Guidelines, and (b) the Attorney Hearing Examiner is not required to follow the Disciplinary Guidelines when recommending a Proposed Order. In response, Dr. Kukla requested that the Board disregard both Respondent's Exhibit A and his testimony as they pertain to the Disciplinary Guidelines. (See Transcript at pages 28-30, 46-47 and Respondent's Exhibit A at 1, 2).

2. The evidence in this matter refers to: (a) two actions against Dr. Kukla by the South Carolina Board, and (b) a prior action against Dr. Kukla by this Board. It should be noted that, although the current matter incorporates the facts upon which the second South Carolina Board action is based, the facts fundamental to the first South Carolina Board action and the first Ohio Board action are not related to the facts upon which the current matter is based.

### SUMMARY OF THE EVIDENCE

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

1. Robert D. Kukla, M.D., received a Doctor of Medicine degree from the Ohio State University in 1974. After finishing a rotating internship at St. Luke's Hospital in Denver, Colorado, Dr. Kukla completed a residency program in Physical Medicine and Rehabilitation at Ohio State University in 1980. In July 1986, Dr. Kukla accepted a position as the Medical Director at HealthSound Rehabilitation Hospital in Florence, South Carolina. He held that position until January 1995, when he accepted a position as a staff psychiatrist at that institution. (Respondent's Exhibit 1 [Resp. Ex.] 1 at 7).
2. On February 10, 1994, the South Carolina Board of Medical Examiners [South Carolina Board] issued a Final Order based on Dr. Kukla's care and treatment of one patient in 1990. The South Carolina Board found that "[Dr. Kukla's] conduct involved several departures from the professionally accepted standard of practice in similar situations which resulted in the patient's death." The South Carolina Board indefinitely suspended Dr. Kukla's certificate to practice in that state, but stayed the suspension upon receipt of a \$5000 fine. Thereafter, the South Carolina Board reinstated Dr. Kukla's certificate with terms and conditions of probation. (State's Exhibit 1 [St. Ex.] 1 at 6-10).
3. On October 11, 1995, the Board issued an Order, following an adjudicatory hearing, based on the 1994 South Carolina Board action. The Board found that Dr. Kukla's conduct, upon which the South Carolina action was based, constituted "[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." The Board suspended Dr. Kukla's certificate to practice in this state, but stayed the suspension. The Board imposed probationary terms and conditions for a period of at least four years. (St. Ex. 1 at 3-4, 10).

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4. On June 1, 1995, the South Carolina Board issued a second Final Order. This Final Order was based on allegations that, from 1988 through 1994, Dr. Kukla "engaged in unethical and unprofessional sexual harassment and contact with [one] patient." (St. Ex. 10 at 2). During the hearing before the South Carolina Board, Dr. Kukla admitted that he had been sexually attracted to the patient. He further admitted that:

[H]e asked the patient to go to a motel with him, that he asked the patient, with sex in mind, to disrobe in his presence, and that he asked the patient to kiss. [Dr. Kukla] admitted that he saw the patient without anyone present and, in doing so, treated her differently from other patients, departing from his normal procedure. [Dr. Kukla] admitted that he instructed his assistant to leave the room, while the patient was examined, and to lock the door, thereby creating an opportunity for something improper to occur. [Dr. Kukla] admitted that his conduct was improper and admitted that sex with patients is wrong. [Dr. Kukla] further admitted that the patient was a vulnerable individual during the period under consideration

(St. Ex. 10 at 3). Dr. Kukla denied, however, that he had kissed the patient. He explained that she often kissed him on the cheek during the four years that he treated her. Nevertheless, Dr. Kukla denied ever having had physical contact of a sexual nature. Dr. Kukla stated that the patient refused all of his advances. (Tr. at 41-44; St. Ex. 9 at 13).

The patient also testified at the May 1995 hearing before the South Carolina Board. The patient testified that Dr. Kukla's offenses were more extensive than those to which he admitted. (See St. Ex. 8 at 25-84). The South Carolina Board, however, did not find the patient's version of events to be factual. (St. Ex. 10). The patient also testified that the first person she informed of Dr. Kukla's improper conduct was her attorney. She further testified that she filed a civil suit against Dr. Kukla at the time she filed her complaint with the South Carolina Board. (St. Ex. 9 at 45-46).

In addition, an investigator for the South Carolina Board testified at the South Carolina Board hearing that Dr. Kukla had been forthright and candid through out the investigation. (St. Ex. 8 at 14, 16).

The South Carolina Board found that Dr. Kukla had "attempted, on several occasions, to seduce the patient by suggesting a visit to a motel for the purpose of sex, kissing the patient, and suggesting that the patient undress before him.

[Moreover, t]he patient was treated differently from other patients in that she was examined without chaperone behind a locked door and these actions of [Dr. Kukla] created an environment conducive to sexual behavior.” (St. Ex. 10 at 3). The South Carolina Board found as fact only those things to which Dr. Kukla had admitted, with the exception of the finding that Dr. Kukla had kissed the patient. Based on its findings, the South Carolina Board concluded that Dr. Kukla violated the Principles of Medical Ethics adopted by the South Carolina Board, and “lack[ed] the ethical competence to practice medicine, as evidenced by his inappropriate sexual advances toward a patient.” (St. Ex. 10 at 4-5).

The South Carolina Board indefinitely suspended Dr. Kukla’s certificate to practice in that state, but stayed the suspension pending the payment of a \$5000 fine. Four days later, Dr. Kukla submitted the fine, and his certificate was reinstated, with probationary terms and conditions for an indefinite period of time. The terms and conditions of probation include the following:

- a. Dr. Kukla “shall undergo psychiatric treatment with not less than monthly office sessions with a psychiatrist approved by the [South Carolina Board], with quarterly written reports submitted directly to the [South Carolina Board] by the psychiatrist. The office sessions shall be in person and may not be conducted by telephone or other electronic means. [Dr. Kukla] must immediately notify the [South Carolina Board] in writing if he changes his treating psychiatrist and must receive [South Carolina Board] approval of the change.”
- b. Dr. Kukla “shall not treat female patients without a female chaperone physically present throughout the treatment. The presence of the female chaperone shall be noted in each patient’s record.”
- c. Dr. Kukla “shall not engage in sexual relations, or contact of any nature, with a prior or current patient.”
- d. Dr. Kukla’s “medical records (office, hospital, and surgical activity) shall be subject to periodic review by [South Carolina Board] representatives. The cost of such reviews shall be borne by [Dr. Kukla].”

(St. Ex. 10 at 6-8).

5. On February 13, 1996, the South Carolina Board released Dr. Kukla from the probationary terms and conditions of the 1994 South Carolina Board action. At

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this time, the South Carolina Board is enforcing only the terms and conditions of its June 1, 1995, Final Order. (Resp. Ex. A at 12).

6. Dr. Kukla testified that he is no longer employed at HealthSound Rehabilitation Hospital. On September 5, 1995, Dr. Kukla started a private practice in Physical Medicine and Rehabilitation in Florence, in South Carolina. He is a solo practitioner and his wife of twenty-four years serves as his office manager. A majority of his practice consists of performing disability examinations for the Division of Disability Determination, Department of Vocational Rehabilitation, in the State of South Carolina. (Tr. at 34, 40; Resp. Ex. A at 13).
7. On September 2, 1994, Dr. Kukla initiated psychiatric treatment with Robert K. Hotchkiss, M.D. On May 12, 1995, Dr. Hotchkiss advised the South Carolina Board that: "Dr. Kukla has been one of the most motivated and compliant physicians [he had] ever treated. . . . Dr. Kukla has a much better understanding of the physician-patient relationship and the power the physician holds in such relationships. [Dr. Hotchkiss held] no fear whatsoever that Dr. Kukla is a threat to his present or future patients or that any similar conduct will ever recur." (St. Ex. 9 at 39-40). On June 26, 1996, Dr. Hotchkiss advised the South Carolina Board that he has continued to see Dr. Kukla on a monthly basis. Dr. Hotchkiss further advised that Dr. Kukla "has no psychiatric impairments that would preclude him from practicing medicine." (Tr. at 32; Resp. Ex. A at 7).
8. The Principles of Medical Ethics of the American Medical Association provide in pertinent part:
  - 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 and 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.

(St. Ex. 12).

### FINDINGS OF FACT

1. On February 10, 1994, the South Carolina Board of Medical Examiners [South Carolina Board] issued a Final Order based on Dr. Kukla's care and treatment of one patient in 1990. On October 11, 1995, the State Medical Board of Ohio [Board] issued an Order based on the South Carolina action. The Board suspended Dr. Kukla's certificate to practice in this state, but stayed the suspension. In addition, the Board imposed probationary terms and conditions for a period of at least four years.
2. On June 1, 1995, the South Carolina Board issued a second Final Order. This Final Order was based on the findings that, from 1988 through 1994, Dr. Kukla "engaged in unethical and unprofessional sexual harassment and contact with [one] patient." The Final Order indefinitely suspended Dr. Kukla's certificate to practice in that state, but stayed the suspension pending payment of a \$5000 fine. Four days later, Dr. Kukla submitted the fine, and the South Carolina Board reinstated his certificate, but imposed probationary terms and conditions for an indefinite period of time.

### CONCLUSIONS

The June 1, 1995, Final Order of the South Carolina Board of Medial Examiners constitutes "[t]he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to March 5, 1996, to wit: Section 4731.22(B)(6) and (B)(18), to wit: Principles of Medical Ethics I and IV of the American Medical Association. However, the evidence is insufficient to find a similar violation in relation to Principles of Medical Ethics II of the American Medical Association

### PROPOSED ORDER

It is hereby ORDERED that:

- A. The certificate of Robert D. Kukla, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite time, but not less than one year.

STATE MEDICAL BOARD  
OF OHIO

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- B. The State Medical Board of Ohio [Board] shall not consider reinstatement of Dr. Kukla's certificate until all of the following minimum requirements are met:
1. Dr. Kukla shall submit an application for reinstatement, accompanied by appropriate fees.
  2. Dr. Kukla shall comply with all terms, conditions, and limitations imposed by the South Carolina Board of Medical Examiners [South Carolina Board]. Moreover, Dr. Kukla shall cause to be submitted to the Board copies of any reports that he submits to the South Carolina Board whenever the South Carolina Board requires such submission.
  3. Dr. Kukla shall notify the Board of any action in any state taken against a certificate to practice medicine held by Dr. Kukla in that state. Moreover, Dr. Kukla shall provide acceptable documentation verifying the same.
  4. Dr. Kukla shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by this Board, the South Carolina Board, and any other state medical board.
  5. Dr. Kukla shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by the South Carolina Board or any other state medical board.
  6. Within sixty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Kukla shall commence appropriate treatment, as determined by an informed assessment of Dr. Kukla's current needs. Such assessment and treatment shall be by a provider or providers approved in advance by the Board. Dr. Kukla may request that the Board consider Robert K. Hotchkiss, M.D., as an approved provider, on the condition that Dr. Hotchkiss continues to be accepted by the South Carolina Board of Medical Examiners under the terms of Dr. Kukla's probation in that state.

Prior to the assessment of Dr. Kukla's current status, Dr. Kukla shall submit to the approved provider copies of the Board's Order, including the Summary of the Evidence, the Findings of Fact, the Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that provider. Within ten days after the completion of the initial assessment, Dr. Kukla shall cause a written report to be submitted to the State Medical Board from the approved provider, which report shall include:

- i. A detailed plan of recommended treatment based upon the provider's informed assessment of Dr. Kukla's current needs; and
    - ii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
  7. Dr. Kukla shall provide the Board with acceptable documentation evidencing compliance with the plan of recommended treatment required under paragraph 6, above, on a quarterly basis, or as otherwise directed by the Board.
  8. Dr. Kukla shall provide documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee, but shall not be less than ten hours. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
  9. In the event that Dr. Kukla has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kukla's fitness to resume practice.
- C. Upon reinstatement, the certificate of Dr. Kukla shall be subject to the following PROBATIONARY terms, conditions, and limitations for at least five years.
1. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing.
  2. Dr. Kukla shall not request modification of the terms, conditions, or limitations of his probation for at least one year after imposition of these probationary terms, conditions, and limitations.
  3. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative within three months of the reinstatement of his certificate and upon his request for termination of the probationary period, or as otherwise requested by the Board.

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4. Dr. Kukla shall submit quarterly declarations, under the penalty of Board disciplinary action or criminal prosecution, stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board. Moreover, Dr. Kukla shall cause to be submitted to the Board copies of the quarterly reports that he submits to the South Carolina Board whenever the South Carolina Board requires such submission.
5. Dr. Kukla shall notify the Board of any action in any state taken against a certificate to practice medicine held by Dr. Kukla in that state. Moreover, Dr. Kukla shall provide acceptable documentation verifying the same.
6. Dr. Kukla shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
7. Dr. Kukla shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by any other state medical board.
8. Dr. Kukla shall continue counseling with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month. The sessions shall be in person and may not be conducted by telephone or other electronic means.  
  
Dr. Kukla shall continue in counseling 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 psychiatrist. Dr. Kukla shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
9. Upon submitting renewal applications for each Ohio biennial registration period occurring during the period of probation, Dr. Kukla shall also submit acceptable documentation of Category I Continuing Medical Education credits completed. At least ten hours of such Continuing Medical Education for each registration period, to be approved in advance by the Board or its designee, shall relate to the violations found in this matter.
10. Dr. Kukla shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio,

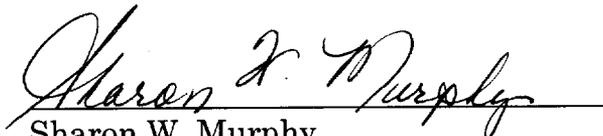
the Board may place Dr. Kukla's certificate under additional terms, conditions, or limitations, including the following:

- a. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- b. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative at three month intervals, or as otherwise requested by the Board.
- c. Dr. Kukla shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Kukla's activities will be directly supervised and overseen by another physician approved by the Board.
- d. Dr. Kukla shall have a third party present while examining or treating female patients.
- e. Within thirty days of commencement of practice in Ohio, Dr. Kukla shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Kukla's patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Dr. Kukla's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring physician becomes unable or unwilling to so serve, Dr. Kukla shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.
- f. Dr. Kukla shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
- g. In the event that Dr. Kukla has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to commencement of practice in Ohio, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kukla's fitness to resume practice.

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11. If the South Carolina Board should terminate Dr. Kukla's probationary terms, conditions, and limitation before Dr. Kukla completes a five year probationary period in that state, the Board may place Dr. Kukla's certificate under additional terms, conditions, or limitations as set forth in paragraph 10, above.
  12. If Dr. Kukla violates probation in any respect, the Board, after giving Dr. Kukla notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Kukla's certificate to practice.
- D. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Kukla's certificate will be fully restored.
- E. The terms, conditions, and limitations of this Order shall supersede the terms, conditions, and limitations of the Order In the Matter of Robert D. Kukla, M.D., entered on the Journal of the State Medical Board of Ohio on October 11, 1995.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 13, 1996

### REPORTS AND RECOMMENDATIONS

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

Dr. Stienecker asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Archie W. Bedell, M.D., and Walter Woodhouse, M.D.; Thomas J. Delliquadri, M.T.; Atul S. Goswami, M.D.; Robert D. Kukla, M.D.; Gregory Spencer Mynko, M.D.; Adam George Paoni, D.O.; and the hearing records and reports of *Goldman* hearings and recommendations on the following: Alexis Medical Center; Robert H. Bell, M.D. & The Orthopaedic Surgeons, Inc.; Jerome P. Davidson, D.P.M.; Larry S. Fields, M.D., John H. Darnell, Jr., M.D., and Robert J. Thomas, M.D., of the Family Medicine Center; Rose A. Gowdey & the Potomac Massage Training Institute; James A. Johnson, D.O.; Jeffrey R. Kontak, M.D. & The Wadsworth-Rittman Area Family Practice, Inc.; Dewey O. Mays, Jr., M.D.; Teresita Morales, M.D.; Charles W. Nadolski; Muhammad Najjar, M.D.; Sanjiv S. Patel, M.D.; Susan W. Perlman, M.D.; Lakshmanaraju S. Raju, M.D.; Swaroop Rani, M.D.; Neil Alan Shank, D.O.; and Darrell K. Wells, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Stienecker	- aye

Dr. Heidt stated that he did not read the hearing record in the matter of Archie W. Bedell, M.D., and Walter Woodhouse, M.D.

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

ROLL CALL:	Mr. Albert	- aye
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Dr. Bhati	- aye
Dr. Heidt	- aye
Dr. Gretter	- aye
Dr. Egner	- aye
Dr. Agresta	- aye
Dr. Buchan	- aye
Mr. Sinnott	- aye
Dr. Garg	- aye
Dr. Stienecker	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of this matter.

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

.....

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT D. KUKLA, M.D.

Dr. Stienecker stated that the Report and Recommendation in the Matter of Robert D. Kukla, M.D., will be tabled until later in the meeting.

.....

**DR. GARG MOVED TO REMOVE THE MATTER OF ROBERT D. KUKLA, M.D., FROM THE TABLE. DR. BHATI SECONDED THE MOTION.** All members voted aye. The motion carried.

Dr. Stienecker 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. Stienecker advised that a request to address the Board has been timely filed on behalf of Dr. Kukla. Dr. Kukla would be allotted approximately five minutes for his address.

Dr. Kukla indicated that he had no objection to the absence of a court reporter, and understands that the Board's minutes are the official record of the Board.

Dr. Kukla thanked the Board for the opportunity to address it. He stated that he only has one request of the Board, which he will get to in a moment. He thinks that the best way he can state his case is to read his

letter of objections to the Report and Recommendation. He will try to make this as interesting as he can. At this time Dr. Kukla read his objections to the Board.

Dr. Heidt interrupted Dr. Kukla, stating that the Board has already read the entire hearing record, including his objections.

Dr. Stienecker allowed Dr. Kukla to continue to read his letter of objections.

Dr. Kukla concluded by stating that the complaint of sexual misconduct against him in South Carolina was the one and only complaint against him of this nature.

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

Mr. McGovern stated that it is important to keep in mind that the Board is dealing with a June 1995 Order from South Carolina, not the Board's previous Order. The Board is bootstrapping the offenses in South Carolina, and not the South Carolina Order. He asked the Board to keep in mind the admissions Dr. Kukla made. He admitted to being sexually attracted to a patient, asked that patient to go to a motel with him, asked the patient to disrobe for him with sex in mind, asked the patient to kiss him, and saw the patient without anyone present. In doing so, Dr. Kukla departed from normal procedures. He instructed his assistant to leave him alone with the patient and to lock the door. Dr. Kukla admitted that his behavior was improper and that sex with patients is wrong. He admitted that the patient was a vulnerable person at the time. Mr. McGovern urged the Board to consider these factors when making its decision in this case.

**DR. GARG MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT D. KUKLA, M.D. DR. BHATI SECONDED THE MOTION.**

Dr. Stienecker asked whether there were any questions or comments concerning the proposed findings of fact, conclusions and order in the above matter.

**DR. GARG MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ROBERT D. KUKLA, M.D., TO READ AS FOLLOWS:**

- A. The certificate of Robert D. Kukla, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year. Such suspension shall be stayed, subject to the following **PROBATIONARY** terms, conditions, and limitations for at least five (5) years:
  - 1. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing.

2. Dr. Kukla shall not request modification of the terms, conditions, or limitations of his probation for at least one year after imposition of these probationary terms, conditions, and limitations.
3. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative within three months of the effective date of this Order and upon his request for termination of the probationary period, or as otherwise requested by the Board.
4. Dr. Kukla shall submit quarterly declarations, under penalty of Board disciplinary action or criminal prosecution, stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board.
5. Dr. Kukla shall comply with all terms, conditions, and limitations imposed by the South Carolina Board of Medical Examiners [South Carolina Board]. Moreover, Dr. Kukla shall cause to be submitted to the Board copies of any reports that he submits to the South Carolina Board whenever the South Carolina Board requires such submission.
6. Dr. Kukla shall notify the Board of any action in any state taken against a certificate to practice medicine held by Dr. Kukla in that state. Moreover, Dr. Kukla shall provide acceptable documentation verifying the same.
7. Dr. Kukla shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
8. Dr. Kukla shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by any other state medical board.
9. Within one (1) year of the effective date of this Order, Dr. Kukla shall provide the Board with documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee, but shall not be less than ten hours. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
10. Within sixty (60) days of the effective date of this Order, or as otherwise approved by the Board, Dr. Kukla shall commence appropriate treatment, as determined by an informed assessment of Dr. Kukla's current needs. Such assessment and treatment shall be by a provider or providers approved in advance by the Board. Dr. Kukla may request that the

Board consider Robert K. Hotchkiss, M.D., as an approved provider, on the condition that Dr. Hotchkiss continues to be accepted by the South Carolina Board of Medical Examiners under the terms of Dr. Kukla's probation in that state.

Prior to the assessment of Dr. Kukla's current status, Dr. Kukla shall submit to the approved provider copies of the Board's Order, including the Summary of Evidence, the Findings of Fact, the Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that provider. Within ten (10) days after the completion of the initial assessment, Dr. Kukla shall cause a written report to be submitted to the State Medical Board from the approved provider, which report shall include:

- a. A detailed plan of recommended treatment based upon the provider's informed assessment of Dr. Kukla's current needs; and
  - b. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
11. Dr. Kukla shall provide the Board with acceptable documentation evidencing compliance with the plan of recommended treatment required under paragraph 10, above, on a quarterly basis, or as otherwise directed by the Board.
  12. Dr. Kukla shall continue counseling with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist but not less than once per month. The sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Kukla shall continue in counseling 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 psychiatrist. Dr. Kukla shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
  13. Upon submitting renewal applications for each Ohio biennial registration period occurring during the period of probation, Dr. Kukla shall also submit acceptable documentation of Category I Continuing Medical Education credits completed. At least ten(10) hours of such Continuing Medical Education for each registration period, to be approved in advance by the Board or its designee, shall relate to the violations found in this matter.
  14. Dr. Kukla shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio, the Board may place

Dr. Kukla's certificate under additional terms, conditions, or limitations, including the following:

- a. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
  - c. Dr. Kukla shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Kukla's activities will be directly supervised and overseen by another physician approved by the Board.
  - d. Dr. Kukla shall have a third party present while examining or treating female patients.
  - e. Within thirty (30) days of commencement of practice in Ohio, Dr. Kukla shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Kukla's patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Dr. Kukla's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring physician becomes unable or unwilling to so serve, Dr. Kukla shall immediately so notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.
  - f. Dr. Kukla shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
  - g. In the event that Dr. Kukla has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to commencement of practice in Ohio, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kukla's fitness to resume practice.
15. If the South Carolina Board should terminate Dr. Kukla's probationary terms, conditions, and limitations before Dr. Kukla completes a five-year probationary period in that state, the Board may place Dr. Kukla's certificate under additional terms, conditions, or limitations as set forth in paragraph 14, above.

16. If Dr. Kukla violates probation in any respect, the Board, after giving Dr. Kukla notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Kukla's certificate to practice.
- B. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Kukla's certificate will be fully restored.
- C. The terms, conditions, and limitations of this Order shall supersede the terms, conditions, and limitations of the Order in the Matter of Robert D. Kukla, M.D., entered on the Journal of the State Medical Board of Ohio on October 11, 1995.

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

Dr. Garg stated that the reason for the alternative order, which stays the proposed suspension, is that he doesn't believe that a suspension serves any purpose since Dr. Kukla is practicing out of state and is being monitored in South Carolina. He would still need the Board's approval to return to practice in Ohio, at which time additional monitoring can be imposed.

In response to Dr. Heidt's questions, Dr. Kukla stated that he does not have any immediate plans to return to practice in Ohio. He sees Dr. Hotchkiss on a monthly basis.

Dr. Agresta agreed with Dr. Garg's rationale for offering an amendment to the Hearing Examiner's Proposed Order.

**DR. AGRESTA SECONDED DR. GARG'S MOTION TO AMEND.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye

The motion carried.

Mr. Sinnott spoke in support of the proposed amendment. He feels that it is a more just Order.

**DR. HEIDT MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ROBERT D. KUKLA, M.D. DR. AGRESTA SECONDED THE MOTION.**

Dr. Stienecker asked whether there were any questions or comments concerning the proposed findings of fact, conclusions and order in the above matter. There were none.

A vote was taken on Dr. Heidt's motion to approve and confirm, as amended:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye

The motion carried.

July 10, 1996

**Charles D. Stienecker, M.D.**  
President  
Wapakoneta, Ohio

**Nora M. Noble**  
Vice-President  
Newark, Ohio

**Thomas E. Gretter, M.D.**  
Secretary  
Cleveland, Ohio

**Raymond J. Albert**  
Supervising Member  
Amanda, Ohio

**Ronald C. Agresta, M.D.**  
Board Member  
Steubenville, Ohio

**Anant R. Bhati, M.D.**  
Board Member  
Cincinnati, Ohio

**David S. Buchan, D.P.M.**  
Board Member  
Westerville, Ohio

**Carol L. Egner, M.D.**  
Board Member  
Cincinnati, Ohio

**Anand G. Garg, M.D., Ph.D.**  
Board Member  
Boardman, Ohio

**Robert S. Heidt, Sr., M.D.**  
Board Member  
Cincinnati, Ohio

**Bradley K. Sinnott, Esq.**  
Board Member  
Columbus, Ohio

**Anita M. Steinbergh, D.O.**  
Board Member  
Westerville, Ohio

Robert D. Kukla, M.D.  
300 Rainbow Drive, Suite 104  
Florence, SC 29501

Dear Doctor Kukla:

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) On or about October 11, 1995, the State Medical Board of Ohio suspended your certificate to practice medicine and surgery in Ohio for one (1) year; stayed such suspension; and placed you on probation for four (4) years subject to probationary terms, conditions and limitations. This action was based on the indefinite suspension on February 10, 1994, of your South Carolina medical license (with subsequent reinstatement with probation which ended February 15, 1995) by that state's medical board for an action that would also have been a violation of Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6) and (B)(18), Ohio Revised Code, to wit: Principles of Medical Ethics I, American Medical Association. This South Carolina action was based upon allegations of "several departures from the professionally accepted standard of practice . . . which resulted in the patient's death."

A copy of the Entry of Order; Report and Recommendation and excerpt of the draft minutes of the State Medical Board of Ohio meeting of October 11, 1995, including Motions approving and confirming the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order, is attached hereto and fully incorporated herein.

- 2) On or about June 1, 1995, the South Carolina Board of Medical Examiners approved a Final Order which indefinitely suspended your license to practice in South

Mailed 7/11/96

July 10, 1996

Carolina. On or about June 5, 1995, the South Carolina Board of Medical Examiners reinstated your license for an indefinite probationary period with certain terms and conditions. A copy of the Final Order is attached hereto and fully incorporated herein. This South Carolina action was based upon allegations of "inappropriate sexual advances towards a patient."

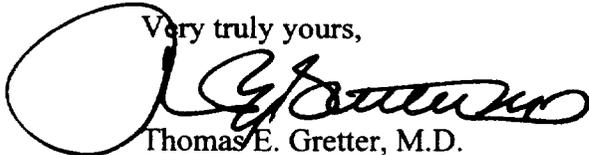
The June 1, 1995, Final Order of the South Carolina Board of Medical Examiners as alleged in Paragraph (2) above, constitutes "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to March 5, 1996, to wit: Section 4731.22(B)(6) and (B)(18), to wit: Principles of Medical Ethics I, II and IV, American Medical Association.

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

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, 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,  
  
Thomas E. Gretter, M.D.  
Secretary

TEG/bjm  
Enclosures  
CERTIFIED MAIL # P 152 983 474  
RETURN RECEIPT REQUESTED  
rev.2/15/95

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the Matter of: )  
 )  
ROBERT D. KUKLA, M.D., )  
 )  
Medical License #12869, )  
 )  
(M-98-94) Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

This matter came before the Board of Medical Examiners (the Board) for hearing on May 16, 1995, as a result of the Notice and Complaint served upon the Respondent and filed on November 28, 1994. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§40-47-200 and 211 (Supp. 1993) to determine whether sanctions should be imposed based upon the Certified Report of the Disciplinary Panel, which panel had heard the charges on April 5, 1995, and filed a certified report of the proceedings together with a transcript of the testimony taken and exhibits entered into evidence. Clifford O. Koon, Jr., Esquire, and Richard P. Wilson, Deputy General Counsel, represented the State. Tracy L. Eggleston, Esquire, and Reynolds Williams, Esquire, represented the Respondent.

The Respondent was charged with violation of S.C. Code §§40-47-200(F)(7), (8), and (12) (Supp. 1993); and Regulations No. 81-60(A), (D), and (F) (1986), and 81-60(A) and (D) (Supp. 1993) of the Rules and Regulations of the Board of Medical Examiners.

FINDINGS OF FACT

Based upon the reliable, probative, and substantial evidence on the whole record, the Board finds:

1. The Respondent is a physician duly licensed to practice medicine in South Carolina. He is on probation pursuant to a Final Order of the Board, dated February 10, 1994. He currently practices Physical and Rehabilitation medicine in Florence, South

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Carolina.

2. The Complaint alleges that between approximately June 13, 1988 and February 18, 1994, the Respondent treated a female patient (DOB 1/6/40) for complaints of neck, back, and shoulder pain. The Complaint further alleges that, during this period, the Respondent engaged in unethical and unprofessional sexual harassment and contact with the patient. The Complaint further alleges that the patient was treated differently from other female patients in that the Respondent routinely ordered his assistant away from her desk and out of the room during the patient's visits, sometimes specifically instructing the assistant to lock the door on her way out of the room.

3. During the Disciplinary Panel hearing the Respondent testified and made several admissions concerning his conduct during the period in question. The Respondent admitted that he was sexually attracted to the patient. The Respondent admitted that he asked the patient to go to a motel with him, that he asked the patient, with sex in mind, to disrobe in his presence, and that he asked the patient to kiss. The Respondent admitted that he saw the patient without anyone present and, in doing so, treated her differently from other patients, departing from his normal procedure. The Respondent admitted that he instructed his assistant to leave the room, while the patient was examined, and to lock the door, thereby creating an opportunity for something improper to occur. The Respondent admitted that his conduct was improper and admitted that sex with patients is wrong. The Respondent further admitted that the patient was a vulnerable individual during the period under consideration.

4. The Respondent during his treatment of the patient attempted, on several occasions, to seduce the patient by suggesting a visit to a motel for the purpose of sex, kissing the patient, and suggesting that the patient undress before him.

5. The patient was treated differently from other patients in that she was examined without chaperone behind a locked door and these actions of the Respondent created an environment conducive to sexual behavior.

#### CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §40-47-200, supra, has the authority to order the revocation or suspension of a license to practice medicine or osteopathy, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the medical or osteopathic practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a civil penalty of up to ten thousand dollars to the Board and the costs of the disciplinary action.

2. The Respondent has violated S.C. Code §§40-47-200(F)(7), (8), and (12) (Supp. 1993); and Regulations No. 81-60(A), (D), and (F) (1986), and 81-60(A) and (D) (Supp. 1993) of the Rules and Regulations of the Board of Medical Examiners, in the following particulars:

(a) Respondent has violated S.C. Code Ann. §40-47-200(F)(7) (Supp. 1993), in that he has violated the following Principles of Medical Ethics adopted by the Board by his actions prior to June 26, 1992:

(1) Regulation 81-60(A) (1986), in that he did not render service to humanity with full respect for the dignity of man or merit the confidence of patients entrusted to his care, as evidenced by his inappropriate sexual advances toward a patient.

(2) Regulation 81-60(D) (1986), in that he did not uphold the dignity and honor of the medical profession and accept its self-imposed disciplines, as evidenced by his inappropriate sexual advances toward a patient.

(3) Regulation 81-60(F)(1986), in that he disposed of his services under terms or conditions which tended to interfere with or impair the free and complete exercise of his medical judgment and skill, as evidenced by his inappropriate sexual advances toward a patient.

(b) The Respondent has violated S.C. Code Ann. §40-47-200(F)(7)(Supp. 1993), in that he has violated the following Principles of Medical Ethics adopted by the Board by his actions after June 26, 1992:

(1) Regulation 81-60 (A)(Supp. 1993), in that he failed to provide competent medical service with compassion and respect for human dignity, as evidenced by his inappropriate sexual advances toward a patient.

(2) Regulation 81-60 (D)(Supp. 1993), in that he failed to respect the rights of patients, as evidenced by his inappropriate sexual advances toward a patient.

(c) The Respondent has violated S.C. Code Ann. §40-47-200(F)(8)(Supp. 1993) in that he engaged in dishonorable, unethical, and unprofessional conduct that is likely to harm the public, as evidenced by his inappropriate sexual advances toward a patient.

(d) The Respondent has violated S.C. Code Ann. §40-47-200(F)(12)(Supp. 1993) in that he has violated the code of medical ethics adopted by the Board as described in (a)(1) through (3) and (b)(1) and (2) above, and lacks the ethical competence to practice medicine, as evidenced by his inappropriate sexual advances toward a patient.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified medical doctors against the countervailing concern that society be protected from professional ineptitude.

4. The sanction imposed is designed not to punish the physician, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Respondent's license to practice medicine in this State is hereby indefinitely suspended. This suspension shall be stayed and the Respondent's license reinstated in a probationary status only after the Respondent has paid a fine of Five Thousand and No/100 (\$5,000.00) Dollars. This fine shall not be deemed paid until received by the Board.

2. Thereafter, the Respondent's license shall be continued in a probationary status for an indefinite period of time upon the following terms and conditions of probation, which shall remain in effect until further order of the Board:

(a) The Respondent shall undergo psychiatric treatment with not less than monthly office sessions with a psychiatrist approved by the Board, with quarterly written reports submitted directly to the Board by the psychiatrist. The office sessions shall be in person and may not be conducted by telephone or other electronic means. The Respondent must immediately notify the Board in writing if he changes his treating psychiatrist and must receive Board approval of the change.

(b) The Respondent shall not treat female patients without a female chaperone physically present throughout the treatment. The presence of the female chaperone shall be noted in each patient's record.

(c) The Respondent shall not engage in sexual relations, or contact of any nature with a prior or current patient.

(d) The Respondent's medical records (office, hospital and surgical activity) shall be subject to periodic review by Board representatives. The cost of such reviews shall be borne by the

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Respondent.

(e) The Respondent shall appear and report to the Board as requested by the Board.

(f) The Respondent shall comply with the terms of this final order and all state and federal statutes and regulations concerning the practice of medicine.

(g) The Respondent shall promptly advise this Board in writing of any changes in address, practice, hospital privileges, professional status, or compliance with this final order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

South Carolina Department of Labor,  
Licensing, and Regulation  
Board of Medical Examiners  
P.O. Box 212269  
Columbia, S.C. 29221-2269

3. Failure by the Respondent to abide by any of the aforementioned conditions of probation during the period of probation shall warrant the immediate revocation of probation and the immediate imposition of the aforementioned indefinite suspension of his license to practice medicine in this State pending hearing into the matter and until further order of the Board.

4. The Respondent shall cooperate with the Board, its attorneys, investigators, and other employees in the investigation of Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. The Respondent may be required to furnish the Board with additional information as may be deemed necessary by the Board or its representatives. In addition to such requests, the Board, in its discretion, may require the Respondent to submit further

documentation regarding the Respondent's practice, and it is the Respondent's responsibility to fully comply with all such requests in a timely fashion. Failure to satisfactorily comply with such requests will be deemed a violation of this final order.

5. This final order shall take effect ten (10) days from the date of receipt of this order by the Respondent or his counsel.

AND IT IS SO ORDERED.

BOARD OF MEDICAL EXAMINERS

BY: Ben C Pendarvis Jr MD  
BEN C. PENDARVIS, JR., M.D.  
President of the Board

06, 01, 1995.

STATE BOARD OF MEDICAL EXAMINERS  
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# LLR

## SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION

David M. Beasley  
Governor  
Lewis F. Gossett  
Director

June 5, 1995

BOARD OF MEDICAL EXAMINERS  
101 Executive Center Drive  
Saluda Building, Suite 120  
Post Office Box 212269  
Columbia, SC 29221-2269  
(803) 731-1650  
TT: (803) 734-4190  
FAX: (803) 731-1660

Robert D. Kukla, M.D.  
900 E. Cheves Street  
Florence, SC 29506

Dear Dr. Kukla:

This is to confirm that your fine in the amount of \$5000.00, as required by the Final Order of June 1, 1995, was received by this Board. The period of indefinite probation is now in effect according to the terms and conditions as outlined in the Final Order.

Very truly yours,

  
Henry D. Foster, Jr.  
Administrator

kyn

STATE OF SOUTH CAROLINA  
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CERTIFIED TRUE COPY

15<sup>th</sup> DAY OF May 1995  
Karen J. Newton  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires 10/9/97

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AMERICAN MEDICAL ASSOCIATION

**PRINCIPLES OF MEDICAL ETHICS**

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**PREAMBLE:**

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility not only to patients, but also to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

- 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.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- 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.
- V. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services.
- VII. A physician shall recognize a responsibility to participate in activities contributing to an improved community.



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

October 13, 1995

Robert D. Kukla, M.D.  
2712 Trotter Drive  
Florence, S.C. 29501

Dear Doctor Kukla:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 11, 1995, 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

Thomas E. Gretter, M.D.

Secretary

TEG:em  
Enclosures

Certified Mail Receipt No. P 741 124 526  
Return Receipt Requested

cc: Francis X. Gardner, Esq.

Certified Mail Receipt No. P 741 124 527  
Return Receipt Requested

Mailed 10-26-95



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## 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 R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 11, 1995, 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 Robert D. Kukla, 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)

A handwritten signature in cursive script, reading "Thomas E. Gretter, M.D.", written over a horizontal line.

Thomas E. Gretter, M.D.  
Secretary

10/17/95

\_\_\_\_\_  
Date



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

ROBERT D. KUKLA, M.D.

\*

## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 11th day of October, 1995.

Upon the Report and Recommendation of R. Gregory Porter, 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 of Ohio for the above date.

It is hereby ORDERED:

1. That the certificate of Robert D. Kukla, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED.

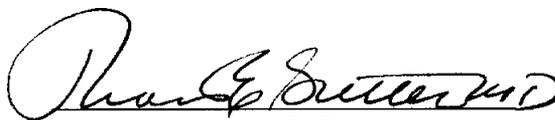
Such suspension shall be stayed, and Dr. Kukla's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least four (4) years:

- a. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- b. Dr. Kukla shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether or not there has been compliance with all of the provisions of probation.
- c. Dr. Kukla 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 Dr. Kukla should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Kukla must notify the State Medical Board in writing of the dates of departure and return.
- e. Within thirty (30) days of the effective date of this Order, Dr. Kukla shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Kukla's

patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Dr. Kukla's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring physician becomes unable or unwilling to so serve, Dr. Kukla shall immediately so notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.

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

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



Thomas E. Gretter, M.D.  
Secretary

(SEAL)

10/17/95

Date

STATE MEDICAL BOARD  
OF OHIO

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**REPORT AND RECOMMENDATION  
IN THE MATTER OF ROBERT D. KUKLA, M.D.**

The Matter of Robert D. Kukla, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on June 21, 1995.

**INTRODUCTION**

**I. Basis for Hearing**

A. By letter dated April 12, 1995 (State's Exhibit 1), the State Medical Board notified Robert D. Kukla, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon an allegation that Dr. Kukla's South Carolina medical license had been disciplined by the South Carolina Board of Medical Examiners (South Carolina Board) "due to several departures from the professionally accepted standard of practice which resulted in a patient's death." The Board alleged that "[t]he February 10, 1994, Final Order of the South Carolina Board of Medical Examiners ... constitutes '(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6) and (B)(18), Ohio Revised Code, to wit: Principles of Medical Ethics I, American Medical Association."

Dr. Kukla was advised of his right to request a hearing in this Matter.

B. By letter received by the State Medical Board on May 4, 1995 (State's Exhibit 2), Francis X. Gardner, Esq., requested a hearing on behalf of Dr. Kukla.

**II. Appearances**

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Lili C. Kaczmarek, Assistant Attorney General.
- B. On behalf of the Respondent: Francis X. Gardner, Esq.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
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## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

No witnesses were presented.

#### B. Presented by the Respondent

Robert D. Kukla, M.D.

### II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

#### A. Presented by the State

1. State's Exhibit 3: May 5, 1995 letter to Francis X. Gardner, Esq., from the Board, advising that a hearing had been set for May 19, 1995, and further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: May 8, 1995 letter to Attorney Gardner from the Board, scheduling the hearing for June 21, 1995. (3 pp.)
3. State's Exhibit 5: Collection of documents from the South Carolina Board, consisting of: February 27, 1995 letter to the Board from Henry D. Foster, Jr., Executive Director, South Carolina Board, concerning the status of Dr. Kukla's South Carolina medical license; February 23, 1994 letter to Dr. Kukla from Mr. Foster, informing Dr. Kukla that his license had been reinstated and placed on indefinite probation upon the payment of Dr. Kukla's \$5,000 fine; and a certified copy of the South Carolina Board's February 10, 1994 Final Order in the Matter of Robert D. Kukla, M.D. (12 pp.) (**Note:** The pages were numbered by the Hearing Examiner)
4. State's Exhibit 6: Collection of documents from the Ohio Board, consisting of: August 3, 1994 letter to Dr. Kukla from the Board, requesting an explanation regarding Dr. Kukla's affirmative response to a question on his renewal application; a copy of the renewal application; and September 11, 1994 and October 5, 1994 letters to the Board from Dr. Kukla, explaining his situation with the South Carolina Board and his affirmative response on his renewal card. (4 pp.)

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5. State's Exhibit 7: Excerpts from the Code of Laws of South Carolina, including regulations. (10 pp.)
6. State's Exhibit 8: The Principles of Medical Ethics of the American Medical Association. (2 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Robert Dale Kukla, M.D. (2 pp.)
2. Respondent's Exhibit B: February 23, 1994 letter to Dr. Kukla from Henry D. Foster, Jr., Executive Director, South Carolina Board, informing Dr. Kukla that his license had been reinstated and placed on indefinite probation upon the payment of Dr. Kukla's \$5,000 fine. (Note: Also included in State's Exhibit 5)
3. Respondent's Exhibit C: April 25, 1994 letter to Dr. Kukla from the South Carolina Board, informing Dr. Kukla of his passing score of 83 on the SPEX examination.
4. Respondent's Exhibit D: June 15, 1995 Certification from the Federation of State Medical Boards that Dr. Kukla received a score of 83 on the March 1994 SPEX examination.
5. Respondent's Exhibits E through H: Letters of support written on behalf of Dr. Kukla by members of his medical community.

### SUMMARY OF THE EVIDENCE

All transcripts and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Hearing Examiner prior to his findings and recommendations in this Matter.

1. Robert D. Kukla, M.D., received his Doctor of Medicine degree from the Ohio State University in 1974. He finished a rotating internship at St. Luke's Hospital, Denver, in 1975. After two years as a general practitioner in Marysville, Ohio, he entered a residency program in Physical Medicine and Rehabilitation at Ohio State. This residency lasted from March 1978 until October 1980. Dr. Kukla was certified by the American Academy of Physical Medicine and Rehabilitation in 1982, and by the American Association of Electromyography and Electrodiagnosis in 1985. (Respondent's Exhibit A; Tr. 12-13)

Dr. Kukla is a staff physiatrist at HealthSouth Rehabilitation Hospital, Florence, South Carolina, and has occupied that position for 6 months previous to the

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hearing. For nine years prior to that time, he had been the Medical Director of that facility. (Respondent's Exhibit A; Tr. 12-13)

2. The South Carolina Board alleged that Dr. Kukla's evaluation and treatment of a patient, from about August 30, 1990 to September 15, 1990, "did not reflect a level of competent medical practice." The Findings of Fact contained in the South Carolina Board's Final Order (State's Exhibit 5), describe the bases for that Board's action. The patient was an 89 year-old female admitted to HealthSouth Rehabilitation Hospital on August 30, 1990. She had a recent total knee replacement, and suffered from "anemia, hypertension, hiatal hernia, angina, diverticular disease, and a recent urinary tract infection." The South Carolina Board listed some of the patient's laboratory data as it existed upon her admission, and found that "[a]lthough the patient's white blood cell count was elevated with a left shift and her urine culture minimally normal, Respondent did not order another CBC during the latter part of her first week to be certain that signs of infection were resolving." (State's Exhibit 5, pp. 3-5)

Although her medications were altered on September 4, 1990, and, on September 6, 1990, Dr. Kukla ordered an internal medicine consult, the South Carolina Board found that Dr. Kukla made no medical progress notes in the patient's record from September 7, 1990 to September 14, 1990. The Board stated that "[t]his was a critical period in the patient's care, yet Respondent admittedly made no notes concerning his assessment of the patient's condition or the consultation with the internist." (State's Exhibit 5, p. 5)

The South Carolina Board stated that on September 10, 1990, the nursing notes indicated "that the patient passed 'a large amount of black stool.'" Her blood pressure was 98/44, which was lower than it had been. The South Carolina Board found that "[a]lthough the patient had been given ferrous sulfate which might cause dark stools, there is no evidence in the record that Respondent recognized the possibility that the patient might have an upper GI bleed. A stool guaiac test should have been ordered." (State's Exhibit 5, pp. 5-6)

The South Carolina Board also stated that on September 11, 1990, the patient complained of feeling ill and being unable to void. Dr. Kukla ordered some lab tests on September 12, 1990. On that same day, the nursing notes indicated that the patient's urine had a foul odor. Her blood pressure was 80/48. The South Carolina Board found "no evidence in the record that Respondent recognized the possibility of a recurrent urinary tract infection." (State's Exhibit 5, p. 6)

The South Carolina Board further stated that on September 13, 1990, lab work came back indicating, among other things, an increased white blood cell count (23,300 with 83% segs and 7% bands), increased BUN (84), and stable creatinine (1.7). The physical therapist noted that "the patient complained of nausea, shortness of breath, and chest tightness." The South Carolina Board

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determined that “[a]nother internal medicine consultation should have been obtained by Respondent.” (State’s Exhibit 5, pp. 6-7)

Finally, the South Carolina Board stated that on September 15, 1990, the physical therapist noted that the patient complained of chest pain and shortness of breath. She was transferred to another hospital, where she died a few hours later “from a combination of suspected heart block and infection.” (State’s Exhibit 5, pp. 7-8)

The South Carolina Board found:

In Respondent’s discharge summary of September 17, 1990, Respondent finally reflected knowledge of the laboratory work reported September 13, 1990, but only mentioned the BUN of 84 and Creatinine of 1.7. Respondent did not mention the significant abnormalities found on the CBC, which earlier should have raised suspicion of an infection as well as a GI bleed, but which are not mentioned in Respondent’s discharge summary. Although the patient’s demise might have been inevitable, Respondent also should have followed up on the available laboratory tests in a more timely fashion and promptly obtained medical consultations.

(State’s Exhibit 5, p. 8)

Dr. Kukla appeared before the South Carolina Board and admitted that he violated South Carolina’s statutes and regulations as the South Carolina Board had alleged. “Although Respondent admitted that the patient should not have died, he attributed the failings which produced that result to staffing inadequacies in the early years of the facility’s operation, among other things. Respondent advised that the situation today is much improved.” (State’s Exhibit 5, p. 8)

3. Based upon these findings, the South Carolina Board concluded that Dr. Kukla had violated Sections 40-47-200(7), (8), and (12), South Carolina Code Annotated (1986), and Regulations 81-60(A), (B), (D), (F), and (H) (1986) of the Rules and Regulations of the Board. The South Carolina Board stated “[i]n this patient’s case, Respondent’s conduct involved several departures from the professionally accepted standard of practice in similar situations which resulted in the patient’s death.” (State’s Exhibit 5, pp. 8-9)

The South Carolina Board indefinitely suspended Dr. Kukla’s medical license in that state, and stayed the suspension upon receipt of payment of a \$5,000 fine. Following reinstatement, Dr. Kukla was placed on probation for an indefinite period of time. Among the terms of his probation, Dr. Kukla was required to take and pass the SPEX examination within the next two offerings of that test. The probationary requirements also provided for periodic review of Dr. Kukla’s medical records by the South Carolina Board. (State’s Exhibit 5, pp. 9-12)

STATE OF OHIO  
DEPARTMENT OF REVENUE

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4. Dr. Kukla paid his fine on February 14, 1994, and was placed on indefinite probation. (State's Exhibit 5, p. 2; Respondent's Exhibit B)
5. Dr. Kukla took the SPEX examination on March 17, 1994, and received a passing score of 83. (Respondent's Exhibits C and D; Tr. 16)
6. Dr. Kukla testified that the South Carolina Board asked him to appear before it in October 1994, and to bring ten charts with him. Dr. Kukla testified that he asked the Director of Medical Records at HealthSouth to select ten of Dr. Kukla's charts at random. (Tr. 17-19) Dr. Kukla testified that, after reviewing his charts, the South Carolina Board commented that "the medical records were vastly improved over what they had reviewed in the prior patient's case. They said the records were good." (Tr. 19)
7. Dr. Kukla notified the Ohio Board of the South Carolina action on his 1994 renewal card, and by letters dated September 11, 1994 and October 5, 1994. (State's Exhibit 6)
8. Dr. Kukla submitted several letters of support from physicians in his community. All of these letters characterize Dr. Kukla as a competent and dedicated practitioner. It should be noted that the State's representative did not have the opportunity to cross-examine the authors of these letters. (Respondent's Exhibits E, F, G, and H)

#### FINDING OF FACT

1. On or about February 10, 1994, the South Carolina Board of Medical Examiners approved a Final Order indefinitely suspending the license of Robert D. Kukla, M.D., to practice medicine in that state. This was based on the South Carolina Board's conclusion that Dr. Kukla's "conduct involved several departures from the professionally accepted standard of practice in similar situations which resulted in [a] patient's death." The suspension of Dr. Kukla's license was stayed upon his payment of a \$5,000 fine on or about February 14, 1994, and his license was then placed on probation, subject to certain terms and conditions, for an indefinite period of time.

#### CONCLUSIONS OF LAW

1. The evidence is sufficient to support a conclusion that Dr. Kukla's treatment of the South Carolina patient would 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.

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Furthermore, the evidence is sufficient to conclude that Dr. Kukla's treatment of the South Carolina patient would constitute "[t]he violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, and any other national professional organizations as are determined, by rule, by the state medical board," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code. Principal I of the American Medical Association's Principles of Medical Ethics states: "A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity." The South Carolina Board concluded that Dr. Kukla had violated statutory provisions and regulations that parallel this Principal. Although this is not the sort of case that usually is cited as an ethical violation in Ohio, it has long been the policy of this Board to give deference to the judgment of medical boards in sister states.

Therefore, as set forth in Finding of Fact #1, above, the Final Order of the South Carolina Board constitutes "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Sections 4731.22(B)(6) and (B)(18)(a), Ohio Revised Code.

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In cases involving patient harm that resulted from a departure from the minimal standards of care, this Board has in the past imposed a period of suspension, followed by probation. It is worth noting that Dr. Kukla has cooperated fully with both the South Carolina Board and the Ohio Board, that he passed the SPEX examination with a score of 83, and that the South Carolina Board has found his medical records to be "vastly improved."

### PROPOSED ORDER

It is hereby ORDERED:

1. That the certificate of Robert D. Kukla, M.D., to practice medicine and surgery in the State of Ohio 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. Kukla's certificate to practice unless and until all of the following minimum requirements are met:

STATE MEDICAL BOARD  
OHIO

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- a. Dr. Kukla shall submit to the Board an application for reinstatement, accompanied by appropriate fees. Dr. Kukla shall not make such application for at least one (1) year from the effective date of this Order.
  - b. In the event that Dr. Kukla has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kukla's fitness to resume practice.
3. In the event that Dr. Kukla wishes to practice in Ohio, he shall notify the Board in writing of his intention to commence practice in Ohio at least thirty (30) days in advance of commencing such practice. The Board may require whatever monitoring provisions or practice restrictions it deems appropriate to ensure the safe practice of medicine by Dr. Kukla.
4. Upon reinstatement, and commencement of practice in Ohio, Dr. Kukla's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least four (4) years:
- a. Dr. Kukla shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Kukla shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether or not there has been compliance with all of the provisions of probation.
  - c. Dr. Kukla shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
  - d. In the event that Dr. Kukla should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Kukla must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  - e. Within thirty (30) days of the effective date of this Order, Dr. Kukla shall submit for the Board's prior approval the name of a monitoring physician, who shall review Dr. Kukla's patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Dr. Kukla's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring

STATE MEDICAL BOARD  
MICHIGAN

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physician becomes unable or unwilling to so serve, Dr. Kukla shall immediately so notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.

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

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



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R. Gregory Porter  
Attorney Hearing Examiner



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 11, 1995

### REPORTS AND RECOMMENDATIONS

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

Dr. Garg asked **whether** each member of the Board had received, read, and considered the hearing record, the proposed **findings, conclusions, and orders**, and any objections filed in the matters of: Donald R. Bernat, M.D.; Ahmet Helvaciolglu, M.D.; William John Jenkins, M.T.; Robert D. Kukla, M.D.; Ernest A. Lewandowski, D.O.; James Miller, D.O.; Ajay H. Parghi, M.D.; Heimo W. Reckmann, M.D.; and Harry A. Schutte, D.O. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye
	Dr. Garg	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye

Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye
Dr. Garg	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of this matter. Dr. Gretter did not serve as Secretary in the above-named cases.

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

.....

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT D. KUKLA, M.D.

Dr. Garg 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. Garg advised that a request to address the Board has been timely filed on behalf of Dr. Kukla by his attorney, Francis X. Gardner.

Dr. Garg advised Mr. Gardner that there is not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. Mr. Gardner stated that he did not have any objection to the absence of a court reporter.

Dr. Garg reminded Mr. Gardner that the Board members have read the entire hearing record, including the exhibits and any objections filed. He added that the Board will not retry the case at this time, and that pursuant to Section 4731.23(C), Revised Code, oral arguments made at this time are to address the proposed findings of fact and conclusions of the hearing examiner. Dr. Garg stated that Mr. Gardner would be allotted approximately five minutes for his address.

Mr. Gardner stated that the Board has before it the Hearing Examiner's Report and Recommendation filed August 17, 1995. There are no written objections because, essentially, there is no dispute by Dr. Kukla with the Findings of Fact or the Conclusions of Law proposed.

Mr. Gardner stated that Dr. Kukla has traveled to Ohio from South Carolina to be present at this meeting because he appreciates the importance of the Board's decision in this matter, and because he wanted to be available for any questions which Board members might have. and because he wishes to respectfully

submit to the Board that, based upon the evidence it has in the hearing record, and the fact that the State of South Carolina, which considered this matter originally, has not taken any action to suspend Dr. Kukla's license, but rather has imposed a probation period, and Dr. Kukla's meticulous compliance with that probation in South Carolina, the Proposed Order is unduly harsh and doesn't serve the public interest here.

Mr. Gardner continued that Dr. Kukla requests that the Board forego the suspension of his Ohio certificate and instead impose a period of probation for a reasonable period of time. They believe that the Proposed Order's four-year probationary period was unduly harsh. They would agree that a reasonable period of probation would be appropriate, during which time Dr. Kukla would be happy to submit to the Board any of his charts, medical records, or any other documentary evidence that the Board would request regarding his current care and treatment of patients. Further, Dr. Kukla, during the period of probation, would be agreeable to submit to personal interviews with the Board at its request. He noted that the Proposed Order "suggests" interviews at three-month intervals. They believe that that is unduly harsh considering Dr. Kukla lives in South Carolina and would have to travel here for those interviews.

Mr. Gardner stated that Dr. Kukla currently practices in Florence, South Carolina, and has done so for the past nine years. He does not currently plan to return to Ohio to practice. Should he consider returning to Ohio to practice, it would be appropriate for him to notify the Board 30 days in advance of his practicing here. They would agree to that being a condition of probation.

Dr. Garg asked whether the Assistant Attorney General wished to make a statement in response.

Ms. Kaczmarek stated that from reviewing the hearing record, there was definitely evidence of an effort on Dr. Kukla's part to do whatever he could do to straighten up the matter in South Carolina. Action was taken against Dr. Kukla's South Carolina license for a (B)(6) violation. A suspension was stayed, he was fined, placed on probation, required to take the SPEX, and submit records for review. Dr. Kukla paid his fine, took the SPEX, and he submitted charts to be reviewed. These charts were randomly selected by the Director of Medical Records where Dr. Kukla worked. The South Carolina Board found that Dr. Kukla's records were vastly improved over what they had been for the one patient whose care was the subject of the discipline imposed.

Ms. Kaczmarek asked that those factors be considered as mitigating factors in this case.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT D. KUKLA, M.D. DR. AGRESTA SECONDED THE MOTION.**

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

Dr. Heidt stated that the patient in question in this case was an 89-year-old, white female with a total hip replacement. Dr. Kukla was the physiatrist on the case. The problems seem to have arisen from post-operative complications for which Dr. Kukla may or may not have been responsible. Dr. Heidt noted that Dr. Kukla paid the fine set by the South Carolina Board, and he passed the SPEX. Dr. Heidt indicated that he thought that this was enough.

**DR. HEIDT MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ROBERT D. KUKLA, M.D., BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that Robert D. Kukla, M.D., be and is hereby REPRIMANDED.

**DR. EGNER SECONDED THE MOTION.**

Mr. Sinnott spoke against the amendment, stating that the record in this case is one where the South Carolina Board found that Dr. Kukla had engaged in conduct involving several departures from professionally accepted standards. Those departures actually resulted in a patient death. The South Carolina Board suspended Dr. Kukla's license, stayed the suspension upon the payment of a substantial fine, and placed him on indefinite probation because of his substandard care. That is the action that Dr. Kukla's state of residence took with respect to his medical license.

Mr. Sinnott continued that one year out of practice in Ohio, along with a four-year probationary period is entirely reasonable when confronted with that . . . Mr. Sinnott stated that he sees no reason to be more lenient in this case.

Dr. Stienecker agreed with Dr. Heidt, stating that the Hearing Examiner noted in the Report and Recommendation that it has long been the policy of the Ohio Board to give deference to the judgment of medical boards in sister states. Dr. Stienecker stated that he doesn't feel the Hearing Examiner's Proposed Order does that. Dr. Stienecker stated that the proposed suspension should be stayed, and Dr. Kukla should be placed on probation, as he was in South Carolina. Dr. Stienecker disagreed with the proposed amendment.

Dr. Egner stated that the Board always has a problem in determining the appropriate sanction in cases involving one incident. There is always a question as to whether the one case reflects the physician's general medical practice. At the time South Carolina considered this case, that Board had to impose some sort of probationary condition in order to be sure that Dr. Kukla did what he should do in the rest of his practice. The Ohio Board has the benefit of seeing that he has complied with the South Carolina requirements. He passed the SPEX, and review of his charts indicates that he is doing an excellent job now. Ohio has more information on which to make its decision than did South Carolina. This Board has seen that what happened in this one incident is not indicative of Dr. Kukla's general medical practice. In addition, Dr. Kukla is already being watched by the Board of the state in which he resides.

Dr. Steinbergh spoke against imposing a reprimand in this case. She would favor staying the suspension and putting Dr. Kukla on probation should he choose to return to Ohio to practice. If he does return to Ohio to practice, it would not be inappropriate for him to come to the Board to so inform it. The probation would only go into effect should Dr. Kukla return to Ohio to practice.

Dr. Heidt stated that Dr. Kukla studied physical medicine from 1978 to 1980. Had he been an orthopaedic surgeon, Dr. Heidt would be tempted to look at this case differently. Dr. Heidt stated that the orthopaedic surgeon is responsible for the problems that arose in this case. He acknowledged that the problems resulted in the patient's death, but the doctor suffered for that. Dr. Heidt stated that this case is not strong enough to carry over to Ohio. This was not a physiatrist problem but an orthopaedic problem.

Dr. Buchan spoke against the amendment, stating that, after reviewing this case, he believes that a stayed suspension with probationary terms is a reasonable sanction. He would agree that appearances at six-month intervals rather than three-month intervals would be appropriate in view of the fact that Dr. Kukla would have to travel from South Carolina.

Dr. Steinbergh stated that, in terms of who was responsible in this case, Dr. Kukla was the attending physician responsible for the care of this patient.

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- nay
	Dr. Stienecker	- nay
	Dr. Egner	- aye
	Dr. Agresta	- nay
	Dr. Buchan	- nay
	Ms. Noble	- nay
	Mr. Sinnott	- nay
	Dr. Heidt	- aye
	Dr. Steinbergh	- nay

The motion failed.

**DR. BHATI MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ROBERT D. KUKLA, M.D., TO STAY THE PROPOSED SUSPENSION, AND TO IMPOSE PROBATIONARY TERMS, AS WRITTEN, WITH THE EXCEPTION OF APPEARANCES EVERY SIX MONTHS, UPON DR. KUKLA'S RETURN TO OHIO. DR. BUCHAN SECONDED THE MOTION.**

Ms. Lubow asked what Dr. Kukla's licensure status would be in the event that he didn't return to Ohio.

Mr. Bumgarner suggested that Dr. Kukla's Ohio license would be considered limited, since it would have a probation attached to it should he return to Ohio.

Dr. Agresta stated that, under those circumstances, the limitation could go on forever. He asked when the four-year probation would start.

Dr. Buchan stated that it should start now.

**DR. BHATI ASKED THAT HIS MOTION BE CHANGED TO BEGIN THE PROBATION NOW.  
DR. BUCHAN, AS SECOND, AGREED.**

Dr. Egner spoke against the motion. She compared this case to one the Board considered the previous month, where a surgeon performed a laparoscopic cholecystectomy which resulted in the patient's death. It was fairly well agreed that the surgeon was responsible for the poor outcome of that patient, but the Board only ordered a three-month suspension with a year or two of probation. Dr. Egner stated that she personally feels that this case is not as weighty as the previous case, but the Board is proposing a harsher sentence.

Dr. Garg stated that those are two different cases and he feels that Dr. Egner is trying to mix apples and oranges. Those cases were not at all similar.

Dr. Egner disagreed, stating that there is some similarity in the two cases.

Dr. Steinbergh stated that she was going to offer language for an amendment, but she doesn't feel that it is needed.

Mr. Sinnott stated that if the Board does adopt the amendment, paragraph 4 d of the Order will also need to be amended by dropping the second sentence.

**DR. BHATI AND DR. BUCHAN AGREED TO ADD DELETION OF THE SECOND SENTENCE  
OF PARAGRAPH 4D OF THE PROPOSED ORDER TO THEIR PROPOSED AMENDMENT.**

Dr. Steinbergh stated that the probationary terms could go for a period of at least four years following Dr. Kukla's return to Ohio. In that case it would be appropriate to leave 4 d in the Order. If the Order is for a definite probation whether Dr. Kukla returns to Ohio or not, the sentence should be removed.

**DR. STEINBERGH MOVED TO TABLE THE MATTER OF ROBERT D. KUKLA, M.D.  
DR. BHATI SECONDED THE MOTION. A vote was taken:**

VOTE:

Mr. Albert	- aye
Dr. Bhati	- aye

Dr. Stienecker	- aye
Dr. Egner	- aye
Dr. Agresta	aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye

The motion carried.

.....

**DR. AGRESTA MOVED TO REMOVE THE MATTER OF ROBERT D. KUKLA, M.D., FROM THE TABLE. DR. BHATI SECONDED THE MOTION. A vote was taken:**

VOTE:

Mr. Albert	- aye
Dr. Bhati	- aye
Dr. Stienecker	- aye
Dr. Gretter	- aye
Dr. Egner	- aye
Dr. Agresta	- aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye

The motion carried.

**DR. BHATI MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ROBERT D. KUKLA, M.D., BY STAYING THE PROPOSED SUSPENSION, AND BY PLACING DR. KUKLA ON PROBATION FOR FOUR (4) YEARS, CHANGING THE APPEARANCE REQUIREMENT OF PARAGRAPH 4 c FROM EVERY THREE MONTHS TO EVERY SIX MONTHS, AND BY DELETING THE SECOND SENTENCE OF PARAGRAPH 4 d. DR. BUCHAN SECONDED THE MOTION. A vote was taken:**

VOTE:

Mr. Albert	- abstain
Dr. Bhati	- aye
Dr. Stienecker	- aye

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 11, 1995  
IN THE MATTER OF ROBERT D. KUKLA, M.D.

Dr. Gretter	- abstain
Dr. Egner	- nay
Dr. Agresta	- aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- nay
Dr. Steinbergh	- aye

The motion carried.

**DR. STIENECKER MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ROBERT D. KUKLA, M.D. DR. BHATI SECONDED THE MOTION. A vote was taken:**

VOTE:

Mr. Albert	- abstain
Dr. Bhati	- aye
Dr. Stienecker	- aye
Dr. Gretter	- abstain
Dr. Egner	- aye
Dr. Agresta	- aye
Dr. Buc'	aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- nay
Dr. Steinbergh	- aye

The motion carried.



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-3315 • (614) 466-3934

April 12, 1995

Robert D. Kukla, M.D.  
2712 Trotter Drive  
Florence, SC 29501

Dear Doctor Kukla:

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) On or about February 10, 1994, the South Carolina Board of Medical Examiners approved a Final Order indefinitely suspending your license to practice medicine in South Carolina due to several departures from the professionally accepted standard of practice which resulted in a patient's death.

On or about February 23, 1994, the South Carolina Board of Medical Examiners reinstated your license for an indefinite probationary period with certain terms and conditions. A copy of the Final Order is attached hereto and fully incorporated herein.

The February 10, 1994, Final Order of the South Carolina Board of Medical Examiners as alleged in paragraph (1) above constitutes "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22 (B)(6) and (B)(18) Ohio Revised Code, to wit: Principles of Medical Ethics I, American Medical Association.

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

Mailed 4/13/95

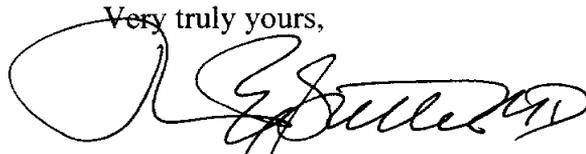
April 12, 1995

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, 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,

A handwritten signature in black ink, appearing to read 'T. E. Gretter, M.D.', written over a large, loopy initial 'T'.

Thomas E. Gretter, M.D.  
Secretary

TEG/bjm  
Enclosure

CERTIFIED MAIL # P 348 888 215  
RETURN RECEIPT REQUESTED

rev.2/15/95

✓

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the Matter of: )  
 )  
ROBERT D. KUKLA, M.D. )  
 )  
Medical License #12869, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

STATEMENT OF THE CASE

This matter comes before the Board by way of an initial complaint of misconduct filed with the Executive Director of the Board of Medical Examiners (the Board) against Robert D. Kukla, M.D. (Respondent), who is a physician duly licensed by the Board to practice medicine in South Carolina. On or about November 19, 1993, Respondent, and counsel for the Board signed a Memorandum of Agreement and Stipulations regarding this matter. By the terms of the Memorandum of Agreement, Respondent chose to waive a hearing before the Medical Disciplinary Commission and proceed with a Final Order Hearing as provided in the Memorandum of Agreement and Stipulations. On or about January 24, 1994, at the Board's Office located at the Koger Center, 101 Executive Center Drive, Suite 120, Columbia, South Carolina, the Final Order Hearing took place. Respondent appeared without counsel. The State was represented by Richard P. Wilson, Assistant Attorney General. Based upon the Memorandum of Agreement and Stipulations and exhibits presented and

the statements of the parties, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Board finds:

1. Respondent is a physician duly licensed by the Board to practice medicine in South Carolina. He currently practices Physical Medicine and Rehabilitation in Florence, South Carolina.

2. On September 3, 1993, a Notice and Complaint was served and filed alleging violation of S.C. Code Ann. §§40-47-200(7), (8), and (12) (1986) and Regulations No. 81-60 (A), (B), (D), (F), and (H) (1986) of the Rules and Regulations of the Board in that between approximately August 30, 1990 and September 15, 1990, Respondent treated a patient at the HealthSouth Rehabilitation Center in Florence, South Carolina. It was alleged that Respondent's evaluation and treatment of the patient's condition did not reflect a level of competent medical practice.

3. The medical records reveal that the 89 year old female patient was admitted by Respondent to HealthSouth on August 30, 1990. Pertinent history on admission included a recent left total knee replacement, anemia, hypertension, hiatal hernia, angina, diverticular disease, and a recent urinary tract infection. The records also indicate that she was reported as previously having had a BUN of 36 on August 5, 1990. Pertinent medications on admission on August 30, 1990, included aspirin, ferrous sulfate,

Dyazide, Procardia, Isordil, and Lanoxin. Pertinent laboratory data on admission included a BUN of 44, Creatinine of 1.7, with a hemoglobin of 12 and hematocrit of 35. The patient had an elevated white blood cell count of 14,000 with 87% segs. A urine culture and sensitivity revealed less than 500 colonies of E-coli. Although the patient's white blood cell count was elevated with a left shift and her urine culture minimally normal, Respondent did not order another CBC during the latter part of her first week to be certain that signs of infection were resolving.

4. On September 4, 1990, Voltaren was started and aspirin was discontinued. The ferrous sulfate was reduced. On September 6, 1990, a consultation order was written by Respondent for the patient to see an internist.

5. The record contains no medical progress notes by Respondent from September 7, 1990, through September 14, 1990. This was the critical period in the patient's care, yet Respondent admittedly made no notes concerning his assessment of the patient's condition or the consultation with the internist.

6. On September 10, 1990, the nursing notes indicate that the patient complained of nausea. At 5:00 P.M. on September 10, 1990, an order was given for the patient to receive Maalox for nausea. Later the same evening, at about approximately 9:30 P.M., another order was written for the patient to receive Lomotil for a loose stool. The nursing notes from September 10, 1990, also indicate that the patient passed "a large amount of black stool."

That same evening, the patient's blood pressure was noted to be 98/44, which was lower than on previous occasions. Although the patient had been given ferrous sulfate which might cause dark stools, there is no evidence in the record that Respondent recognized the possibility that the patient might have an upper GI bleed. A stool guaiac test for blood should have been ordered.

7. On September 11, 1990, the physical therapist reported that the patient stated, "I am so weak, I was sick all night." The nursing notes on September 11, 1990, indicate that the patient was "unable to void" and that she "complained of discomfort."

8. On September 12, 1990, Respondent ordered a SMAc 24, CBC, and dig level. The nursing notes from September 12, 1990, reveal that the patient was catheterized and urine with a "foul odor" was obtained. The patient's blood pressure was noted to be 80/48. There is no evidence in the record that Respondent recognized the possibility of a recurrent urinary tract infection.

9. On the morning of September 13, 1990, the previously ordered laboratory work was available, but there was nothing in the medical record indicating that Respondent checked on them or was aware of those values. On this date the patient's white blood cell count was found to be 23,300 with 81% segs and 7% bands. The hemoglobin had dropped to 8.5 with a hematocrit of 25. The BUN had increased to 84 with a stable Creatinine of 1.7. Sodium was slightly reduced at 133. The digoxin level was 1.6. Nursing notes from September 13, 1990, indicate that the patient complained of

nausea. On September 13, 1990, the physical therapist reported that the patient complained of nausea, shortness of breath and chest tightness. Another internal medicine consultation should have been obtained by Respondent.

10. The physician's order sheet from September 14, 1990, and September 15, 1990, disclose no evidence to suggest Respondent had seen the laboratory data, except for possibly starting an IV and asking for repeat SMAC 7 on September 17, 1990.

11. The vital sign sheet reveals that the patient remained essentially afebrile during this entire two week period. She did not demonstrate tachycardia although her pulse approached 100 on September 14, 1990. There was no record to suggest tachypnea. Her blood pressure appeared to be rather stable until September 10, 1990, on which date it was noted to drop. On September 10, 1990, her blood pressure was 98/44, on September 11, 1990, it was 90/50, on September 12, 1990, it was 80/48, and on September 13, 1990, it was 90/46. On September 14, 1990, the patient began receiving IV fluids and normal pressures were obtained thereafter until her demise.

12. On September 14, 1990, the patient was "highly motivated" after being told by the nursing staff that she might be able to return home.

13. Physical therapy notes from September 15, 1990, indicated that the patient was complaining of chest pain and shortness of breath. The patient was transferred to Bruce Hospital on the same

day with apparent cardiopulmonary arrest. She died within approximately one hour of arrival at Bruce Hospital on September 15, 1990, from the combination of suspected heart block and infection.

14. In Respondent's discharge summary of September 17, 1990, Respondent finally reflected knowledge of the laboratory work reported September 13, 1990, but only mentioned the BUN of 84 and Creatinine of 1.7. Respondent did not mention the significant abnormalities found on the CBC, which earlier should have raised suspicion of an infection as well as a GI bleed, but which are not mentioned in Respondent's discharge summary. Although the patient's demise might have been inevitable, Respondent also should have followed up on the available laboratory tests in a more timely fashion and promptly obtained medical consultations.

15. Respondent appeared and testified before the Board concerning this matter. Respondent admits that in performing the aforementioned acts he did violate the statutes and regulations, as alleged. Although Respondent admitted that the patient should not have died, he attributed the failings which produced that result to staffing inadequacies in the early years of the facility's operation, among other things. Respondent advised that the situation today is much improved.

#### CONCLUSIONS OF LAW

The Board concludes that Respondent has violated S.C. Code Ann. §§40-47-200(7), (8), and (12) (1986) and Regulations No. 81-60

(A), (B), (D), (F), and (H) 1980, of the Rules and Regulations of the Board, as alleged.

**SANCTION**

In enforcing the Medical Practice Act, the Board is mindful that its ultimate purpose is to protect the public and maintain the integrity of the profession in the State. In fashioning an appropriate sanction, this Board has meticulously weighed the public interest and the need for services of qualified medical doctors against the countervailing concern that society be protected from professional misconduct.

In this patient's case, Respondent's conduct involved several departures from the professionally accepted standard of practice in similar situations which resulted in the patient's death.

Accordingly, the Board finds it is in the public interest to impose the following sanction.

**THEREFORE, IT IS ORDERED THAT:**

1. Respondent's license to practice medicine in this State is hereby indefinitely suspended. Said suspension shall be stayed and Respondent's license reinstated in a probationary status only after Respondent has satisfied the following specified precondition for reinstatement:

- (a) Respondent shall pay a fine of Five Thousand and NO/100 (\$5,000.00) Dollars. Said fine shall not be deemed paid until received by the Board.

2. Thereafter, Respondent's license shall be reinstated in a probationary status for an indefinite period of time upon the following terms and conditions of probation, which shall remain in effect until further Order of the Board:

- (a) Respondent must pass the Special Purpose Examination (SPEX) within the next two (2) offerings of that test. The next such national testing dates for SPEX are March 17, 1994, and June 16, 1994. SPEX is a one-day multiple choice examination designed to test basic knowledge and cognitive skills required of all physicians, regardless of specialty practice. It is clinically oriented, with emphasis on those medical principles which form the foundation for the safe and effective practice of medicine. Failure to comply with this requirement within the prescribed time shall automatically result in the immediate temporary suspension of Respondent's license to practice medicine until such time as full compliance has been made by Respondent.
- (b) Respondent's medical records (office and hospital) shall be subject to periodic review by Board representatives. The cost of such reviews shall be borne by Respondent.

- (c) Respondent shall appear and report to the Board as requested by the Board.
- (d) Respondent shall comply with the terms of this Final Order and all State and Federal statutes and regulations concerning the practice of medicine.
- (e) Respondent shall promptly advise this Board in writing of any changes in address, practice, hospital privileges, professional status or compliance with this Final Order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

South Carolina Department of Labor,  
Licensing & Regulation  
Board of Medical Examiners  
P. O. Box 212269  
Columbia, SC 29221-2269

3. Failure by Respondent to abide by any of the aforementioned conditions of probation during said period shall warrant the immediate revocation of probation and the immediate imposition of the aforementioned indefinite suspension of his license to practice medicine in this State pending hearing into the matter and until further Order of the Board.

4. Respondent shall cooperate with the Board, its attorneys, investigators, and other employees in the investigation of Respondent's practice and compliance with the provisions of this Final Order. It is Respondent's responsibility to demonstrate

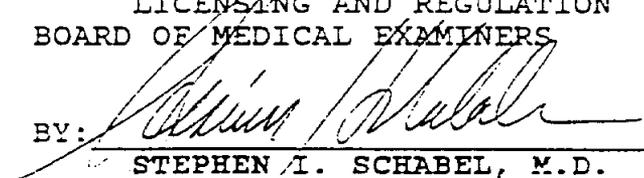
compliance with each and every provision of this Final Order. Respondent may be required to furnish the Board with additional information as may be deemed necessary by the Board or its representatives. In addition to such requests the Board, in its discretion, may require Respondent to submit further documentation regarding Respondent's practice, and it is Respondent's responsibility to fully comply with all such requests in a timely fashion. Failure to satisfactorily comply with such requests will be deemed a violation of this Final Order.

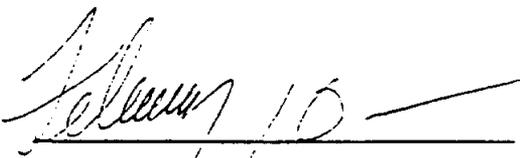
5. This Final Order shall take effect immediately upon receipt by Respondent or his counsel.

AND IT IS SO ORDERED.

SOUTH CAROLINA DEPARTMENT OF LABOR,  
LICENSING AND REGULATION  
BOARD OF MEDICAL EXAMINERS

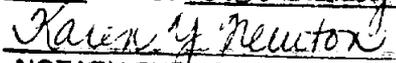
BY:

  
STEPHEN I. SCHABEL, M.D.  
President of the Board

  
\_\_\_\_\_, 1994.

CERTIFIED TRUE COPY

27<sup>th</sup> DAY OF February 19 95

  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 10-9-99