



addition to the case caption in blue ink that was not present on the Notice of Appeal filed with the Board. The caption in this court adds the words:

vs. State Medical Board  
30 E. Broad St #3  
Cols, OH 43215

However, Appellee did not challenge this court's jurisdiction under *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877. Arguably, the addition of a new original signature on the court's copy of the notice of appeal may run afoul of the requirement in R.C. 199.12 that has been the subject of protracted litigation - and criticism - but the court is also aware that without an original signature there have been instances in which the Clerk of this court has refused documents tendered for filing. The substance of both documents is identical; no one could sensibly claim there was an misunderstanding created for the Board or its counsel. Accordingly, this court will not *sua sponte* address that procedural point further.

Appellant's Notice of Appeal states that "Dr. Anderson appeals the Board's decision on the grounds that the board made incorrect findings of fact and law." This appeal, pursuant to Section 119.12 of the Ohio Revised code, requires the Board's Order to be examined to determine if it is supported by reliable, probative, and substantial evidence and is in accordance with Ohio law.

### *Factual Background*

On September 3, 1997, Appellant pled guilty in Cuyahoga County Common Pleas Court to Attempted Gross Sexual Imposition, a misdemeanor of the first degree under pre-S.B.2 criminal law. The conduct underlying that conviction involved supplying a medically contraindicated sedative to a pregnant woman in the first trimester of pregnancy during her office visit. The visit concluded when the Appellant drove this patient to his own home, provided alcohol to her, and thereafter slept-with and engaged in sexual activity with the female patient for a number of hours into the early morning. (Finding of Fact 1, June 15, 1998 Report and Recommendation of Attorney Hearing Examiner Sharon W. Murphy, adopted by the Board as its finding of fact.) The Board found Appellant's conduct constituted moral turpitude committed in the course of his medical practice. (Conclusions of Law 3 and 4, June 15, 1998 Report and adopted by the Board.)

The Board permanently revoked Appellant's medical license based upon the misconduct in addition to numerous other instances of unprofessional conduct as found in the Board's July 8, 1998 "ENTRY OF ORDER."

Appellant reapplied for medical licensure by the State on July 10, 2006. On July 11, 2007, the Board notified Appellant that a hearing to determine whether to grant his application would be conducted before a hearing officer. The notice advised that several issues were to be considered by the hearing officer, including allegations that he had pled guilty to Attempted Gross Sexual Imposition, a misdemeanor committed in the course of medical practice, that he failed to conform to minimal standards of care and violated a provision of the code of ethics of the American Medical Association, and that he failed to provide proof of good moral character.

On Monday April 21, 2008, Mr. Anderson appeared before Patricia A. Davidson, Attorney Hearing Examiner. He testified in his own behalf in support of his contention that he has good moral character. The Hearing Examiner found that Anderson showed no remorse for the acts the Board had found (in its July 8, 1998 decision) to have been egregious, specifically referring to the wrongful conduct underlying the conviction for attempted gross sexual imposition. Furthermore, the Hearing Examiner found that Appellant failed to have a current understanding of the gravity of his offenses.

Thus, the Examiner found no convincing evidence that Appellant had experienced a positive change in his moral character or understanding in the period between the Board's 1998 revocation of Appellant's license and this 2006 reapplication. Conversely, the Hearing Examiner found Appellant's testimony in support of his good moral character not credible based upon both content and Appellant's demeanor.

The Board adopted the Hearing Examiner's findings of fact and conclusions of law including the credibility determination of the Hearing Examiner. Given those findings of fact and conclusions of law, the Board permanently denied the application of Appellant to resume the practice of allopathic medicine and surgery in Ohio.

### *The Standard of Review*

Under Ohio law, decisions of administrative agencies such as the Board are subject to a "hybrid form of review" in which a common pleas court must give deference to the findings of an agency, but those findings are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265. Other rules relative to an

administrative appeal from the Medical Board are summarized in this court's decision in *Johnson v. State Medical Board of Ohio* (Franklin Co. C.P.), 147 Ohio Misc.2d 121, 2008-Ohio-4376, at ¶¶ 21-24, and need not be repeated here.

### *Appellant's Assignments of Error*

Appellant's brief in support argues that the issue presented "is narrow: Whether the decision of the Medical Board 'is supported by reliable, probative and substantial evidence and is in accordance with law.'" The decision in question is the Board's determination that Dr. Anderson has not demonstrated "a change or development in his ethical standards or moral character since the time he committed the violations described in the 1998 order."

Essentially, Appellant argues that this court should overturn the view of the evidence presented - and primarily the credibility determination of the Hearing Examiner - as adopted by the Board in its Order.

Mr. Anderson's explanations attempting to justify his misconduct in the 1998 administrative proceeding were obviously self-serving, and it is not remarkable that the Hearing Examiner found Anderson not to be credible. Additionally, the Hearing Examiner did not find Appellant's testimony credible in regard to his acceptance of responsibility for that prior wrongful conduct or in his understanding of the seriousness of that misconduct. Based a hearing lasting an hour and a half on April 21, 2008, the Hearing Examiner found that Appellant had not provided proof of good moral character. It is important to remember that the Hearing Examiner had the opportunity to observe the witness as he testified. Further, she explicitly based her credibility determination, in part, on Appellant's testimonial demeanor.

The court observes that Mr. Anderson testified that he felt the complaining witness was not credible because of late-reporting of the alleged rape to police, followed by her disappearance for four years after which "she comes back and says she wants to prosecute this thing." Tr. 17. This, admittedly, caused him to be "angry at the situation" he faced with both the criminal case and the license revocation proceeding. Tr. 15-17. Furthermore, Mr. Anderson blamed his lawyer at the time for failing to "revoke" or "appeal" his criminal conviction, even though it was based on a guilty plea. Tr. 35. Despite the strength of his criminal case (based upon the late reporting and later disappearance of the victim) he pled guilty after his criminal trial had been underway for

two days, ostensibly because "I had a 13-year-old son and I could not afford to take even the slightest chance of going away while he was growing up in his teenage years." Tr. 16. The victim was, in his view at the 2008 administrative hearing, "respected" because "I treated them [sic] and prevented them [sic] from having many [medical] problems." Tr. 42.

This court finds no legal error in the Board's proceedings, and has identified no factual reason to substitute its judgment for that of the Board. Accordingly, this court finds the Board's order is supported by reliable, probative and substantial evidence and in an accordance with law.

### **JUDGMENT ENTRY**

The Order of the State Medical Board of Ohio dated June 11, 2008 is **AFFIRMED**. Costs of the appeal are taxed against Appellant Wilfred L. Anderson.

**IT IS SO ORDERED.**

\*\*\* THIS IS A FINAL APPEALABLE ORDER. \*\*\*



**RICHARD A. FRYE, JUDGE**

Copies to:

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Rocky River, Ohio 442216

Barbara Pfeiffer  
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Columbus, Ohio 43215

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

08CVF 6 9242

IN THE MATTER OF ) Case Number:  
 )  
WILFRED LOUIS ANDERSON, M.D. ) Judge:

NOTICE OF APPEAL

Now comes Wilfred Louis Anderson, M.D. by and through undersigned counsel and hereby files a notice to appeal regarding the June 11, 2008 State Medical Board Order against him.

Pursuant to Section 119.12 of the Ohio Revise Code, Wilfred Louis Anderson, M.D. appeals the Board's decision to permanently deny his application for a certificate to practice allopathic medicine and surgery. Dr. Anderson appeals the Board's decision on the ground that the board made incorrect findings of fact and law.

Respectfully submitted,  
Milano Weiser, Attorneys at Law

  
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CLERK OF COURTS-CV

2008 JUN 26 PM 2:02

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO

2008 JUL -1 P 1:12  
STATE MEDICAL BOARD  
OF OHIO

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

June 11, 2008

Wilfred Louis Anderson, M.D.  
2485 Newbury Drive  
Cleveland Heights, OH 44118

Dear Doctor Anderson:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 11, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3688 8810  
RETURN RECEIPT REQUESTED

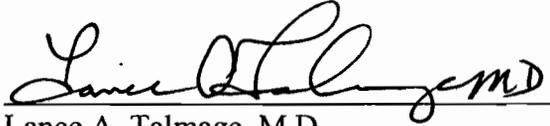
Cc: Jay Milano, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3934 3688 8827  
RETURN RECEIPT REQUESTED

*2ND MAILING 7-10-08*  
*Mailed 6-13-08*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 11, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Wilfred Louis Anderson, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.  
Secretary

(SEAL)

June 11, 2008

\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

WILFRED LOUIS ANDERSON, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 11, 2008.

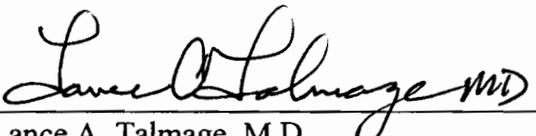
Upon the Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED that:

The application of Wilfred Louis Anderson, M.D., for a certificate to practice allopathic medicine and surgery is PERMANENTLY DENIED.

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

(SEAL)

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

June 11, 2008  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF WILFRED LOUIS ANDERSON, M.D.**

2008 MAY -1 P 2: 35

The Matter of Wilfred Louis Anderson, M.D., was heard by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio, on April 21, 2008.

**INTRODUCTION**

**Basis for Hearing**

- A. By letter dated July 11, 2007, the State Medical Board of Ohio [Board] notified Wilfred Louis Anderson, M.D., that, with regard to his application for licensure filed in July 2006, the Board intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand him or place him on probation. (St. Ex. 1A) The Board stated that its proposed action was based on allegations including:
- that Dr. Anderson had pleaded guilty to and been found guilty of a misdemeanor offense, attempted gross sexual imposition in violation of Ohio Revised Code Section [R.C.] 2923.02 (attempt) with respect to Section 2907.05 (gross sexual imposition);
  - that the Board had previously decided in a July 1998 order that this guilty plea and the court's finding of guilt constituted:
    - (1) a "plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice" as that language is used in R.C. 4731.22(B)(11) as in effect prior to March 9, 1999; and
    - (2) a "plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude" as that language is used in R.C. 4731.22(B)(13) as in effect prior to March 9, 1999;
  - that Dr. Anderson, in his prior practice of medicine, had departed from or failed to conform to "minimal standards of care of similar practitioners under the same or similar circumstances," as that language was used in former R.C. 4731.22(B)(6) (in effect prior to March 15, 1993), and that this minimal-standards violation had been decided by the Board in its July 1998 Order;
  - that Dr. Anderson had violated the code of ethics of the American Medical Association, and this violation constituted the "violation of any provision of a code of ethics \* \* \* of a national professional organization" under R.C. 4731.22(B)(18)(a), and that this violation had been decided by the Board in its July 1998 Order; and
  - that, with respect to the 2006 licensure application, Dr. Anderson had failed to meet the requirement in R.C. 4731.08 that he must furnish satisfactory proof of good moral character. The Board alleged that this failure to furnish satisfactory proof of good moral character was demonstrated by Dr. Anderson's acts, conduct and/or omissions as found in the July 1998 Order. (St. Ex. 1A)

In addition, the Board alleged that Dr. Anderson's lack of active practice of medicine and surgery for a period in excess of two years constitutes cause for the Board to exercise its discretion under R.C. 4731.222 to require additional evidence of his fitness to resume practice. The Board alleged that, according to his application, Dr. Anderson has not engaged in the active practice of medicine and surgery since in or about 1998 and that his most recent licensure examination was in March 1975. (St. Ex. 1A)

- B. The Board advised Dr. Anderson of his right to a hearing upon timely written request, and it received his hearing request on July 27, 2007. (St. Exs. 1A, 1B)

#### Appearances

Marc Dann, Attorney General, and Kyle C. Wilcox and Barbara J. Pfeiffer, Assistant Attorneys General, for the State of Ohio.

Jay Milano, Esq., for the Respondent, Wilfred Louis Anderson, M.D.

### **EVIDENCE EXAMINED**

#### Testimony Heard

Wilfred Louis Anderson, M.D.

#### Exhibits Admitted

- A. Presented by the State

State's Exhibit 1A through 1M: Procedural Exhibits.

State's Exhibit 2: Application for licensure submitted by Dr. Anderson on July 10, 2006, with supplemental materials submitted subsequently.

State's Exhibit 3: Entry of Order dated July 8, 1998, in the *Matter of Wilfred L. Anderson, M.D.*, with a copy of the Report and Recommendation; excerpt of draft minutes; notice of opportunity for hearing (January 1998); copy of statutes previously in effect; and an excerpt from the *Principles of Medical Ethics* published by the American Medical Association.

State's Exhibit 4: Two documents filed in *Anderson v. Ohio State Medical Board*, Franklin County Common Pleas Court, Case No. 98CVF-5746, consisting of the court's opinion upholding the Board's permanent revocation of Dr. Anderson's certificate, and the judgment entry formally affirming the Board's Order.

- B. Presented by the Respondent

The Respondent offered no exhibits.

## SUMMARY OF THE EVIDENCE

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

### Prior Administrative Action in 1998

1. In January 1998, the State Medical Board of Ohio [Board] issued a notice of opportunity for hearing to Wilfred L. Anderson, M.D., notifying him that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. In May 1998, a three-day hearing was conducted, and, in June 1998, a Report and Recommendation was filed by the Hearing Examiner [1998 R&R]. (St. Ex. 3 at 4-26, 29-31)
2. At its meeting in July 1998, the Board voted to order a permanent revocation of Dr. Anderson's certificate. In its Entry of Order dated July 8, 1998 [Order], the Board expressly incorporated the 1998 R&R by reference. (St. Ex. 3 at 1-3, 27-28) The Order included the following Findings of Fact and Conclusions of Law:

#### [1998] FINDINGS OF FACT<sup>1</sup>

1. On February 13, 1992, Patient 1 presented to the office of Wilfred L. Anderson, M.D., for a pregnancy test. During this visit, Dr. Anderson performed a pregnancy test and informed Patient 1 that she was pregnant. Dr. Anderson also prescribed Valium [diazepam] for Patient 1. Following this visit, Dr. Anderson drove Patient 1 from his office to his home. While at Dr. Anderson's home, Dr. Anderson engaged in sexual activity with Patient 1 and provided alcohol to her.
2. On July 24, 1997, in the Cuyahoga County Court of Common Pleas, Dr. Anderson pleaded guilty to and was found guilty of one misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code. The acts underlying Dr. Anderson's guilty plea occurred on February 13, 1992, subsequent to an office visit, and involved sexual contact with Patient 1.
3. On October 27, 1992, Patient 2 presented to Dr. Anderson's office stating that she was pregnant and suffering from syphilis. Dr. Anderson instructed Patient 2 to lie on the examining table with her feet in the stirrups. Dr. Anderson inserted his finger into Patient 2's vagina, told her to relax her muscles, and asked her if she liked the way it felt. When Patient 2 responded "'no,'" Dr. Anderson said "'I bet you like it when your boyfriend does it to you.'" After telling Patient 2 to get dressed, Dr. Anderson said, "'I don't like to see them put it on, I like to see them take it off.'"
4. Patient 2 did not state that she specifically saw Dr. Anderson's hands while Dr. Anderson performed the pelvic examination. Because her testimony was circumstantial, and Dr. Anderson clearly stated that his routine practice was to wear

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<sup>1</sup> The Findings of Fact and Conclusions of Law from the 1998 Order are set forth in a different typeface to distinguish them from the Findings of Fact and Conclusions of Law in the present Report and Recommendation. Citations to exhibits have been omitted from the quotation.

gloves during such an examination, the evidence was insufficient to support a finding that Dr. Anderson inserted an ungloved finger into Patient 2's vagina.

5. Dr. Anderson prescribed metronidazole for Patient 2 who was approximately six weeks pregnant.
6. In the examination of Brenda Harrison [as a witness during the hearing], there was extended discussion of Ms. Harrison's opinion regarding Dr. Anderson and his character. The discussion was relevant to this matter only to the extent that Ms. Harrison's opinion of Dr. Anderson might have biased her investigation of him. Nevertheless, Ms. Harrison's testimony made clear that her opinion of Dr. Anderson did not bias her investigation or her reporting of this matter.

#### **[1998] CONCLUSIONS OF LAW**

1. The conduct of Wilfred L. Anderson, M.D., \* \* \* constitutes "(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, as in effect prior to March 15, 1993.

Dr. Anderson's testimony with respect to Dr. Segal's opinion that Dr. Anderson's conduct had fallen below the minimal standard of care was not reliable. In a number of areas, Dr. Anderson's testimony demonstrated that Dr. Anderson is not cognizant of the standards of care.

- a. First, Dr. Anderson cited an article in support of his prescribing Flagyl to Patient during the first trimester of pregnancy. Nevertheless, when further questioned, Dr. Anderson admitted that the article clearly limited its use of the drug to patients with pregnancies of at least 24 weeks, or approximately six months, duration. Despite the fact that Dr. Anderson introduced this article into evidence, it more directly supported the testimony of Dr. Segal.
- b. Moreover, Dr. Anderson's inability to explain another article that he entered into evidence to support his own testimony does not advance the position that Dr. Anderson was well versed in the 1992 standards of care regarding the risks posed by certain medications prescribed during the first trimester of pregnancy.
- c. Dr. Anderson stated that he intended to prescribe penicillin to Patient 2, despite the fact that both Patient 2 and her referring physician had reported that she was allergic to penicillin. Dr. Anderson hoped to treat her with penicillin, because penicillin is the drug of choice of syphilis. He added that the second drug of choice for treating syphilis is Erythromycin, but Erythromycin is contraindicated during pregnancy.

Nevertheless, in almost incomprehensible testimony, Dr. Anderson testified that he prescribed Erythromycin to Patient 2, despite the fact that she was pregnant, because he was sure that Patient 2 would not take the drug. He explained that one of the side effects of Erythromycin is nausea, which is very uncomfortable during the first trimester of pregnancy. This reasoning is illogical, however, because Patient 2 would become aware of the side effect only after she had taken the medication.

On the other hand, Dr. Anderson justified his prescribing of Erythromycin for Patient 2, despite its contraindication in pregnancy, because it would have been unethical to let Patient 2 leave his office untreated. Dr. Anderson alleged that he was concerned about the public health risk. However, if Dr. Anderson's motive was to treat the syphilis, giving Patient 2 a medication he was sure she would not take is an unreasonable and insupportable patient management decision.

2. The conduct of Dr. Anderson, as set forth in Finding of Fact (1), constitutes "(t)he violation of any provision of a code of ethics . . . of a national professional organization,' as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV."

Dr. Anderson's defense against the allegations regarding his sexual conduct with Patient 1 was to attack facts set forth by Patient 1 and to attack Patient 1's memory and mental stability. However, although the details challenged by Dr. Anderson may have been appropriate to challenge in Dr. Anderson's criminal proceedings, their relevance to this administrative procedure is minimal. By his own testimony, Dr. Anderson confirmed all of the Board's allegations regarding his conduct with Patient 1. Moreover, testimony of witnesses presented by both parties further confirmed the facts alleged.

Most significantly, however, the evidence presented at hearing demonstrated that Dr. Anderson not only performed the acts alleged by the Board, but also that he failed to see the significance of those acts. As noted in the State's Closing Argument,

This case concerns one of the most egregious violations of the ethical standards for physicians. Not only did Respondent violate the ethical standards, but even today he sees nothing wrong with his actions. He shows no remorse and no understanding of the gravity of his actions. He apparently believes that it is proper to have sexual relations with patients and to make sexual comments and jokes to patients while examining them. \* \* \*

Dr. Anderson's own testimony shows that he has no concept of the ethical practice of medicine \* \* \*.

3. The conduct of Dr. Anderson, as set forth in Finding of Fact 2, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.
4. The conduct of Dr. Anderson, as set forth in Finding of Fact 2, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.
5. The conduct of Dr. Anderson, as set forth in Finding of Fact 3, constitutes " (t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle I.

Dr. Anderson denied having made offensive comments to Patient 2, despite the fact that Dr. Anderson could not remember the specific conversation he had with Patient 2 and

despite the fact that he admitted that he often makes such offensive remarks to his patients. Accordingly, Dr. Anderson's testimony, in conjunction with the testimony of Brenda Harrison and Michael Giar, provides sufficient evidence to support a conclusion that Dr. Anderson's treatment of Patient 2 violated Principle 1 of the AMA's Code of Ethics.

(St. Ex. 3 at 23-26)

3. Dr. Anderson appealed the Board's decision, which was affirmed by the Franklin County Common Pleas Court in a November 1999 opinion and a December 1999 final order in *Anderson v. Ohio State Med. Bd.*, Case No. 98CVF-5746. (St. Ex. 4)

### **Appellate Decisions**

4. In 2005, the Franklin County Court of Appeals made clear in *Richter v. State Medical Board* (June 15, 2005), 161 Ohio App.3d 606, 2005-Ohio-2995, that, where the Board had ordered a permanent revocation under former R.C. 4731.22(B) (as in effect prior to March 9, 1999), a new certificate could be granted in some circumstances, and the Board must accept and process the application. The court stated, among other things:

In *Roy*, this court determined that the board has the authority, pursuant to [former] R.C. 4731.22(B), to permanently revoke a medical license, although, consistent with *Bouquett* and *White*, some revocations are subject to reinstatement, and under some circumstances, a new license may be obtained following revocation.<sup>2</sup>

*Richter* at ¶ 14.

### **Dr. Anderson's 2006 Application for a Certificate to Practice in Ohio**

5. In a February 2006 letter, the Board's Public Services Administrator explained to Dr. Anderson that, for him to apply for licensure, he would need to submit an application form and a Federation Credentials Verification application, as she had previously explained to him in September 2005. The Administrator provided the web address for obtaining the forms and explained how to access them. The Administrator also advised Dr. Anderson that he must use the application for a new license rather than the restoration application. (St. Ex. 2 at 32)
6. On July 10, 2006, Dr. Anderson submitted an "Application for Physician Licensure" to the Board, which accepted and processed the application. (St. Ex. 2)
7. In the application, Dr. Anderson described his educational background, including that he had received his medical degree from the Washington University School of Medicine in 1974. Dr. Anderson also stated that he had completed an internship at University Hospitals of Cleveland from June 1974 to May 1975. (St. Ex. 2 at 2-6)

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<sup>2</sup> *Roy v. Ohio State Med. Bd.* (1995), 101 Ohio App.3d 352; *Bouquett v. Ohio State Med. Bd.* (1991), 74 Ohio App.3d 203; *State v. White* (1987), 29 Ohio St.3d 39.

8. Regarding his examination history, Dr. Anderson stated that he had taken and passed all three parts of the medical licensure examination given by the National Board of Medical Examiners: Part I in June 1972, Part II in April 1974, and Part III in March 1975. The passing scores and test dates were confirmed by the NBME. (St. Ex. 2 at 8, 28, 39, 60)
9. On the application, Dr. Anderson was required to list all his activities since medical school, including medical and non-medical activities to the present. Dr. Anderson stated that he had worked for approximately one year at Huron Road Hospital in 1975 and 1976, and had worked from 1976 to 1978 for the City of Cleveland Department of Health, practicing medicine in clinics for sexually transmitted diseases, after which he had opened his own medical practice in 1978 in Cleveland. He stated that he had retired in 1998 when his certificate was revoked by the Board, and he listed no activities after 1998. (St. Ex. at 12-14)
10. At hearing, however, Dr. Anderson stated that he had had a business, Anderson Systems, which was a computer company, primarily a defense contractor, and that he had performed work unrelated to the practice of medicine. Dr. Anderson testified that the last time he had worked for Anderson Systems was in 2001, when he had sold 60 computer systems to a nonprofit organization. Dr. Anderson explained that he had omitted this business activity from his application because he had not made money and “barely broke even.” (Tr. at 28-33)
11. When asked how he had supported himself since 1998, Dr. Anderson testified that he relied on friends and family, did “some stock market trading,” had savings and “things of that nature,” and “had a wife for a while,” but that his wife had died in 2003. (Tr. at 32)
12. The application includes a set of questions under the heading “Addendum to Application – Additional Information.” The instructions state:

If you answer “YES” to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence and orders. Please note that some questions require very specific and detailed information. Make sure that all responses are complete.

(St. Ex. 2 at 17, emphasis in original)

13. In this section, Dr. Anderson answered “Yes” to the following questions:

7. Has any board, bureau, department, agency or other body, including those in Ohio, in any way limited, restricted, suspended, or revoked any professional license, certificate or registration granted to you; placed you on probation, or imposed a fine, censure or reprimand against you?

\* \* \*

10. Have you ever been requested to appear before any board, bureau, department, agency, or other body, including those in Ohio, concerning allegations against you?

\* \* \*

12. Have you ever been notified of any investigation concerning you by any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license?

\* \* \*

13. Have you every been notified of any charges, allegations, or complaints filed against you with any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license?

\* \* \*

15. Have you ever pled guilty to, been found guilty of a violation of any law, or been granted intervention in lieu of conviction regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation? If yes, submit copies of all relevant documentation, such as police reports, *certified* court records and any institutional correspondence and orders.

16. Have you ever forfeited collateral, bail, or bond for breach or violation of any law, police regulation, or ordinance other than for a minor traffic violation; been summoned into court as a defendant or had any lawsuit filed against you (other than a malpractice suit)? If yes, submit copies of all relevant documentation, such as police reports, *certified* court records and any institutional correspondence and orders.

(St. Ex. 2 at 17-18) Included with the materials submitted on July 10, 2006, was a separate sheet stating as follows: "Attachment -- DUI conviction February 2001 Shaker Heights, OH." (St. Ex. 2 at 22)

14. In October 2006, the Board received an additional document, a recommendation form completed by Wanda L. Ramsey, who stated: "This applicant was charged with a misdemeanor regarding a patient of questionable credibility. This does not reflect the moral character that I & his other patients know him to have." (St. Ex. 2 at 24)
15. On November 2, 2006, Dr. Anderson submitted supplemental information as required in the application.<sup>3</sup> Among other things, he submitted the following explanation regarding his affirmative answers to questions 7, 10, 12, 13, 15 and 16 in the application:

My Certificate to practice Medicine in the State of Ohio was Permanently Revoked by this Board on July 8, 1998. The revocation was based in large part upon my

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<sup>3</sup> A "review sheet" indicates that the Board sent an "Incomplete letter" to Dr. Anderson on July 26, 2006, and sent another "Incomplete letter" on November 7, 2006. (St. Ex. 2 at 2)

conviction of a **misdemeanor** in Cuyahoga County Case No. 9 CR-96-342176. The crime of which I was convicted was the **misdemeanor** “Attempted Gross Sexual Imposition.” My right to appeal the Board’s Decision was lost when my attorney failed to file a timely notice. (Emphasis in original)

My plea came on the day of trial and was the result of negotiation initiated by the prosecutor, who obviously felt that there was not enough evidence to convict. Moreover, I believe my attorney subjected me to enormous pressure to accept the plea based upon the fact that he had not prepared adequately for my trial, and that he was incompetent. I was faced with the possibility of 5 years of mandatory jail time were I to be convicted, and I was advised that accepting a misdemeanor would have no permanent effects and would remove any chance of incarceration. I pleaded guilty even though I was innocent of any crime. I understand that consensual sex with a patient is wrong. However, I suggest that the more standard punishment for physicians in my situation is a suspension, rather than revocation. I am requesting the ability to present my circumstances and the work I have done since my revocation to the Board at a hearing with the hope that the Board will find my punishment to date sufficient.

(St. Ex. 2 at 21) (emphasis in original) Accompanying this supplemental statement was a certified copy of the September 1997 sentencing entry in *State v. Wilfred Anderson*, Case No. CR -342176 (Cuya. Co. Common Pleas). (St. Ex. 2 at 23)

16. In addition to the required materials, Dr. Anderson provided a copy of a January 2001 editorial published in Athens, Georgia. (St. Ex. 2 at 30) The author, Cecil Bentley, recounted several stories regarding his personal experiences of segregation and integration, including the following:

Georgia Gov. Herman Talmadge, reflecting the view of most segregationists, called the Court’s ruling “a mere scrap of paper,” and it was 10 more years before the *Brown vs. Board of Education* decision impacted public schools in my hometown Macon.

Alphabetical seating placed me directly behind Wilfred Anderson, the first and only black student to attend Willingham High in fall 1964. Several students had planned to transfer from all-black Ballard Hudson to all-white Willingham that year, but on opening day, only Wilfred came.

Several things about Wilfred impressed me. He really understood trigonometry and was willing and able to help me learn it, too. He was a great athlete but ineligible to play because of transfer rules. He was a sharp dresser, knew a lot of good jokes and was a great musician, who helped an already awesome school band get better.

What impressed me most, though, was his poise, patient and perseverance. Unquestionably, those character traits allowed him to endure the daily insults and

helped me and my school make it through a tumultuous year without a major incident. He made the long walk much easier for all those who followed.

(St. Ex. 2 at 30-31; Tr. at 58-59)

17. Dr. Anderson stated in his application and in his testimony that he has not engaged in the practice of medicine since his certificate was revoked in 1998. (Tr. at 32-33; St. Ex. 2)

**Dr. Anderson's Testimony Regarding What Has Changed during the Past 10 Years and Why It Is Important for Him to Return to the Practice of Medicine**

18. Dr. Anderson's attorney, at hearing, asked him to explain what has "changed over the last ten years," since the Board commented in its 1998 Order that he had "not only performed the acts alleged by the Board, but also \* \* \* failed to see the significance of those acts." (Tr. at 14-15) Dr. Anderson testified as follows:

A. [Dr. Anderson:] Well, first of all, I realized that those particular acts were wrong. I knew that then. But at the time I was accused of felony charges which was grossly wrong and I was probably understandably upset about that. It seemed out of proportion. But now 10 years later I fully accept my responsibility for the ethical violation.

Q. [Mr. Milano:] Did that anger spill over to the Board when you were here in the way you acted of that frustration?

A. Spilled over? I was not angry at the Board. I was angry at the situation. Maybe that would have come across to the Board Hearing Officer as arrogance. I don't think I'm that arrogant. I had been charged with felonies, kidnapping, rape.<sup>4</sup> All these things were just patently not true, but then we came to this particular problem.

Q. Well, let me stop you and ask you a question. \* \* \* If they're not true, why did you plead guilty to a misdemeanor?

A. First of all, it was a misdemeanor. My attorneys -- First of all, I pled guilty to a misdemeanor while we were in trial. This was not some other time. The prosecution offered this. I refused for two days, while my attorneys sort of beat me up about it, why go to a felony trial when you can walk away with a misdemeanor. At that point they assumed the Medical Board would \* \* \* do nothing.

The real reason is, at that time I had a 13-year-old son and I could not afford to take even the slightest chance of going away while he was growing up in his teenage years. That was the overriding factor.

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<sup>4</sup> When evidence is presented at hearing regarding crimes that were charged but did not result in a conviction, the Hearing Examiner may exclude the evidence on grounds that it is unduly prejudicial to the Respondent under the circumstances. Here, however, the Respondent elicited the testimony in order to show his state of mind during the 1998 administrative proceedings.

The next one was this particular woman who said that I raped her, drugged her and raped her, made these allegations in 1992. Six weeks, maybe five weeks after the alleged rape, she came to -- \* \* \* [*Discussion omitted as to whether the Respondent had meant to say "1992."*]

In 1992 she said I drugged her and raped her. Two weeks later she came to my office again for another office visit and to get another prescription. Two weeks after that she called to get another prescription. I told her I wouldn't. The week after that she accused me of rape. So five weeks after the alleged rape she reports it to the police. They come to find her again, they can't, and then she disappears for four years. So 1996 she comes back and says she wants to prosecute this thing. You can see the anger.

Q. So in the past 10 years, how has your thinking changed in terms of the difference between the criminal justice system and what was right and wrong about that and your conduct as a physician?

A. Well, now I pretty much separated the -- my anger and frustration against the criminal justice system from whatever went on with the Medical Board.

Before it didn't seem appropriate. But now I understand<sup>5</sup> what the Medical Board -- the Medical Board sees something completely different than the criminal case. To me, at that time these two were intertwined inseparably. Okay?

Q. What have you been doing since?

A. Before I became a physician, I was essentially a computer expert. I worked for IBM designing computers. So consulting work there until the last two years. I had to drop that.

(Tr. at 15-18)

19. Dr. Anderson explained that various factors had caused him to drop his consulting work and seek to return to the practice of medicine. First, he testified that, in his past practice, he had worked with an under-served population, and he wanted to serve that population again.

(Tr. at 18-26)

He stated: "No community is served properly for sexually transmitted diseases. \* \* \* No doctor wants to deal with them. Nobody goes to medical school for four years -- I mean even I didn't come out of medical school telling everybody that I wanted to be a specialist in sexually transmitted diseases. It's not fashionable. But it was absolutely necessary."

(Tr. at 25-26)

20. Second, Dr. Anderson explained that he has special expertise to offer patients. He testified that, at about the time he had lost his medical license, he had "solved a major problem" of premature births "by eliminating particularly bacterial vaginosis." He testified that, in 2006,

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<sup>5</sup> Dr. Anderson testified at various points regarding his understanding of his conduct underlying the 1998 Order. See, e.g., Tr. at 41-43.

he had read an article that made him aware that the medical research community had not caught up with the knowledge he had developed by the mid-1990s, which had concerned him. (Tr. at 19-25) Dr. Anderson's testimony included the following:

A. In the late 1980s and early 1990s it got to be understood that the diseases that we treated mostly, bacterial vaginosis, chlamydia, trichomonas, things of that nature, actually affected a woman's ability to carry a baby to term. Also, it made women sterile. It caused miscarriages. It's what is known as "female problems." And in the time that it -- In the 20 years that I did this, we essentially solved that. \* \* \*

In 2006 the Institute of Medicine released a report that premature births had gone to 13 percent, where it used to be nine percent two decades before. In 2006 it got to be apparent that I had to drop what I was doing and come back to this particular point, because the research that we had done in my office now shows that we can prevent up to 90 percent of premature births, a lot of other things too, but that particular thing came into focus. \* \* \*

Q. But how do you -- What basis do you have to say that you can prevent premature births based on your experience?

A. The main thing we saw in that time period was how to treat bacterial vaginosis, a very common female problem. Even now the medical profession cannot handle that disease. We did it routinely for 20 years. Mainly -- Mainly gynecologists can't treat the men. Bacterial vaginosis is a disease that causes vaginal odor, discharge, irritation. Most women have it at some point. Gynecologists can treat it easily with metronidazole. It goes away. It comes back. \* \* \* But if you treat the men with metronidazole, the women [don't] get it back again. What we did over a 15-year period was figure out how to treat those men so the women that we treated for 15 years didn't get it back.

Around 1995 we looked back through our patient records. There are 200 women that we treated like this every four weeks, was how we managed them. They didn't have premature births. That's when it got to be apparent that we had done something significant.

Q. Is there a medical reason as to why the vaginosis causes miscarriages?

A. It causes premature rupture of the membrane, a problem in women. \* \* \* Apparently these diseases weaken those membranes. But the thing is, we figured out how to solve that problem. Mainly we figured out how to treat the men to keep it from coming back. There's a lot of other things. \* \* \*

\* \* \* I thought in 1995, '96 that the medical research people would catch up. They didn't and that got to be apparent. \* \* \* You know, when I came out of medical school and did my residency at University Hospital, I went to -- essentially I went to the public health clinic in the ghetto called the Glenville area. \* \* \*

We went out. We did some defense contracting, our little computer company. So we got a contract from the Navy, a big one. It was almost a million dollars. That money went to open the clinic. That's why you keep hearing me say that we had a practice restricted to sexually transmitted diseases. It was actually a private practice but the Navy had financed it. This is how we were able to do that kind of a research for the next 10 years, and that's where we were with it.

\* \* \* Well, it was obvious [in 2006] that the research community hadn't caught up. It was time to stop doing what I was doing and go back and expand the -- it wasn't research anymore. We knew exactly what we were doing and just make it so everybody understands it, and now that's what we're doing.

Q. And what have you done specifically as it relates to this condition?

A. Well, specifically we have developed a kit that allows women at home to test themselves for bacterial vaginosis, send it in to our facilities where we put the results on the internet. It's essentially a way to use the internet to make this testing accessible to everybody.

We are sending proposals to the March of Dimes to ask them to make the test available to every pregnant woman. It's simple. It's cheap. You can simply mail them out. I think that would make a big difference for those tests for bacterial vaginosis.

Q. Do you intend to go back into practice?

A. If I get my license, yes. I feel lots of people are having problems because I'm not there.

(Tr. at 20-25)

21. Dr. Anderson also gave the following reason for wanting to return to the practice of medicine:

For the same reason I want to breathe. It's what I do. Okay? I sort of just -- I hope I don't get too far back. My grandfather was a physician in Macon, Georgia. I grew up in a hospital. When I was 12 years old, my grandfather was taking me out on house calls out in the country around Macon, Georgia. It's what I was programmed to do since I was born.

(Tr. at 27-28)

**Dr. Anderson's Testimony Regarding his Present Fitness to Practice and the Potential Requirement for Additional Testing and/or Education**

22. Dr. Anderson testified that he has kept up with his continuing medical education [CME] since 1998. He stated that he probably had "80 to 100 or 120 hours" of CME. When asked by his attorney whether he understood "that there would be significantly more CME's, continuing

medical education, necessary,” he answered: “That’s right. The general requirement is 20 hours per year. So over 10 years, that’s 200 hours.<sup>6</sup> That’s not a problem.”  
(Tr. at 26-27)

23. When asked about the potential for additional testing to obtain a medical licensee, he stated: “You know, I haven’t treated anybody for diabetes since I got out of medical school. The test seems inappropriate.” He explained that he had graduated from one of the ten best medical schools, that he had done his residency in Ohio and had been granted a license in Ohio, and that he was a National Board Diplomate, which “generally means you don’t need to be tested again.” However, he testified that, if the Board required him to take a test to get a medical license, he would do it. (Tr. at 26-27)

### **Dr. Anderson’s Arguments Regarding His Application**

24. The arguments made on Dr. Anderson’s behalf included:
- a. that Dr. Anderson is not attempting to justify the conduct that resulted in the Board’s 1998 Order, although he may have tried to justify that conduct in the past. (Tr. at 55)
  - b. that although Dr. Anderson “did speak to patients in a more familiar way” during his medical practice, it is “necessary to understand that Dr. Anderson’s practice was different,” in that “he was treating people about sexual things” and his practice dealt with people in “their most intimate natures,” and that, therefore, “the need to be familiar with them was appropriate,” although Dr. Anderson accepts that what he did was not right. (Tr. at 55)
  - c. that Dr. Anderson’s conduct during the 1998 administrative hearing, “when he acted the way he did, like a jerk,” should be understood in the context of his experiences at that time, because “there were real problems with the criminal case,” and Dr. Anderson was experiencing anger at having to go through the criminal proceedings, which “clouded his vision.” Dr. Anderson argued that he now understands the difference between the criminal action and the administrative action and understands that his duty as a physician was different from a person’s obligations under the criminal laws, which focus on “whether it was a consensual act,” and that he understands that his “duty as a physician was to stay away.” Dr. Anderson now understands what he “should have done with the Board” in the prior proceedings, and he urged the Board to see “how he would have reacted that way back then” and “how ten years would change that.” (Tr. at 56-57)
  - d. that, although Dr. Anderson’s previous conduct was wrong and he takes responsibility for it, his violations were not severe enough to warrant excluding him from practicing medicine permanently. He has already “paid an enormous heavy price for what he did,” and “the sanction now imposed on him exceeds a reasonable sanction for some very incorrect conduct.” (Tr. at 8, 15, 58)

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<sup>6</sup> Dr. Anderson’s statement regarding CME was not accurate: Ohio law requires 100 hours of CME during each two-year reporting period, with 40 of those hours to be certified as Category 1 education. R.C. 4731.281; Ohio Admin. Code § 4731-10-02.

## FINDINGS OF FACT

1. On July 8, 1998, the State Medical Board of Ohio issued an Entry of Order [1998 Order] in the *Matter of Wilfred L. Anderson, M.D.*, permanently revoking the certificate of Wilfred Louis Anderson, M.D., to practice medicine and surgery in Ohio. The permanent revocation in the 1998 Order was based on findings and conclusions including the following.
  - a. The Board's Findings of Fact in its 1998 Order included these findings:
    - On February 13, 1992, Patient 1 presented to the office of Wilfred L. Anderson, M.D., for a pregnancy test. During this visit, Dr. Anderson performed a pregnancy test and informed Patient 1 that she was pregnant. Dr. Anderson also prescribed Valium [diazepam] for Patient 1. Following this visit, Dr. Anderson drove Patient 1 from his office to his home. While at Dr. Anderson's home, Dr. Anderson engaged in sexual activity with Patient 1 and provided alcohol to her.
    - On July 24, 1997, in the Cuyahoga County Court of Common Pleas, Dr. Anderson pleaded guilty to and was found guilty of one misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code. The acts underlying Dr. Anderson's guilty plea occurred on February 13, 1992, subsequent to an office visit, and involved sexual contact with Patient 1.
    - On October 27, 1992, Patient 2 presented to Dr. Anderson's office stating that she was pregnant and suffering from syphilis. Dr. Anderson instructed Patient 2 to lie on the examining table with her feet in the stirrups. Dr. Anderson inserted his finger into Patient 2's vagina, told her to relax her muscles, and asked her if she liked the way it felt. When Patient 2 responded "no," Dr. Anderson said "I bet you like it when your boyfriend does it to you." After telling Patient 2 to get dressed, Dr. Anderson said, "I don't like to see them put it on, I like to see them take it off."
    - Dr. Anderson prescribed metronidazole for Patient 2 who was approximately six weeks pregnant.
  - b. The Board's Conclusions of Law in its 1998 Order included these conclusions:
    - The conduct of Wilfred L. Anderson, M.D. \* \* \* constitutes "(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, as in effect prior to March 15, 1993.

- The conduct of Dr. Anderson \* \* \* constitutes ““(t)he violation of any provision of a code of ethics . . . of a national professional organization,” as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV.”
- Most significantly, however, the evidence presented at hearing demonstrated that Dr. Anderson not only performed the acts alleged by the Board, but also that he failed to see the significance of those acts. As noted in the State’s Closing Argument,

This case concerns one of the most egregious violations of the ethical standards for physicians. Not only did Respondent violate the ethical standards, but even today he sees nothing wrong with his actions. He shows no remorse and no understanding of the gravity of his actions. He apparently believes that it is proper to have sexual relations with patients and to make sexual comments and jokes to patients while examining them. \* \* \* Dr. Anderson’s own testimony shows that he has no concept of the ethical practice of medicine \* \* \*.

- The conduct of Dr. Anderson \* \* \* constitutes ““(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.
  - The conduct of Dr. Anderson \* \* \* constitutes ““(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude,” as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.
  - The conduct of Dr. Anderson \* \* \* constitutes ““(t)he violation of any provision of a code of ethics . . . of a national professional organization,” as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle I.
2. Although the Board ordered in 1998 that Dr. Anderson’s certificate to practice was permanently revoked, Ohio appellate courts have held, in decisions interpreting the Board’s authority to permanently revoke a certificate to practice under statutes in effect prior to March 9, 1999, that some revocations are subject to reinstatement and that a new license may be obtained following revocation in some circumstances.
  3. On July 10, 2006, Dr. Anderson submitted to the Board an application for a certificate to practice medicine and surgery in Ohio. On November 2, 2006, he submitted further information required by the application process. The application is pending.

4. When he filed his application in July 2006, Dr. Anderson had not engaged in the active practice of medicine and surgery for approximately eight years, since in or about July 1998. Also, the evidence establishes that he has not taken a licensure examination since March 5, 1975, when he took and passed Part III of the examination administered by National Board of Medical Examiners.

### CONCLUSIONS OF LAW

1. The Board made Findings of Fact and Conclusions of Law in its 1998 Order, including the following.
  - a. As set forth above in Finding of Fact 1, the Board previously decided in its 1998 Order that certain acts, omissions, and/or conduct by Wilfred Louis Anderson, M.D., 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 language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(6) as in effect prior to March 15, 1993.<sup>7</sup>
  - b. The Board also decided in its 1998 Order that Dr. Anderson’s plea of guilty to, and/or the judicial finding of his guilt of, the misdemeanor of Attempted Gross Sexual Imposition pursuant to R.C. 2923.02 and R.C. 2907.05, constituted both of the following:
    - a “plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,” as that language is used in R.C. 4731.22(B)(11) as in effect prior to March 9, 1999; and
    - a “plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude,” as that language is used in R.C. 4731.22(B)(13) as in effect prior to March 9, 1999.
  - c. Further, the Board decided in its 1998 Order that Dr. Anderson’s acts, conduct, and/or omissions, as specifically described in the Order, constituted the “violation of any provision of a code of ethics . . . of a national professional organization,” as that

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<sup>7</sup> The Hearing Examiner notes that, due to the appellate court decisions referenced above, the permanent revocation ordered by the Board in 1998 is being treated, in effect, as a non-permanent revocation in these proceedings. Pursuant to Ohio Administrative Code Section 4731-13-36(B), a “revocation” has the following effect:

(B) “Revocation” means the loss of a certificate to practice in Ohio. An individual whose certificate has been revoked shall be eligible to submit an application for a new certificate. The application for a new certificate shall be subject to all requirements for certification in effect at the time the application is submitted. In determining whether to grant such an application, the board may consider any violations of Chapters 4730, 4731, 4760 and 4762 of the Revised Code, whichever is applicable, that were committed by the individual before or after the revocation of the individual’s certificate, including those that formed the basis for the revocation. All disciplinary action taken by the board against the revoked certificate shall be made a part of the board’s records for any new certificate granted under this rule. (punctuation modified)

Therefore, the Board may consider the previous violations in determining whether to grant the pending application for licensure.

language is used in R.C. 4731.22(B)(18)(a) as in effect prior to March 9, 1999. Specifically, the Board concluded that Dr. Anderson had violated Principles I, II, and IV of the American Medical Association's Code of Ethics.

2. R.C. 4731.08 requires that the applicant for licensure "shall furnish evidence satisfactory to the board that the applicant is more than eighteen years of age and of good moral character."

Dr. Anderson has not furnished satisfactory evidence of good moral character, and he has therefore failed to meet a mandatory requirement for licensure.

First, Dr. Anderson's acts, omissions and/or conduct as found in the Board's 1998 Order demonstrated a lack of good moral character: he had pleaded guilty to a misdemeanor that involved moral turpitude in the course of practice of medicine, and he had violated the standards of medical ethics in a manner that the Board found to be egregious. Further, he had shown no remorse or understanding of the gravity of his offenses.

Second, there was no convincing evidence that Dr. Anderson has experienced a change or development in his ethical standards or moral character since the time he committed the violations described in the 1998 Order. The Hearing Examiner did not find Dr. Anderson's testimony credible in regard to his acceptance of responsibility for his prior wrongful conduct or his understanding of its seriousness. For example, based on his testimony and demeanor at hearing, the Hearing Examiner found that Dr. Anderson's explanations were not credible regarding why he had tried to justify his conduct during the 1998 administrative proceedings.

Based on Dr. Anderson's failure to meet a mandatory requirement for licensure, the Board must deny the application.

3. Section 4731.222 of the Ohio Revised Code provides, among other things, that, where an applicant for medical licensure has not engaged in the practice of medicine and surgery for more than two years, the Board may require, before it issues the certificate, that the applicant must pass an oral or written examination, or both, to determine his present fitness to resume practice.

In the present matter, the issue under R.C. 4731.222 is moot, based on Conclusion of Law 2, above, that Dr. Anderson has not met a mandatory requirement for licensure.

In the alternative, however, if the Board should decide to grant Dr. Anderson's application, then the Board has cause to require additional evidence under R.C. 4123.222 of his present fitness to resume the practice of allopathic medicine and surgery, based on the fact that Dr. Anderson has not engaged in the practice of medicine and surgery for a period in excess of two years, as set forth above in Finding of Fact 4.

**PROPOSED ORDER**

It is hereby ORDERED that:

The application of **Wilfred Louis Anderson, M.D.**, for a certificate to practice allopathic medicine and surgery is PERMANENTLY DENIED.

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



Patricia A. Davidson  
Hearing Examiner

STATE MEDICAL BOARD  
OF OHIO  
2008 MAY -1 P 2:35

# State Medical Board of Ohio

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



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## EXCERPT FROM THE DRAFT MINUTES OF JUNE 11, 2008

### PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Proposed Findings and Proposed Orders appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions and proposed orders; and any objections filed in the matters of Wilfred Louis Anderson, M.D.; Richard Luboga Byakika, M.D.; George Jakymenko, M.D.; and Gregory S. Uhl, M.D.; and the Proposed Findings and Proposed Order in the matter of Brian Matthew Gease. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye

Dr. Varyani - aye

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

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

.....

WILFRED LOUIS ANDERSON, M.D.

.....

**DR. MADIA MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF WILFRED LOUIS ANDERSON, M.D. DR. AMATO SECONDED THE MOTION.**

.....

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.



# State Medical Board of Ohio

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

July 11, 2007

Wilfred Louis Anderson, M.D.  
2485 Newbury Drive  
Cleveland, Ohio 44118

Dear Doctor Anderson:

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

- (1) On or about July 8, 1998, the Board issued an Entry of Order [Order] permanently revoking your certificate to practice medicine and surgery [certificate to practice] in the state of Ohio. The Board's July 8, 1998 permanent revocation of your certificate to practice was based upon the violations set forth in the Report and Recommendation in the Matter of Wilfred L. Anderson, M.D., which was approved and confirmed by the Board. A copy of the Order and supporting documents are attached hereto and fully incorporated herein.

Although in the aforementioned Order the Board directed that your certificate to practice was permanently revoked, appellate decisions interpreting the Board's authority to permanently revoke a certificate to practice under statutes in effect prior to March 9, 1999, held, *inter alia*, that some revocations are subject to reinstatement and in some circumstances a new license may be obtained following revocation.

On or about July 10, 2006, you caused to be submitted to the Board an application for a certificate to practice medicine and surgery in the state of Ohio [Application]. On or about November 2, 2006, you caused to be submitted to the Board further information required by such application process. Your Application is currently pending.

- (2) According to your pending Application, the most recent licensure examination taken by you was the National Board of Medical Examiners, Part III examination on or about March 5, 1975. Further, you have not been engaged in the active practice of medicine and surgery since in or about 1998.

Your acts, conduct, and/or omissions as set forth in the Board's July 8, 1998 Order, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause in used in Section 4731.22(B)(6), Ohio Revised Code, as in effect prior to March 15, 1993.

*Mailed 7-12-07*

Further, your plea of guilty or the judicial finding of guilt as set forth in the Board's July 8, 1998 Order, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2923.02, Ohio Revised Code and Section 2907.05, Ohio Revised Code, Attempted Gross Sexual Imposition.

Further, your plea of guilty or the judicial finding of guilt as set forth in the Board's July 8, 1998 Order, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2923.02, Ohio Revised Code, and Section 2907.05, Ohio Revised Code, Attempted Gross Sexual Imposition.

Further, your acts, conduct, and/or omissions as set forth in the Board's July 8, 1998 Order, as alleged in paragraph (1) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or 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, as in effect prior to March 9, 1999, to wit: Principles I, II, and IV.

Further, your acts, conduct, and/or omissions as set forth in the Board's July 8, 1998 Order, as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.08, Ohio Revised Code, a failure to furnish satisfactory proof of good moral character.

Further, your failure to be engaged in the active practice of medicine and surgery for a period in excess of two years prior to your Application, as alleged in paragraph (2) above, constitutes cause for the Board to exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of your fitness to resume practice.

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

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

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

Wilfred Louis Anderson, M.D.

Page 3

register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage". The signature is fluid and cursive, written over a white background.

Lance A. Talmage, M.D.  
Secretary

LAT/KHM/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8318 3978  
RETURN RECEIPT REQUESTED

CC: Jay Milano, Esq.  
Attorney for Wilfred L. Anderson, M.D.  
Milano Law Building  
2639 Wooster Road  
Rocky River, Ohio 44116

CERTIFIED MAIL #91 7108 2133 3931 8318 3985  
RETURN RECEIPT REQUESTED

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

*Jan. 1999*



WILFORD ANDERSON, M. D. ,

Appellant,

vs.

OHIO STATE MEDICAL BOARD

Appellee.

CASE NO. 98CVF07-5746

JUDGE McGRATH

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
DEC 17 PM 3:51  
CLERK OF COURTS - CIVIL

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
JULY 8, 1998 ORDER PERMANENTLY REVOKING APPELLANT'S  
LICENSE TO PRACTICE MEDICINE AND SURGERY**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the July 8, 1998 Order of the State Medical Board of Ohio which permanently revoked Wilford Anderson's license to practice medicine and surgery in the State of Ohio. For the reasons stated in the decision of this Court rendered on November 23, 1999, which decision is incorporated by reference as if fully rewritten herein, it is hereby **ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered in favor of the Appellee, State Medical Board of Ohio, and the July 8, 1998 order of the State Medical Board in the matter of Wilford Anderson M.D. is hereby affirmed. Costs to Appellant.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**PATRICK M. McGRATH, JUDGE**

**APPROVED:**

*Submitted, not returned*

**MARK A. McCLAIN (0013148)**  
1677 East 40<sup>th</sup> Street & Payne Avenue  
Cleveland, Ohio 44103  
(216) 249-2555  
Counsel for Appellant, Wilford Anderson, M.D.

**BETTY D. MONTGOMERY**  
Attorney General

*Rebecca J. Albers*

**REBECCA J. ALBERS (0059203)**  
**MARY K. CRAWFORD (0021451)**  
Assistant Attorneys General  
Health and Human Services Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3428  
(614) 466-8600

Counsel for Appellee, State Medical Board of Ohio

*Tom [unclear]*

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CIVIL DIVISION

WILFORD ANDERSON, M.D., CLERK OF COURTS

NOV 15 1999  
101 325 - L A 8 55

Appellant,

] CASE NO. 98CVF07-5746

vs.

] JUDGE McGRATH

HEALTH & HUMAN

OHIO STATE MEDICAL BOARD,

]

DEC 02 1999

]

Appellee.

]

SERVICES SECTION

DECISION AFFIRMING THE ORDER OF  
THE OHIO STATE MEDICAL BOARD

Rendered this 23<sup>rd</sup> day of November, 1999

McGRATH, J.

The above-captioned case is presently before the Court on administrative appeal, pursuant to R.C. 119.12, from the Order of the State Medical Board of Ohio which permanently revoked Appellant's license to practice medicine in the state of Ohio.

The Appellant was charged with (1) having sexual relations with one patient, as to whom he pled guilty to a misdemeanor of attempted gross sexual imposition, (2) making improper sexual comments to another patient and (3) improper prescribing of medicines.

The Statement of Facts contained in the Brief of Appellee frames the issues and is set forth below;

This case involves two female patients who filed complaints against Appellant with the police department for his improper sexual actions and for comments. As a result of one complaint, Appellant was charged with rape and subsequently pled to attempted gross sexual imposition.

Appellant admitted at the hearing that Patient One came to his office as a patient and was extremely upset after finding out she was pregnant. He further admitted that right after her appointment, he took her from his

office to his home, gave her alcohol and had sexual relations with her in his bedroom.

As to the allegations involving Patient Two, Appellant admitted at the hearing that he would make comments to his female patients who were about to get dressed that he liked to see women take their clothes off, not put them on. Patient Two also stated he told her he would give her something to make her vagina smell better and taste better. Dr. Anderson admitted he would make such comments to his patients. He further admitted he had made comments such as "I bet you like it when your boyfriend does it" while inserting his finger into the females' vagina, statements Patient Two claimed Dr. Anderson made to her under such circumstances. Patient Two was so offended by his comments and actions that she filed a complaint with the police department.

Dr. Anderson also prescribed Valium and Flagyl to Patients One and Two, patients he knew were in their first trimester of pregnancy. Neither of these medications are to be prescribed during the early months of pregnancy.

The above-described facts are consistent with the Findings of Fact contained in the twenty three (23) page Hearing Examiner's Report and Recommendation. The Hearing Examiner's Conclusions of law are set forth below;

1. The conduct of Wilfred L. Anderson, M.D., as set forth in Findings of Fact 1,3, and 4, constitutes "(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, as in effect prior to March 15, 1993.

Dr. Anderson's testimony with respect to Dr. Segal's opinion that Dr. Anderson's conduct had fallen below the minimal standard of care was not reliable. In a number of areas, Dr. Anderson's testimony demonstrated that Dr. Anderson is not cognizant of the standards of care.

a. First, Dr. Anderson cited an article in support of his prescribing Flagyl to a Patient during the first trimester of pregnancy. Nevertheless, when further questioned, Dr. Anderson admitted that the article clearly limited its use of the drug to patients with pregnancies of at least 24 weeks, or approximately six months, duration. Despite the fact that Dr. Anderson introduced this article into evidence, it more directly supported the testimony of Dr. Segal.

b. Moreover, Dr. Anderson's inability to explain another article that he entered into evidence to support his own testimony does not advance the

position that Dr. Anderson was well versed in the 1992 standards of care regarding the risks posed by certain medications prescribed during the first trimester of pregnancy.

c. Dr. Anderson stated that he intended to prescribe penicillin to Patient 2, despite the fact that both Patient 2 and her referring physician had reported that she was allergic to penicillin. Dr. Anderson hoped to treat her with penicillin, because penicillin is the drug of choice for syphilis. He added that the second drug for treating syphilis is Erythromycin, but Erythromycin is contraindicated during pregnancy.

Nevertheless, in almost incomprehensible testimony, Dr. Anderson testified that he prescribed Erythromycin to Patient 2, despite the fact that she was pregnant, because he was sure that Patient 2 would not take the drug. He explained that one of the side effects of Erythromycin is nausea, which is very uncomfortable during the first trimester of pregnancy. This reasoning is illogical, however, because Patient 2 would become aware of the side effect only after she had taken the medication.

On the other hand, Dr. Anderson justified his prescribing of Erythromycin for Patient 2, despite its contraindication in pregnancy, because it would have been unethical to let Patient 2 leave his office untreated. Dr. Anderson alleged that he was concerned about the public health risk. However, if Dr. Anderson's motive was to treat the syphilis, giving Patient 2 a medication he was sure would not take is an unreasonable and insupportable patient management decision.

2. The conduct of Dr. Anderson, as set forth in Findings of Fact (1) constitutes "(t)he violation of any provision of a code of ethics. . . of a national professional or organization, as that clause is used in Section 4731.22 (B)(18)(a), Ohio Revised Code, to wit: Principles I,II, and IV.

Dr. Anderson's defense against the allegations regarding his sexual conduct with Patient 1 was to attack facts set forth by Patient 1 and to attack Patient 1's memory and mental stability. However, although the details challenged by Dr. Anderson may have been appropriate to challenge in Dr. Anderson's criminal proceedings, their relevance to this administrative procedure is minimal. By his own testimony, Dr. Anderson confirmed all of the Board's allegations regarding his conduct with Patient 1. Moreover, testimony of witnesses presented by both parties further confirmed the facts alleged.

Most significantly, however, the evidence presented at hearing demonstrated that Dr. Anderson not only performed the acts alleged by the

Board, but also that he failed to see the significance of those acts. As noted in the State's Closing Argument,

This case concerns one of the most egregious violations of the ethical standards for physicians. Not only did Respondent violate the ethical standards, but even today he sees nothing wrong with his actions. He shows no remorse and no understanding of the gravity of his actions. He apparently believes that it is proper to have sexual relations with patients and to make sexual comments and jokes to patients while examining them. \* \* \* Dr. Anderson's own testimony shows that he has no concept of the ethical practice of medicine \* \* \* .

(St. Ex 18 at 1).

3. The conduct of Dr. Anderson, as set forth in the Findings of Fact 2, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.

4. The conduct of Dr. Anderson, as set forth in Findings of Fact 2, constitutes "(a) plea of guilty to , or a judicial finding of guilt of a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit" Section 2907.05, Ohio Revised Code.

5. The conduct of Dr. Anderson, as set forth in Findings of Fact 3, constitutes "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle I.

Dr. Anderson denied having made offensive comments to Patient 2, despite the fact that Dr. Anderson could not remember the specific conversation he had with Patient 2 and despite the fact that he admitted that he often makes such offensive remarks to his patients. Accordingly, Dr. Anderson's testimony, in conjunction with the testimony of Brenda Harrison and Michael Giar, provides sufficient evidence to support a conclusion that Dr. Anderson's treatment of Patient 2 violated Principle 1 of the AMA's Code of Ethics.

The standard of review for administrative appeals is governed by R. C. 119.12

which hold in pertinent part:

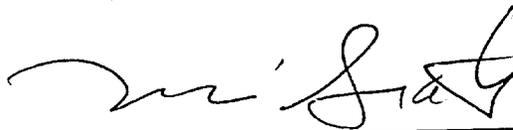
The Court may affirm the order of an agency complained of in the appeal if it finds, upon consideration of the entire record and such additional

evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

Thus, the scope of review by the common pleas court of an order of the State Medical Board is limited to whether it is: (1) supported by reliable, probative and substantial evidence, and (2) in accordance with law. If so, the court may not substitute its judgment for that of the Board, even if the Court may have come to a different conclusion.

This Court concludes that the Board's Order is supported by reliable, probative and substantial evidence and that it is in accordance with law, laches not being a defense in this case. See Ohio St. Bd. of Pharmacy v. Frantz (1990), 51 Ohio St. 3d 143. The Order is therefore AFFIRMED.

Appellee's counsel may prepare an entry within ten (10) days.



---

**PATRICK M. McGRATH, JUDGE**

Appearances:

Mark A. McClain, Esq.  
Counsel for Appellant

Rebecca J. Albers, Esq.  
Mary K. Crawford, Esq.  
Counsel for Appellee

*Swaine*

FILED  
COMMON PLEAS COURT  
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Wilford Anderson, M.D.,  
Appellant,

98 DEC -3 PM 3: 17  
CLERK OF COURTS

v. : Case No. 98CVF-5746  
Ohio State Medical Board, : Judge McGrath  
Appellee. :

**DECISION AND ENTRY**

Rendered this 2<sup>nd</sup> day of December 1998.

McGRATH, J.

This matter is before this Court upon appellant Wilford Anderson's motion to stay the order of the Ohio State Medical Board pending appeal, filed October 21, 1998. Appellee, Ohio State Medical Board ("Board"), filed its memorandum opposing appellant's motion on October 22, 1998.

The following facts are relevant to this matter. On July 8, 1998, the Board issued an order permanently revoking appellant's license to practice medicine in Ohio. This order was based upon the report and recommendation of the Board Hearing Examiner, Sharon M. Murphy, filed June 15, 1998. After a three day hearing, Murphy concluded that appellant had had improper sexual relations with a patient. Criminal charges were brought against appellant based upon the above misconduct. Appellant admitted to pleading guilty to attempted gross sexual imposition. Murphy also found that appellant had made sexually inappropriate comments to the second patient. Last, Murphy found that appellant improperly proscribed medications potentially hazardous to pregnant women.

In sum, the Board found that appellant's actions were clearly below the standard of care and ethical conduct required of physicians practicing medicine in Ohio.

Appellant argues that suspension of his medical license during his appeal will cause unusual hardship due to his inability to earn a living as a physician. It is further argued that staying the Board's order will not injure the health safety and welfare of the public, as appellant has not had any new charges brought against him for six years.

R.C. 119.12, in relevant part provides:

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. \* \* \* In the case of any appeal from the state medical board, the court may grant a suspension and fix its terms if it appears to the court that an *unusual hardship* to the appellant will result from the execution of the agency's order pending the termination of the appeal, *and the health safety and welfare of the public will not be threatened by the suspension of the order* \* \* \* (Emphasis added).

In the present action, this Court finds that appellant has failed to make the threshold showing of "unusual hardship" as required by R.C. 119.12. As this Court has previously held:

"'unusual hardship' means more than the loss of the right to practice medicine. (Citation omitted). The removal of a license to practice medicine inherently means that the person whose license is being removed will be unable to make a living practicing medicine because in order to practice medicine, a license is necessary."

*Roy v. State Medical Bd. Of Ohio* (August 9, 1993), Franklin Co. C.P. No. 93CVF05-3734, unreported, at 2. It must then be expected that the loss of the right to practice medicine will undoubtedly lead to loss of income and reputation in the community.

The Board found that appellant had engaged in improper sexual conduct with patients and had wrongfully proscribed drugs potentially hazardous to pregnant women. This leads the Court to conclude that appellant has failed to show not only

"unusual hardship," but that his continued practice of medicine during this appeal would not injure the health, safety and welfare of the public.

Accordingly, the Court **DENIES** appellant's motion to stay the order of the Board pending appeal.

IT IS SO ORDERED.



---

Patrick M. McGrath, Judge

Copies to:

Mark A. McClain  
Attorney for Appellant

Rebecca J. Albers  
Mary K. Crawford  
Assistant Attorneys General

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

IN THE MATTER OF )  
WILFRED ANDERSON, M.D. )  
 )  
Appellant-Respondent )  
 )  
vs. )  
 )  
STATE MEDICAL BOARD OF OHIO )  
 )  
Appellee-Petitioner. )

NOTICE OF APPEAL

Now comes Wilfred L. Anderson, M.D., by and through undersigned counsel, and hereby  
appeals the July 8, 1998 decision of the State Medical Board of Ohio which permanently revokes  
his licence to practice medicine.

Respectfully submitted,



Mark A. McClain 0013148  
1677 East 40<sup>th</sup> Street  
Cleveland, Ohio 44103  
(216) 881-1220  
Attorney for Appellant  
Wilfred L. Anderson, M.D.

07-16 12: 02 1998  
COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal was sent this 23<sup>rd</sup> day of July, 1998, to  
Anand G. Karg, M.D., Secretary, State Medical Board of Ohio, 77 S. High St., 17<sup>th</sup> Floor,  
Columbus, Ohio 43266-0315.

A handwritten signature in black ink, appearing to be "M. G. Karg", is written over a horizontal line. The signature is stylized and cursive.



# State Medical Board of Ohio

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

July 8, 1998

Wilfred L. Anderson, M.D.  
5 Severance Circle, #818  
Cleveland, OH 44118

Dear Doctor Anderson:

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 July 8, 1998, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 115  
RETURN RECEIPT REQUESTED

cc: Mark A. McClain, Esq.  
CERTIFIED MAIL RECEIPT NO. Z 233 839 116  
RETURN RECEIPT REQUESTED

*Mailed 7/16/98*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 8, 1998, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Wilfred L. Anderson, 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)

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

July 8, 1998  
\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

WILFRED L. ANDERSON, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 8, 1998.

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

It is hereby ORDERED that:

The certificate of Wilfred L. Anderson, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

July 8, 1998  
Date

98 JUN 15 PM 12:45

**REPORT AND RECOMMENDATION  
IN THE MATTER OF WILFRED L. ANDERSON, M.D.**

The Matter of Wilfred L. Anderson, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 13, 14 and 15, 1998.

**INTRODUCTION**

**I. Basis for Hearing**

A. By letter dated January 14, 1998, the State Medical Board of Ohio [Board] notified Wilfred L. Anderson, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on the following allegations:

(1)(a) On or about February 13, 1992, Patient 1 presented to Dr. Anderson's office for a pregnancy test. During this visit, Dr. Anderson performed a pregnancy test and informed Patient 1 that she was pregnant. Dr. Anderson also prescribed diazepam for Patient 1.

Following this visit, Dr. Anderson drove Patient 1 from his office to his home. While at Dr. Anderson's home, Dr. Anderson engaged in sexual intercourse with Patient 1 and provided alcohol to her.

(1)(b) On or about July 24, 1997, in the Cuyahoga County Court of Common Pleas, Dr. Anderson pleaded guilty to and was found guilty of one misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code. The acts underlying Dr. Anderson's guilty plea occurred on February 13, 1992, subsequent to an office visit, and involved sexual contact with Patient 1.

(2) On or about October 27, 1992, Patient 2 presented to Dr. Anderson's office stating that she was pregnant and suffering from syphilis. Dr. Anderson instructed Patient 2 to lie on the examining table with her feet in the stirrups. Dr. Anderson inserted his ungloved finger into Patient 2's vagina, told her to relax her muscles, and asked her if she liked the way it felt. When Patient 2 responded "no," Dr. Anderson said "I bet you like it when your boyfriend does it to you."

98 JUN 15 PM 12:45

In addition, after telling Patient 2 to get dressed, Dr. Anderson said "I don't like to see them put it on, I like to see them take it off."

Finally, Dr. Anderson prescribed metronidazole for Patient 2 who was approximately six weeks pregnant.

The Board alleged that Dr. Anderson's conduct, as referenced in paragraphs (1)(a) and (2), 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, as in effect prior to March 15, 1993."

The Board further alleged that Dr. Anderson's conduct, as alleged in paragraph (1)(a), constitutes "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV."

In addition, the Board alleged that Dr. Anderson's guilty plea and/or the judicial finding of guilt, as alleged in paragraph (1)(b) above, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code [and/or] "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code."

Finally, the Board alleged that Dr. Anderson's conduct, as referenced in paragraph (2), constitutes "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle I."

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

- B. On February 14, 1998, Mark A. McClain, Esq., submitted a written hearing request on behalf of Dr. Anderson. (State's Exhibit 2)

## II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mary K. Crawford, Assistant Attorney General.
- B. On behalf of the Respondent: Mark A. McClain, Esq.

98 JUN 15 PM 12:45

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

1. Wilfred L. Anderson, M.D., as if on cross-examination
2. Brenda Harrison
3. Patient 2
4. Patient 1
5. Joseph Segal, M.D.
6. Michael Giar

#### B. Presented by Respondent

1. Angelina C. Johnson
2. Zelma V. McKnight-Philpot
3. Wilfred L. Anderson, M.D.
4. Wanda Ramsey, M.D.
5. John H. Lenear

### II. Exhibits Examined

#### A. Presented by the State

1. State's Exhibits 1-8: Procedural exhibits. [Note: the Hearing Examiner removed the confidential Patient Key from State's Exhibit 1, and labeled it State's Exhibit 1A. State's Exhibit 1A will be sealed to protect patient confidentiality.]
2. State's Exhibit 9: Not admitted.

98 JUN 15 PM 12:46

3. State's Exhibit 10: Certified copies of the Journal Entries filed in the Cuyahoga County Court of Common Pleas, in the case captioned *State of Ohio v. Wilfred Anderson*, No. CR 342176. (2 pp.)
- \* 4. State's Exhibit 11: Copy of Dr. Anderson's medical records for Patient 1. (3 pp.)
- \* 5. State's Exhibit 12: Copy of Dr. Anderson's medical records for Patient 2. (2 pp.)
6. State's Exhibit 13: Copy of an excerpt from the *Physicians' Desk Reference*, 46th Ed., (PDR), on Valium (diazepam). (3 pp.)
7. State's Exhibit 14: Copy of an excerpt from the PDR on metronidazole. (4 pp.)
8. State's Exhibit 15: Excerpts from the *Code of Medical Ethics*, of the American Medical Association (AMA). (6 pp.)
9. State's Exhibit 16: Copy of article entitled *Sexual Misconduct in the Practice of Medicine*, published by the Council on Ethical and Judicial Affairs, AMA. (5 pp.)
- \* 10. State's Exhibit 17: Copy of two appointment cards for Patient 2.

B. Presented by the Respondent

Respondent's Exhibit C: Copies of summaries of articles obtained from the Internet:

1. *Safety of Metronidazole in Pregnancy: a Meta-Analysis*, from the American Journal of Obstetrics & Gynecology. February, 1995. (2 pp.)
2. *Pregnancy Outcomes after First -Trimester Vaginitis Drug*, from Obstetrics & Gynecology, May 1987. (2 pp.)
3. *Bacterial Vaginosis in Pregnancy and Efficacy of Short-Course Oral Metronidazole Treatment: A Randomized Controlled Trial*, from Obstetrics and Gynecology, Sept. 1994. (2 pp.)

C. Post-hearing admission to the record:

1. State's Exhibit 17: The State's Closing Argument, filed June 10, 1998. (14 pp.)
2. Respondent's Exhibit E: Respondent's Summation of the Case. (15 pp.)

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### PROCEDURAL MATTERS

At hearing, Respondent requested an opportunity to file written closing arguments. Over the State's objection, the Hearing Examiner agreed to order written arguments. The Hearing Examiner ordered that the written arguments be filed on or before June 10, 1998, at which time the hearing record would close. (Tr. III at 129-130).

The State filed the State's Closing Argument on June 10, 1998. That same day, Counsel for Respondent contacted the Hearing Examiner by telephone and requested an extension of time in which to file his arguments. Counsel for Respondent stated that computer problems had caused him delay. The Hearing Examiner allowed Respondent an additional day in which to file his arguments. On June 11, 1998, Respondent filed Respondent's Summation of the Case. Accordingly, the hearing record closed on that date.

### SUMMARY OF THE EVIDENCE

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

#### A. WILFRED L. ANDERSON, M.D.

1. Wilfred L. Anderson, M.D., received his medical degree from Washington University in St. Louis, Missouri, in 1974. Prior to 1982, Dr. Anderson served as the Medical Director of the City of Cleveland's Sexually Transmitted Disease Program. Since 1982, he has maintained a private practice restricted to the treatment of sexually transmitted diseases [STD]. (May 13, 1998, Hearing Transcript [Tr. I] at 13-14; May 15, 1998, Hearing Transcript [Tr. III] 5-9). Dr. Anderson is a member of the National Medical Association, which he described as the African-American counterpart of the American Medical Association. Dr. Anderson is not a member of the American Medical Association. (Tr. I at 17-18).
2. Dr. Anderson explained that he often approaches patients with a "light-hearted manner." He stated that he does so because patients who come to his office are often hostile and "generally emotionally distraught - Not distraught in the pathologic sense. They feel dirty. They often feel that they don't want to have sex with anybody ever again." (Tr. I at 22-24; Tr. III at 10).
3. Angelina C. Johnson, office manager for Dr. Anderson, testified that Dr. Anderson dispenses medications from his office. Ms. Johnson stated that she orders the medications in bulk amounts. She is responsible for counting the pills and putting them into individual containers for patient distribution. The medications are kept in Ms. Johnson's desk drawer, but are dispensed only by Dr. Anderson. Ms. Johnson stated that the medications are generally antibiotics. She denied that Dr. Anderson dispensed Valium from his office. (May 14, 1998, Hearing Transcript [Tr. II] at 172-173) (See also Tr. I at 14-17).

B. JOSEPH SEGAL, M.D.

1. Joseph Segal, M.D., testified on behalf of the State. Dr. Segal received a medical degree from Indiana University in 1976. He completed a residency in Internal Medicine at Jewish Hospital in Cincinnati, followed by a two year fellowship in Infectious Diseases at Washington University in St. Louis, Missouri. Dr. Segal currently practices Internal Medicine and Infections Diseases, in Cincinnati, Ohio. (Tr. II at 71-72).
2. Dr. Segal testified that he is familiar with the American Medical Association [AMA]. He stated that the AMA has various Councils which address issues pertaining to the practice of medicine. Dr. Segal testified that the AMA Council on Ethical and Judicial Affairs has promulgated the Code of Medical Ethics and the Principles of Medical Ethics. (Tr. II at 72).

Dr. Segal explained that the AMA's Guideline on Sexual Misconduct in the Practice of Medicine pertains to Principles I, II, and IV of the Principles of Medical Ethics. (Tr. II at 75-76; State's Exhibit [St. Ex.] 15 at 5, 6). The Preamble to the AMA Principles of Medical Ethics states that:

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 Associations are not laws, but standards of conduct which define the essentials of honorable behavior of the physician.

(St. Ex. 15 at 5). Principles I, II, and IV provide as follows:

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

(St. Ex. 15 at 5).

Dr. Segal explained that the AMA's Guideline on Sexual Misconduct in the Practice of Medicine provides that "Sexual contact that occurs concurrent with the physician/patient

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relationship constitutes sexual misconduct.” (Tr. II at 80; St. Ex. 15 at 6). Dr. Segal testified that a physician having sex with a patient is a violation of the AMA Principles of Medical Ethics. Dr. Segal stated that his opinion would not change if the sexual contact was voluntary, or if the sexual contact was limited to “oral sex in which the patient performed oral sex on the physician.” (Tr. II at 81).

Dr. Segal explained that sexual interactions between physicians and patients can have negative effects on the physician-patient relationship, in that sexual contact may exploit the vulnerability of the patient, may obscure the physician’s objective judgment, or may be detrimental to the patient’s well-being. Accordingly, the AMA’s Guideline on Sexual Misconduct in the Practice of Medicine provides that, “at a minimum, a physician’s ethical duty means terminating the physician-patient relationship before initiating a dating or sexual relationship with the patient.” Dr. Segal concluded that based on the AMA’s Council Report on Sexual Misconduct in the Practice of Medicine, “[c]urrent ethical thought uniformly condemns sexual relations between patients and physicians.” (Tr. II at 89-91; St. Ex. 16).

C. PATIENT 1

1. Dr. Anderson’s medical records for Patient 1 indicate that Patient 1 first presented to Dr. Anderson’s office as a patient on August 1, 1989. Dr. Anderson treated her for complaints of vaginal irritation. Dr. Anderson treated Patient 1 several times over the next seven months. (St. Ex. 11 at 2A).

On February 13, 1992, Patient 1 presented to Dr. Anderson’s office because she suspected she may have been pregnant. During this visit, Dr. Anderson performed a pregnancy test and informed Patient 1 that she was pregnant. Dr. Anderson prescribed diazepam [Valium] for Patient 1. He also noted that Patient 1 planned an abortion. (St. Ex. 11 at 2B).

2. Patient 1 testified she had been employed by an orthodontist who had an office in Dr. Anderson’s building until 1989. From 1990 to 1993, Patient 1 worked in a dental office in another city. (Tr. at 6-8).

Patient 1 testified that she first saw Dr. Anderson as a patient in 1989. She saw him four or five times through 1992. (Tr. II at 6). Regarding her visit to Dr. Anderson’s office on February 13, 1992, Patient 2 testified as follows:

- a. Patient 1 visited Dr. Anderson’s office on February 13, 1992, because she thought she may have been pregnant. Dr. Anderson performed a pregnancy test, and confirmed that she was pregnant. (Tr. II at 6-7).
- b. During the examination and, later, in the consultation room, Dr. Anderson asked Patient 1 for a date and invited Patient 1 to his home. Patient 1 made excuses because

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she did not want to socialize with her physician. Patient 1 denied ever having dated Dr. Anderson. (Tr. II at 7-9, 19-20).

- c. Patient 1 "pretty much got hysterical" when Dr. Anderson confirmed that she was pregnant. Dr. Anderson invited Patient 1 to his home, to help her relax. He told her that she needn't worry about getting pregnant, because she was already pregnant. (Tr. II at 9).

Patient 1 told Dr. Anderson that she did not want to go to his home. Dr. Anderson told her that he was going to give her something to relax, and handed her "two little green pills." "Trusting [Dr. Anderson] as a doctor," Patient 1 took the pills. (Tr. at 9-10). After giving her the pills, Dr. Anderson told Patient 1 that he could not let her drive herself home. (Tr. II at 11).

Patient 1 told the receptionist that Dr. Anderson had given her medication, and that she was starting to "feel funny." The receptionist just "smirked" and walked away. (Tr. II at 10-11, 24-25).

Dr. Anderson first took his receptionist to her home, then he took Patient 1 to his home. At his home, Dr. Anderson got a bottle of champagne from his refrigerator. They sat in the living room to watch television. Patient 1 does not recall how much champagne she consumed. (Tr. at 11-12, 68).

Dr. Anderson left to get a pizza. Because she had taken the pills Dr. Anderson had given her, Patient 1 did not feel physically able to leave his house on her own. Patient 1 remembers walking, or staggering, into Dr. Anderson's bedroom. Patient 1 does not recall leaving Dr. Anderson's bedroom. She did remember, however, that when Dr. Anderson returned with the pizza, Patient 1 ate a piece of pizza with Dr. Anderson. Patient 1 could not recall which room they occupied while eating the pizza. (Tr. II at 12-13, 66-68).

Patient 1 stated that the next thing she remembers, was the following:

I was laying on my back on his bed. I didn't have anything on. And he was penetrating me, and he made a very loud scream, and at that point, I said, in my mind, I said, "he's ejaculating in me."

After that, I woke up, somewhere between 3:00 and 5:00. It was still dark outside, the next morning, and he was laying next to me, and asked if I was ready to go home. I told him yes, I was ready to go home.

(Tr. II at 13). Patient 1 does not remember participating in any oral sexual activity.  
(Tr. II at 14).

- d. The following day, Patient 1 contacted Dr. Anderson to state that she had left her watch at his home. She stated that she would retrieve the watch from his office. At his office, Dr. Anderson wrote her a prescription for Valium. At that time, he identified the pills he had given her the previous day as Valium. (Tr. at 14-15, 24).
- e. Dr. Anderson told her that the prescription was her Valentine's gift. He also told her that as long as she was his girlfriend, she would not have to pay for her medical treatment. (Tr. at 14-15).
- f. The pills Patient 1 obtained from the pharmacy, when she filled the prescription given to her by Dr. Anderson, were the same as the "little green pills" Dr. Anderson had given her on February 13, 1992. (Tr. at 23-24).

Patient 1 denied having told Dr. Anderson, on February 13, 1992, that she had been treated in the past for psychiatric problems. (Tr. II at 16-17, 30-32). Patient 1 testified that, in July 1993, she started receiving psychiatric treatment. She explained that, in 1993, a physician diagnosed Patient 1 as suffering from hallucinations and being "prone to losing touch with reality." (Tr. at 36-37, 44). Patient 1 has been hospitalized for psychiatric problems annually, from 1993 through 1997. At the time of giving testimony, Patient 1 had been taking Prozac [fluoxetine hydrochloride, an anti-depressant] and Zyprexa [olanzapine, an anti-psychotic], daily. (Tr. II at 57-58).

3. Regarding Patient 1, Dr. Anderson testified that Patient 1 had worked in another office in his building between 1986 and 1989. He had had dinner with her on one occasion, and had had lunch with her on three occasions. Soon after that, Patient 1 had "disappeared" and no one knew where she was. (Tr. I at 31, Tr. III at 61-63).

Dr. Anderson testified that Patient 1 came to his office on February 13, 1992. Dr. Anderson testified that he examined Patient 1 and performed a pregnancy test. He stated that she was:

upset in a matter that was not familiar to me, or seemed strange. I've seen people upset for various reasons. Not usually about this. But there was something different, almost as if it was put on or overdone, not genuine, exaggerated.

(Tr. I at 28-29). Then Patient 1 asked for Valium. Dr. Anderson wrote a prescription for 10 Valium, although in her medical record he recorded twice that amount. Dr. Anderson stated that 10 Valium "can't cause much harm . . . and he didn't want to argue with her about whether she needed it or not." He stated that, after getting the prescription, Patient 1 was no longer upset. (Tr. I at 28-31; Tr. III at 64-67).

Dr. Anderson denied having given Patient 1 Valium. He further stated that he did not dispense Valium from his office. (Tr. at 68).

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Dr. Anderson stated that Patient 1 did not want to go home. She told Dr. Anderson that she was pregnant by someone who did not want to be pregnant by. Dr. Anderson offered to take her to dinner, but she refused. He said that she "more or less implied" that she wanted to go home with him. He stated that there were no other options, so he took her home with him. (Tr. I at 31-32; Tr. III at 67-68).

Dr. Anderson stated that he had a romantic interest in Patient 1 at that time. The romantic interest included the possibility of a sexual relationship. (Tr. I at 42-45). Dr. Anderson testified that it was not unethical to have a sexual encounter with Patient 1. (Tr. III at 122-123).

They left Dr. Anderson's office at approximately 7:30 p.m. They dropped off his office manager at her home, and stopped to buy a bottle of champagne. At his home, Dr. Anderson gave Patient 1 a tour of his home and introduced her to the housekeeper. Dr. Anderson and Patient 1 sat in the living room for a few hours watching television. Patient 1 drank some champagne. At some point, Patient 1 got up and went into the bedroom and started undressing. Dr. Anderson followed her to the bedroom. (Tr. I at 32-33; Tr. III at 68-69).

Dr. Anderson stated that he stayed in the bedroom, because he was "amazed" or "shocked." He stated that he did not remove his clothes. His pants were unzipped, and Patient 1 orally stimulated his penis. Dr. Anderson later admitted that Patient 1 may have removed his pants. Dr. Anderson denied inserting his penis into her vagina or ejaculating. He stated that after the oral sexual act, he "tactfully extracted" himself from the situation. Before 11:00 p.m., he left the house to get pizza. When he returned, he and Patient 1 sat in the kitchen and ate pizza. Thereafter, Dr. Anderson drove Patient 1 home. (Tr. I at 35-40; Tr. III at 92-93).

Dr. Anderson stated that when he drove Patient 1 home, she told him that she had been "under the care of a psychiatrist." He testified that there was no further discussion of that subject. (Tr. I at 39; Tr. III at 94).

Dr. Anderson denied having given Patient 1 any pills. He stated that Patient 1 consumed only one glass of champagne. Dr. Anderson further stated that Patient 1 did not appear drowsy, and he did not recall that she "blacked out" at any time that evening. (Tr. III at 90-92).

Dr. Anderson admitted that he had told Board investigators that he had taken Patient 1 to his home because he had intended to seduce her. He also admitted telling Board investigators that "everyone knows that [he doesn't] charge patients [he] has sex with." (Tr. at 69-70).

Patient 1 returned on February 27, 1992, with complaints of lower abdominal pain. She also stated that her Valium had been destroyed. Dr. Anderson wrote that Patient 1 had hard feces and diagnosed constipation. He wrote another prescription for Valium. Dr. Anderson did not mention the pregnancy. (St. Ex. 11 at 2B).

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Regarding his prescribing of Valium to Patient 1 when she was pregnant, Dr. Anderson stated that such practice does not fall below the minimal standard of care. He stated that "there is no known instance of Valium, or any one of that class of drugs, causing any birth defects or abnormal effects to the fetus or pregnancy in any human anywhere in scientific literature." Dr. Anderson further stated that the Physician's Desk Reference [PDR] does not say that such practice is contraindicated, only that it should be avoided. (Tr. III at 98).

4. Angelina C. Johnson, office manager for Dr. Anderson, testified regarding Patient 1. Ms. Johnson stated that Patient 1 had dated Dr. Anderson "several times." (Tr. II at 166). On cross-examination, however, Ms. Johnson admitted that she had never personally witnessed Patient 1 on a date with Dr. Anderson. (Tr. II at 175).

Ms. Johnson further testified that she had been in the office on February 13, 1992. She stated that Patient 1 had told her that Patient 1 was pregnant and depressed, that she was planning an abortion, and that Patient 1 was going to Dr. Anderson's house. Ms. Johnson testified that she responded by saying "Whatever," and left the room. (Tr. II at 168-169).

Ms. Johnson stated that Dr. Anderson dropped her off at her home, after which Dr. Anderson and Patient 1 proceeded on to Dr. Anderson's house. (Tr. at 169-170).

Ms. Johnson stated that, following February 13, 1992, Patient 1 made harassing telephone calls to her at Dr. Anderson's office for approximately one week. She further stated that, after the telephone calls, Ms. Johnson did not hear from Patient 1 again. (Tr. II at 170-171). Nevertheless, when shown Patient 1's medical record, Ms. Johnson testified that Patient 1 came to the office on February 27, 1992. (Tr. at 171).

5. Zelma V. McKnight-Philpot testified that, on February 13, 1992, she had been employed as Dr. Anderson's housekeeper. Ms. McKnight-Philpot testified that Dr. Anderson introduced her to Patient 1 when he brought Patient 1 to his home. Ms. McKnight-Philpot stated that Patient 1 did not appear to be sleepy. (Tr. II at 181-184).

Ms. McKnight-Philpot noticed at some point that Dr. Anderson went to get a pizza, and that Patient 1 was in the bedroom. She stated that the local Pizza Hut closed at 10:00, so she believed that the time must have been earlier than 10:00. Thereafter, Ms. McKnight-Philpot remembered Patient 1 sitting at the kitchen table eating pizza with Dr. Anderson. She also remembered Dr. Anderson taking Patient 1 home after they ate pizza, sometime before midnight. (Tr. II at 185-190).

6. Brenda Harrison, Enforcement Investigator for the Board, testified that she and another Board investigator, Michael Giar, had interviewed Dr. Anderson regarding Patient 1 in March 1994. (Tr. I at 75, 80). Ms. Harrison testified that, when asked why Dr. Anderson had taken Patient 1 to his home rather than to her home, he responded "quite jovially" that he had intended to seduce her. He further stated that he had told Patient 1 "she wouldn't

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have cause to be worried about going home with him because she was already pregnant." In addition, Dr. Anderson admitted to Ms. Harrison that he and Patient 1 had "had sex" at his home. (Tr. I at 81).

Ms. Harrison testified that, during that interview, Dr. Anderson had made the following statements:

- a. "Everyone knows that I don't charge patient I have sex with"; and
- b. When Dr. Anderson meets a woman he is considering having sex with, "he suggests that they become a patient so that he could check them out before furthering a sexual relationship."

(Tr. I at 81-82).

Ms. Harrison also testified that she had contacted a psychologist who had provided treatment to Patient 1. Patient 1's psychological history included a diagnosis of major depression with psychotic features, including hearing voices and losing touch with reality. Nonetheless, the psychologist reported that Patient 1 had been "very consistent" in relaying facts regarding Dr. Anderson. (Tr. I at 97-98, 126, 131-133).

Ms. Harrison also stated that she had been familiar with Dr. Anderson prior to this investigation. Dr. Anderson had engaged in a social relationship with Ms. Harrison's sister. (Tr. at 123-124). Ms. Harrison added, however, that she had had no opinion of Dr. Anderson prior to conducting the investigation in this matter. (Tr. I at 128-129).

7. Michael Giar, testified that he has been an Enforcement Investigator for the Board for thirteen years. Mr. Giar further testified that he participated in the interview of Dr. Anderson on March 16, 1994. Regarding that discussion, Mr. Giar testified that Dr. Anderson had stated that Patient 1 had been very upset, so Dr. Anderson had offered to give Patient 1 a ride to Dr. Anderson's home. (Tr. II at 136-137). Mr. Giar testified that he had responded to Dr. Anderson by stating:

Dr. Anderson, you're telling me you have this emotionally distraught patient in your office, and rather than offering her a ride to her home, you're offering her a ride to your home. Can't you see how that can be construed that you were attempting to take her home so you could have sex with her or seduce her?

Mr. Giar stated that Dr. Anderson looked at him "like he was a little bit simple minded, and simply replied 'I was.'" Mr. Giar stated that he was "stunned." He explained that:

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I've had other complaints where I've spoken to physicians about sex complaints. And normally, there is some sort of attempted mitigation. The physician will say it didn't happen. The physician will say there was a misunderstanding, or \* \* \* they will admit something happened, but at least saying something like 'I know I did it, but it was wrong,' or something to that effect.

I had never had a physician tell me something so blatantly \* \* \*.

(Tr. II at 139-140). Mr. Giar confirmed some of the other statements that Ms. Harrison reported having been made by Dr. Anderson. In addition, Mr. Giar testified that Dr. Anderson had stated that Patient 1 had filed criminal charges against him because she "was just upset because [Dr. Anderson] never called her back for a date after they had sex." (Tr. II at 139-140, 142).

8. Based on Dr. Anderson's conduct on February 13, 1992, Patient 1 filed a complaint with the local police department. Patient 1 accused Dr. Anderson of rape and kidnapping. In 1996, Dr. Anderson was indicted in Cuyahoga County. (Tr. I at 48, 50-52).

On or about July 24, 1997, in the Cuyahoga County Court of Common Pleas, Dr. Anderson pleaded guilty to one count of Attempted Gross Sexual Imposition, a first degree misdemeanor, in violation of Sections 2923.02 and 2907.05, Ohio Revised Code (pre-Senate Bill 2). The Court ordered a pre-sentence investigation and report. (St. Ex. 10 at 1). On August 25, 1997, the Court sentenced Dr. Anderson to six months incarceration, but suspended that portion of the sentence. In addition, the Court placed Dr. Anderson on probation for two years, requiring him to attend sexual counseling supervised by the probation department, complete 200 hours of community service, and pay costs, a fine, and a probation fee. (St. Ex. 10 at 2).

Regarding the sexual counseling ordered by the Court, Dr. Anderson stated that he is required to see a psychologist for 45 or 50 minutes every other week. When asked to explain what he has learned and how he feels about the counseling, Dr. Anderson answered as follows. "I don't hate it. It is interesting, and I think anything I say now cannot help me in this forum." (Tr. III at 131-132).

9. Dr. Segal testified that Dr. Anderson's conduct was unethical when he engaged in sexual behavior with Patient 1. (Tr. II at 100-101).

Dr. Segal further testified that when Dr. Anderson prescribed diazepam [Valium] to Patient 1, who was pregnant, Dr. Anderson "failed to conform to minimal standards of care of similar practitioners under the same or similar circumstances." In addition, Dr. Segal stated that Dr. Anderson's conduct fell below the minimal standard of care when he provided alcohol while prescribing Valium to Patient 1. Dr. Segal testified that his

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opinion was based, in part, on the excerpt in the 1992 edition of the PDR regarding Valium [diazepam]. On cross-examination, Dr. Segal admitted that the use of Valium during the first trimester is not "forbidden," but is contraindicated and "recommended against." (Tr. at 83-84, 107-108; St. Ex. 13).

10. Under the topic heading "WARNINGS," the PDR advises as follows:

An increased risk of congenital malformations associated with the use of minor tranquilizers (diazepam \* \* \* ) during the first trimester of pregnancy has been suggested in several studies. Because use of these drugs is rarely a matter of urgency, their use during this period should almost always be avoided.

(St. Ex. 13 at 2).

D. PATIENT 2

1. Dr. Anderson's medical records for Patient 2 indicate that Patient 2 first presented to Dr. Anderson's office on October 27, 1992. Patient 2 stated that she had been diagnosed by another physician as being pregnant and suffering from syphilis. Dr. Anderson also noted that Patient 2 had complained of a vaginal odor. Dr. Anderson performed a pregnancy test, which was positive. He also diagnosed gardnerella and mycoplasma. Dr. Anderson prescribed metronidazole [Flagyl] 500 mg b.i.d. for 6 days, and Erythromycin 500 mg. t.i.d. for five days. In addition, Dr. Anderson prescribed Nystatin suppositories, 15, q.hs. (St. Ex. 12 at 2; St. Ex. 14).
2. Patient 2 testified regarding her visit to Dr. Anderson's office on October 27, 1992, as follows:
  - a. Patient 2 was referred to Dr. Anderson by her physician because she had been diagnosed with syphilis, she was pregnant, and she was allergic to penicillin [PCN]. (Tr. I at 152).
  - b. Upon arriving at Dr. Anderson's office, Patient 2 was ushered to the examination room by the receptionist. The receptionist told her to undress from the waist down. Patient 2 did so. (Tr. I at 150-151).
  - c. When Dr. Anderson came into the room, he told Patient 2 to "scoot down to the edge of the table and put [her] feet in the stirrups." Patient 2 did so. Dr. Anderson inserted his fingers into her vagina and asked her if she liked the way it felt. Patient 2 answered "No." Dr. Anderson responded "I bet you like it when your boyfriend does it." (Tr. I at 151).
  - d. Patient 2 stated that Dr. Anderson was not wearing gloves at the time he inserted his fingers into her vagina. Patient 2 explained that Dr. Anderson had not been wearing

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gloves when he entered the examination room, and she did not see or hear him put on or take off gloves at any time during the examination. When Dr. Anderson finished the examination, he was not wearing gloves. (Tr. at 152-153, 167-168).

- e. At the conclusion of the pelvic examination, Dr. Anderson told Patient 2 to get dressed. At that point, Dr. Anderson made a comment to Patient 2 that "he likes to see them take it off", but he does not like "to see them put it on." (Tr. at 153, 170).
  - f. After she dressed, Patient 2 met Dr. Anderson in the consultation room. Dr. Anderson told her to sit on a stool next to him. When she did, Dr. Anderson put one of his legs between Patient 2's legs, and put his hand on her leg. (Tr. at 155, 171-172).
  - g. Dr. Anderson told Patient 2 that he would give her a medication to make her "smell better and taste better." Patient 2 denied having raised the subject of smell or taste, although she had been aware that she had a vaginal odor. (Tr. at 155, 173-174).
  - h. Patient 2 told Dr. Anderson that she was allergic to PCN. She further told him that she had taken PCN in the past, and had had a reaction which included itching and a red rash on her chest. (Tr. I at 156).
  - i. Dr. Anderson had instructed Patient 2 to return either the following day or the following week. Patient 2 could not recall the exact date. Patient 2 did not return. (Tr. at 157-158).
  - j. Patient 2 told her mother about her experience with Dr. Anderson. Her mother took her to the Rape Crisis Center. Someone from the Rape Crisis Center accompanied her to the Cleveland Heights Police Department where she filed a report. (Tr. at 158-159).
3. Regarding Patient 2, Dr. Anderson testified that the drug of choice for treating syphilis is PCN. Patient 2, however, had stated that she was allergic to PCN. Dr. Anderson stated that the second drug of choice for treating syphilis is Erythromycin, but Erythromycin is contraindicated during pregnancy. (Tr. I at 52-54).

Dr. Anderson stated that PCN can be given by injection. Other medications must be taken by prescription. Dr. Anderson stated that he did not believe that Patient 2 was allergic to PCN. He stated that simply by talking to Patient 2, he had determined that she was "out and out" lying. Dr. Anderson added that in a difficult case like Patient 2's, the physician can not accept the patient's word regarding an allergy to PCN. Moreover, Dr. Anderson explained that letting a patient with syphilis leave his office untreated constitutes a public health threat. Therefore, Dr. Anderson prescribed Erythromycin, despite the fact that it is contraindicated during pregnancy. Nevertheless, he did not believe that Patient 2 would be compliant and take the medication, due to the side effect of nausea. Dr. Anderson planned to give her a small dose of PCN the following day to test her reaction. (Tr. I at 54-59, 61; Tr. III at 49-52).

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Dr. Anderson testified that he performed a pelvic examination of Patient 2. Although Dr. Anderson could not remember the specific conversation he had with Patient 2, Dr. Anderson denied having asked her how the examination felt. He admitted, however, that when a patient complains of discomfort upon insertion of the vaginal speculum, he often states "I bet you don't complain when you boyfriend does it." He said that he makes the remark in a joking manner. Similarly, although Dr. Anderson could not recall making the statement to Patient 2, Dr. Anderson stated that he often tells a patient that he doesn't like to see a woman remove her clothes, but only likes to see her put clothes on. (Tr. I at 62-63; Tr. III at 33-34).

Dr. Anderson denied inserting a finger into Patient 2's vagina other than when he inserted the speculum. He denied performing a bi-manual examination. In addition, Dr. Anderson denied having inserted an ungloved finger into Patient 2's vagina. Later, however, Dr. Anderson stated that he could not specifically remember his examination of Patient 2. Finally, Dr. Anderson testified that it would be physically improbable, for a patient lying on an examination table with her feet in the stir-ups, to visualize the physician's hands while that physician was performing a pelvic examination. (Tr. I at 64-65; Tr. III at 20-29, 42, 115-116, 118-119, 123-127).

Dr. Anderson denied touching Patient 2 in the lab [consultation room]. He admitted, however, that he generally makes an effort to have physical contact with his patients. Dr. Anderson explained that:

It's not a conscious effort to just touch them, but the general attitude that I have when I'm with a patient, particularly an AIDS patient, that translates into people with syphilis and all other diseases, I make an extra effort to make sure I'm not on the other side of a desk or separated from them in a manner that would make them feel repulsive \* \* \* because it's necessary for me to make sure that those people feel comfortable and not alienated.

(Tr. III at 45-46). Nevertheless, Dr. Anderson stated that he generally does not put his leg between a patient's legs. (Tr. at 46-47).

Dr. Anderson admitted that he prescribed Flagyl to Patient 2. He further testified that Patient 2 had complained to him of having a vaginal odor. Regarding the statement he allegedly made to Patient 2, "I'll give you something for the odor that will make your vagina smell better and taste better," Dr. Anderson testified that he did not make the statement "in that manner." He later testified that "If it was a day that I felt pretty good, and in a particularly jovial manner, I would say such a thing or similar to that \* \* \*." (Tr. at 67-69; Tr. III at 40, 47-48).

Dr. Anderson also stated that he has jokingly said to patients who are starting to get dressed, "I don't like to see them put it on; I like to see them take it off." He did not specifically recall making this comment to Patient 2. (Tr. I at 65-67). Dr. Anderson later admitted that

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he makes that statement "as a joke." Moreover, he admitted advising Board investigators that he had made the statement to Patient 2. (Tr. I at 70).

Regarding the testimony of Dr. Segal that providing Flagyl to a patient during the first trimester of a pregnancy is below the minimal standard of care [see below], Dr. Anderson testified that Dr. Segal was "wrong." Dr. Anderson explained that bacterial vaginosis is a serious threat to the unborn fetus, and that gardnerella is associated with low birth weight babies and premature deliveries. Moreover, Dr. Anderson stated that ureaplasma, mycoplasma and gardnerella are the three major causes of those spontaneous abortions. He stated that to leave Patient 2's disease untreated would be "obscene." Dr. Anderson further stated that gardnerella is much more of a threat to the fetus than "any very large dose of metronidazole would be." He added that there are no known human conditions caused by giving metronidazole to a patient during the first trimester of pregnancy. (Tr. III at 52-55).

Dr. Anderson cited three articles to support his testimony.

- a. *Safety of Metronidazole in Pregnancy: a Meta-Analysis*, from the American Journal of Obstetrics & Gynecology, February, 1995.

In this analysis, the researchers concluded that metronidazole does not appear to be associated with an increased teratogenic risk. [Note, however, this article was published in 1995; it could not have been the basis for Dr. Anderson's conduct at issue in this matter, which occurred in 1992.] (Tr. III at 55-57; Resp. Ex. C at 1-2).

- b. *Pregnancy Outcomes after First -Trimester Vaginitis Drug*, from Obstetrics & Gynecology, May 1987.

Dr. Anderson cited the article to support his prescribing of Flagyl to Patient 2. [Note: This article was published in 1987, and could reasonably have been relied upon by Dr. Anderson when making treatment decisions in 1992. Nevertheless, Dr. Anderson could not explain the meaning of the suggestion that "spontaneous abortions are caused by the imidazole agents miconazole and clotrimazole rather than the conditions being treated."] (Tr. III at 57-59; Resp. Ex. C at 3-4).

- c. *Bacterial Vaginosis in Pregnancy and Efficacy of Short-Course Oral Metronidazole Treatment: A Randomized Controlled Trial*, from Obstetrics and Gynecology, Sept. 1994.

Dr. Anderson also cited this article in support of his prescribing of Flagyl to Patient during the first trimester of pregnancy. Nevertheless, when further questioned, Dr. Anderson admitted that the article clearly limited its study to use of the drug in patients with pregnancies of at least 24 weeks, or approximately six months, duration. (Tr. III at 59-60; Resp. Ex. C at 5-6).

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4. Mrs. Johnson testified that she was in Dr. Anderson's office when Patient 2 arrived on October 27, 1992. Ms. Johnson remembers escorting Patient 2 to the examination room. (Tr. II at 160-163).

Ms. Johnson further testified that when Patient 2 left the office, Ms. Johnson told Patient 2 that she may need to schedule an appointment for the following week. Patient 2 refused the appointment, said that she would call, and left the office. (Tr. II at 163). On cross-examination, Ms. Johnson reaffirmed her testimony that Patient 2 did not make another appointment. (Tr. II at 176-177).

The State presented Ms. Johnson with follow-up appointment cards from Dr. Anderson's office, scheduling Patient 2 for an appointment the following day, October 28, 1992, and for the following week, November 3, 1992. When presented with the appointment cards, Ms. Johnson admitted that she had written the appointment cards; nevertheless, she stated that she had made a mistake when completing the card. She stated that the appointment for the following day had been in error, and actually had been a reference to the appointment at issue, October 27, 1992. When the State reminded Ms. Johnson that Patient 2 had been a "walk-in" appointment on October 27, 1992, Ms. Johnson finally admitted that she had scheduled follow-up appointments for Patient 2. She further admitted that she had handed the cards to Patient 2 when Patient 2 left the office on October 27, 1992. (Tr. at 177-179; St. Ex. 17).

5. Ms. Harrison testified that she had interviewed Dr. Anderson regarding Patient 2 in March 1994. Ms. Harrison testified that, during that interview, Dr. Anderson admitted having made the following comments to Patient 2:
- a. "I bet you don't complain when you boyfriend does it";
  - b. "I'll give you something for the odor that will make your vagina smell better and taste better;" and
  - c. "I don't like to see them put it on; I like to see them take it off."

(Tr. I at 77-78). Moreover, Ms. Harrison testified that Dr. Anderson had stated that, after the patient dresses and leaves the examination room,

[H]e often will sit closely with a patient \* \* \* as to make the patient feel secure. He'll often place his hand on the patient's leg or arm as an affectionate type touch to make them feel relaxed and comfortable when describing the course of treatment that he prescribed.

(Tr. at 179).

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6. Mr. Giar testified that, during the interview of Dr. Anderson on March 16, 1994, Dr. Anderson had told him that "a standard joke" of Dr. Anderson's was to tell patients who complained of pain during a pelvic examination that, "I bet you don't mind when your boyfriend does that." (Tr. II at 132-133).
7. Dr. Segal testified that when Dr. Anderson prescribed metronidazole [Flagyl] to Patient 2, who was pregnant, Dr. Anderson "failed to conform to minimal standards of care of similar practitioners under the same or similar circumstances." Dr. Segal stated that his opinion was based, in part, on the excerpt in the 1992 edition of the PDR regarding Flagyl. (Tr. at 85-86; St. Ex. 14).

Dr. Segal stated that Patient 2 had been diagnosed with syphilis, mycoplasma, and gardnerella, all of which may pose a risk to the fetus or to the pregnancy. Moreover, Dr. Segal stated that Flagyl is the treatment of choice for gardnerella. Nevertheless, Dr. Segal stated that gardnerella does not require treatment in the first trimester of pregnancy, and the recommended course of action would be to wait to the second or third trimester to treat it. Dr. Segal concluded that prescribing Flagyl prior to the second trimester of pregnancy is practice below the minimal standard of care. (Tr. II at 103-106, 108-109, 121-122).

Dr. Segal further stated that Dr. Anderson's conduct fell below the minimal standard of care when he made the following statement to Patient 2:

- a. "I bet you like it when your boyfriend does it," while performing a pelvic examination;
- b. "I don't like to see women put their clothes on, I like to see them take them off," as Patient 2 was about to dress; and
- c. "I'm going to give you some medication to make your vagina smell better and taste better," when the patient had not first raised the issue of taste.

Dr. Segal stated that his opinion was based upon his understanding of the AMA's Principles of Ethics, Principle I, which requires that physicians demonstrate respect for human dignity. (Tr. II at 86-88, 94-100, 112-118, 121-122).

#### E. CHARACTER TESTIMONY

1. Wanda Ramsey, M.D., testified that she has known Dr. Anderson, both professionally and socially, for approximately 17 years. She stated that she knows Dr. Anderson to have a "good, solid character." Dr. Ramsey has also seen Dr. Anderson as his patient, and has observed his manner with patients. She stated that Dr. Anderson "has a very low-keyed demeanor \* \* \* he tries very hard to put his patients at ease." Finally, Dr. Ramsey stated that she is aware of the

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allegations against Dr. Anderson in this matter; nevertheless, she is not aware of anything about Dr. Anderson that would render him unfit to practice medicine. (Tr. III at 70-76).

2. John H. Lenear, senior editor of the weekly newspaper Call and Post, testified that he has known Dr. Anderson for approximately 20 years. Mr. Lenear stated that Dr. Anderson has an outstanding character. He stated that Dr. Anderson is forthright and "quick to cut to the heart of a subject." Dr. Anderson is "able to speak to things most people ignore \* \* \* or hide from." Moreover, Mr. Lenear stated that he has witnessed Dr. Anderson interacting with patients in his office. He stated that Dr. Anderson's patients trust him, and that Dr. Anderson's frankness is a benefit to his practice. Mr. Lenear concluded that Dr. Anderson is "very competent in what he does, very trustworthy." (Tr. III at 77-89).

#### FINDINGS OF FACT

1. On February 13, 1992, Patient 1 presented to the office of Wilfred L. Anderson, M.D., for a pregnancy test. During this visit, Dr. Anderson performed a pregnancy test and informed Patient 1 that she was pregnant. Dr. Anderson also prescribed Valium [diazepam] for Patient 1. Following this visit, Dr. Anderson drove Patient 1 from his office to his home. While at Dr. Anderson's home, Dr. Anderson engaged in sexual activity with Patient 1 and provided alcohol to her.
2. On July 24, 1997, in the Cuyahoga County Court of Common Pleas, Dr. Anderson pleaded guilty to and was found guilty of one misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code. The acts underlying Dr. Anderson's guilty plea occurred on February 13, 1992, subsequent to an office visit, and involved sexual contact with Patient 1.
3. On October 27, 1992, Patient 2 presented to Dr. Anderson's office stating that she was pregnant and suffering from syphilis. Dr. Anderson instructed Patient 2 to lie on the examining table with her feet in the stirrups. Dr. Anderson inserted his finger into Patient 2's vagina, told her to relax her muscles, and asked her if she liked the way it felt. When Patient 2 responded "no," Dr. Anderson said "I bet you like it when your boyfriend does it to you." After telling Patient 2 to get dressed, Dr. Anderson said, "I don't like to see them put it on, I like to see them take it off."
4. Patient 2 did not state that she specifically saw Dr. Anderson's hands while Dr. Anderson performed the pelvic examination. Because her testimony was circumstantial, and Dr. Anderson clearly stated that his routine practice was to wear gloves during such an examination, the evidence was insufficient to support a finding that Dr. Anderson inserted an ungloved finger into Patient 2's vagina.

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5. Dr. Anderson prescribed metronidazole for Patient 2 who was approximately six weeks pregnant.
6. In the examination of Brenda Harrison, there was extended discussion of Ms. Harrison's opinion regarding Dr. Anderson and his character. The discussion was relevant to this matter only to the extent that Ms. Harrison's opinion of Dr. Anderson might have biased her investigation of him. Nevertheless, Ms. Harrison's testimony made clear that her opinion of Dr. Anderson did not bias her investigation or her reporting of this matter.

### CONCLUSIONS OF LAW

1. The conduct of Wilfred L. Anderson, M.D., as set forth in Findings of Fact 1, 3, and 4, constitutes "(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, as in effect prior to March 15, 1993.

Dr. Anderson's testimony with respect to Dr. Segal's opinion that Dr. Anderson's conduct had fallen below the minimal standard of care was not reliable. In a number of areas, Dr. Anderson's testimony demonstrated that Dr. Anderson is not cognizant of the standards of care.

- a. First, Dr. Anderson cited an article in support of his prescribing Flagyl to Patient during the first trimester of pregnancy. Nevertheless, when further questioned, Dr. Anderson admitted that the article clearly limited its use of the drug to patients with pregnancies of at least 24 weeks, or approximately six months, duration. Despite the fact that Dr. Anderson introduced this article into evidence, it more directly supported the testimony of Dr. Segal.
- b. Moreover, Dr. Anderson's inability to explain another article that he entered into evidence to support his own testimony does not advance the position that Dr. Anderson was well versed in the 1992 standards of care regarding the risks posed by certain medications prescribed during the first trimester of pregnancy.
- c. Dr. Anderson stated that he intended to prescribe penicillin to Patient 2, despite the fact that both Patient 2 and her referring physician had reported that she was allergic to penicillin. Dr. Anderson hoped to treat her with penicillin, because penicillin is the drug of choice of syphilis. He added that the second drug of choice for treating syphilis is Erythromycin, but Erythromycin is contraindicated during pregnancy.

Nevertheless, in almost incomprehensible testimony, Dr. Anderson testified that he prescribed Erythromycin to Patient 2, despite the fact that she was pregnant, because he was sure that Patient 2 would not take the drug. He explained that one

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of the side effects of Erythromycin is nausea, which is very uncomfortable during the first trimester of pregnancy. This reasoning is illogical, however, because Patient 2 would become aware of the side effect only after she had taken the medication.

On the other hand, Dr. Anderson justified his prescribing of Erythromycin for Patient 2, despite its contraindication in pregnancy, because it would have been unethical to let Patient 2 leave his office untreated. Dr. Anderson alleged that he was concerned about the public health risk. However, if Dr. Anderson's motive was to treat the syphilis, giving Patient 2 a medication he was sure she would not take is an unreasonable and insupportable patient management decision.

2. The conduct of Dr. Anderson, as set forth in Findings of Fact (1), constitutes "'(t)he violation of any provision of a code of ethics . . . of a national professional organization,' as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV."

Dr. Anderson's defense against the allegations regarding his sexual conduct with Patient 1 was to attack facts set forth by Patient 1 and to attack Patient 1's memory and mental stability. However, although the details challenged by Dr. Anderson may have been appropriate to challenge in Dr. Anderson's criminal proceedings, their relevance to this administrative procedure is minimal. By his own testimony, Dr. Anderson confirmed all of the Board's allegations regarding his conduct with Patient 1. Moreover, testimony of witnesses presented by both parties further confirmed the facts alleged.

Most significantly, however, the evidence presented at hearing demonstrated that Dr. Anderson not only performed the acts alleged by the Board, but also that he failed to see the significance of those acts. As noted in the State's Closing Argument,

This case concerns one of the most egregious violations of the ethical standards for physicians. Not only did Respondent violate the ethical standards, but even today he sees nothing wrong with his actions. He shows no remorse and no understanding of the gravity of his actions. He apparently believes that it is proper to have sexual relations with patients and to make sexual comments and jokes to patients while examining them. \* \* \*  
Dr. Anderson's own testimony shows that he has no concept of the ethical practice of medicine \* \* \*.

(St. Ex. 18 at 1).

3. The conduct of Dr. Anderson, as set forth in Findings of Fact 2, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.

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4. The conduct of Dr. Anderson, as set forth in Findings of Fact 2, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.
5. The conduct of Dr. Anderson, as set forth in Findings of Fact 3, constitutes "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle I.

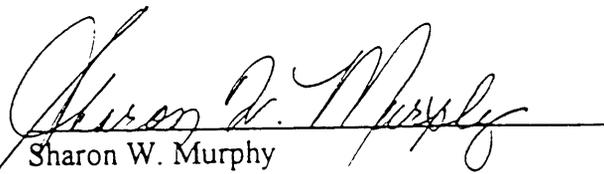
Dr. Anderson denied having made offensive comments to Patient 2, despite the fact that Dr. Anderson could not remember the specific conversation he had with Patient 2 and despite the fact that he admitted that he often makes such offensive remarks to his patients. Accordingly, Dr. Anderson's testimony, in conjunction with the testimony of Brenda Harrison and Michael Giar, provides sufficient evidence to support a conclusion that Dr. Anderson's treatment of Patient 2 violated Principle 1 of the AMA's Code of Ethics.

#### PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Wilfred L. Anderson, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

77 S. High Street, 17th Floor \* Columbus, Ohio 43266-0315 \* 614/462-2934 \* Website: www.state.oh.us/med

## EXCERPT FROM THE DRAFT MINUTES OF JULY 8, 1998

### REPORTS AND RECOMMENDATIONS

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

Dr. Buchan 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: Wilfred L. Anderson, M.D.; Frank Paul Bongiorno, M.D.; Edward L. Botnik, M.D.; James E. Gadek, M.D.; Mark K. Greathouse, M.D.; Archibald W. Hutchinson, M.D.; and Francisco Deleon Ponce, M.D. A roll call was taken:

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

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

Dr. Buchan advised that the matter of Reinhard A. W. Westphal, M.D., was also scheduled for today's agenda; however, due to Dr. Westphal's desire to address the Board, and his inability to be present today due to injury, this matter will be considered at the Board's August 1998 meeting.

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 these matters.

Dr. Buchan stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

Dr. Garg returned to the meeting at this time.

WILFRED L. ANDERSON, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILFRED L. ANDERSON, M.D. DR. AGRESTA SECONDED THE MOTION.**

.....

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

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

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43260-9315 • (614) 466-3934 • Website: [www.state.oh.us/med](http://www.state.oh.us/med)

January 14, 1998

Wilfred L. Anderson, M.D.  
5 Severance Circle #818  
Cleveland, Ohio 44118

Dear Doctor Anderson:

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)(a) On or about February 13, 1992, Patient 1, a 27 year-old female identified on the attached Patient Key (Key confidential--to be withheld from public disclosure), presented to your office for a pregnancy test. During this visit, you performed a pregnancy test and informed Patient 1 that she was pregnant. You also prescribed diazepam for Patient 1.

Following this visit, you drove Patient 1 from your office to your house. While at your house, you engaged in sexual intercourse with Patient 1 and provided alcohol to her.

- (b) On or about July 24, 1997, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to and were found guilty of one (1) misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code. The acts underlying your guilty plea occurred on February 13, 1992, subsequent to an office visit, and involved sexual contact with Patient 1.
- (2) On or about October 27, 1992, Patient 2, a 20 year-old female identified on the attached Patient Key (Key confidential--to be withheld from public disclosure), presented to your office upon referral from another physician, as she was pregnant and suffering from syphilis.

During this visit, after instructing Patient 2 to lie back on the examining table and place her feet in the stirrups, you inserted your ungloved finger into Patient 2's vagina, told her to relax her muscles, and asked her if she liked the way it felt.

*Mailed 1/16/98*

When Patient 2 responded "no," you said "I bet you like it when your boyfriend does it to you." Further, after telling Patient 2 to get dressed, you said "I don't like to see them put it on, I like to see them take it off," and left the room.

Additionally during this visit, you prescribed metronidazole for Patient 2 who was approximately six weeks pregnant.

Your acts, conduct, and/or omissions as alleged in paragraphs (1)(a) and (2) above, individually and/or collectively, constitute "(a) departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code, as in effect prior to March 15, 1993.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1)(a) above, individually and/or collectively, constitute "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1)(b) above, individually and/or collectively, constitute "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle III.

Further, your guilty plea and/or the judicial finding of guilt, as alleged in paragraph (1)(b) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.

Further, your guilty plea and/or the judicial finding of guilt, as alleged in paragraph (1)(b) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principle I.

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

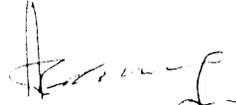
be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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,



Anand G. Garg, M.D.  
Secretary

AGG/lsg  
Enclosures

CERTIFIED MAIL #Z 395 591 347  
RETURN RECEIPT REQUESTED

cc: Edward S. Wade, Jr., Esq.

CERTIFIED MAIL #Z 395 591 345  
RETURN RECEIPT REQUESTED

**§ 4731.15** Examination and registration of practitioners of limited branches of medicine or surgery.

(A)(1) The state medical board also shall examine and register persons desiring to practice any limited branch of medicine or surgery, and shall establish rules governing such limited practice. Such limited branches of medicine or surgery shall include mechanotherapy, massage, and cosmetic therapy.

(2) As used in this chapter:

(a) "Adjunctive electrolysis" means electrolysis that is limited to use as an adjunct to elements of cosmetic therapy by a cosmetic therapist;

(b) "Approved electric modalities" means electric modalities approved by the state medical board for use in cosmetic therapy;

(c) "Electrolysis" has the same meaning as in section 4713.01 of the Revised Code;

(d) "Cosmetic therapy" means the systematic friction, stroking, slapping, and kneading or tapping to the face, neck, scalp, or shoulders through the use of approved electric modalities, and additionally may include the permanent removal of hair from the human body through the use of approved electric modalities and adjunctive electrolysis.

(e) "Cosmetic therapist" means a person who holds a certificate to practice cosmetic therapy issued by the state medical board under this chapter and who is registered with the board under this chapter.

(B) All persons who hold a certificate to practice a limited branch of medicine or surgery issued by the state medical board, whether residents of this state or not, shall on or before the first day of June, 1983, and on or before the first day of June every second year thereafter, register with the state medical board on a form prescribed by the board and shall pay at such time a biennial registration fee of twenty-five dollars. At least one month in advance of the date of registration, a written notice that the biennial registration fee is due on or before the first day of June shall be sent to each holder of a certificate to practice a limited branch of medicine or surgery, at the person's last known address. All persons who hold a certificate to practice a limited branch of medicine or surgery issued by the state medical board shall provide the board written notice of any change of address. A certificate to practice a limited branch of medicine or surgery shall be automatically suspended if the fee is not paid by the first day of September of the year it is due, and continued practice after the suspension of the certificate to practice shall be considered as practicing without a license in violation of sections 4731.34 and 4731.41 of the Revised Code. An applicant for reinstatement of a certificate to practice suspended for failure to register shall submit his current and

delinquent registration fees and a penalty in the sum of twenty-five dollars.

\*HISTORY: 142 v H 331. Eff 6-29-88.

#### Cross-References to Related Sections

Reimbursement for services of certain mechan. therapists. RC § 3923.23 4.

#### CASE NOTES AND OAG

1. (1987) It is an abuse of discretion for the Industrial Commission to refuse to consider a report signed by a mechanotherapist if the report concerns a claimant's condition that is within the area of authority granted by statute and the rules of the State Medical Board for mechanotherapists to diagnose and to treat: State ex rel. Sheets v. Indus. Comm., 36 OApp3d 118, 521 NE2d 496.

#### [§ 4731.15.1] § 4731.151 Workers' compensation payments.

A person who holds a certificate to practice mechanotherapy, who completed educational requirements in mechanotherapy on or before November 3, 1975, performs "medical services" for the purposes of section 4123.66 of the Revised Code, and shall receive payment or reimbursement as provided under that section.

As used in this section, "educational requirements" means completion of a course of study appropriate for certification to practice mechanotherapy on or before November 3, 1975, as determined by rules adopted under this chapter.

HISTORY: 142 v S 176. Eff 7-20-88.

Not analogous to former RC § 4731.15.1 (133 v H 707), repealed, 136 v S 73, § 2, eff 11-3-75.

#### CASE NOTES AND OAG

1. (1990) A mechanotherapist is not qualified as an "attending physician" for purposes of completing a C-85-A form: State ex rel. Sheets v. Indus. Comm., 49 OS3d 285, 551 NE2d 1263.

#### § 4731.16 Examination.

Ohio Administrative Code

Examination procedures. OAC ch. 4731-5.

#### § 4731.22 Grounds for discipline.

(A) The state medical board, pursuant to an adjudicatory hearing under Chapter 119 of the Revised Code and by a vote of not less than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

(B) The board, pursuant to an adjudicatory hearing under Chapter 119 of the Revised Code and by a vote of not less than six members, shall, to

the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(1) Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence or engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business. For purposes of this division, "willfully betraying a professional confidence" does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code, and nothing in this division affects, or shall be construed as affecting, the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Soliciting patients or publishing a false, fraudulent, deceptive, or misleading statement.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

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

(7) Representing, with the purpose of obtaining compensation or other advantage for himself or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured.

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, or a judicial finding of guilt of, a felony;

(10) Commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice;

(12) Commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice;

(13) A plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude;

(14) Commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act involves moral turpitude;

(15) Violation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Any division of fees or charges, or any agreement or arrangement to share fees or charges, made by any person licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery with any other person so licensed, or with any other person;

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

(b) For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision of a code of ethics of a specified national professional organization that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code, and nothing in this division affects, or shall be construed as affecting, the immunity from civil liability conferred by

that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills. In enforcing this division, the board, upon a showing of a possible violation, may compel any individual licensed or certified to practice by this chapter or who has applied for licensure or certification pursuant to this chapter to submit to a mental or physical examination, or both, as required by and at the expense of the board. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations against him unless the failure is due to circumstances beyond his control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds a physician unable to practice because of the reasons set forth in this division, the board shall require the physician to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed licensure to practice. An individual licensed by this chapter affected under this division shall be afforded an opportunity to demonstrate to the board that he can resume his practice in compliance with acceptable and prevailing standards under the provisions of his certificate. For the purpose of this division, any individual licensed or certified to practice by this chapter accepts the privilege of practicing in this state, and by so doing or by the making and filing of a registration or application to practice in this state, shall be deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board. This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule promulgated by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code, and nothing in this division affects, or shall be construed as affecting, the immunity from civil liability

conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of any abortion rule adopted by the public health council pursuant to section 3701.341 [3701.34.1] of the Revised Code.

(22) The 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;

(23) The violation of section 2919.12 of the Revised Code;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veterans administration of the United States, for any act or acts that would also constitute a violation of this chapter;

(25) Termination or suspension from medicare or medicaid programs by the department of health and human services or other responsible agency for any act or acts that would also constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual licensed or certified under this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing a registration or application for licensure or by holding a license or certificate under this chapter, an individual shall be deemed to have given his consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual licensed or certified under this chapter or any applicant for a license or certification suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The examination shall be at the expense of the board. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician qualified to conduct such examination and chosen by the board.

Failure of the individual to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against him unless the failure is due to circumstances beyond

the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend his certificate or deny his application and shall require the individual, as a condition for initial, continued, reinstated, or renewed licensure to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a license suspended under this division, the practitioner shall demonstrate to the board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but shall not be limited to, the following:

(1) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the practitioner has successfully completed any required inpatient treatment;

(2) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(3) Two written reports indicating that the individual's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for this determination.

The board may reinstate a license suspended under this division after such demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice after reinstatement of his license, the board shall require continued monitoring of the practitioner, which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the license holder has maintained sobriety.

For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code, that the applicant or certificate holder committed the act in question. The board shall have no jurisdiction under these divisions in cases where the trial court renders a final judgment in the certificate holder's favor and that judgment is based upon an adjudication on the merits. The board shall have jurisdiction under these divisions in cases where the trial court issues an order of dismissal upon technical or procedural grounds.

The sealing of conviction records shall have no effect upon a prior board order entered under the

provisions of this section or upon the board's jurisdiction to take action under the provisions of this section if a notice of opportunity for hearing has been issued based upon conviction, a plea of guilty, or a judicial finding of guilt prior to such court order.

(C)(1) The board shall investigate evidence that appears to show that any person has violated any provision of this chapter, Chapter 4730. of the Revised Code, or any rule of the board. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter, Chapter 4730. of the Revised Code, or any rule of the board. In the absence of bad faith, any person who reports such information or who testifies before the board in any adjudication hearing conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of his report or testimony.

Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board. Information received by the board pursuant to an investigation shall be confidential and not subject to discovery in any civil action.

Investigations of alleged violations of this chapter, Chapter 4730. of the Revised Code, or any rule of the board shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

For the purpose of investigation of a possible violation of division (B)(3), (8), (9), (11), or (15) of this section, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony.

In investigating possible violations of all remaining divisions of this section, the board also may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony. However, in such instances, other than for patient records provided to the board pursuant to the reporting provisions of division (A) of section 4731.224 [4731.22.4] of the Revised Code, a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary of the board, the supervising member, and a member of the board who is licensed to practice medicine, osteopathic medicine, or podiatric medicine. Before issuance of such

subpoena, the three board members shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter, Chapter 4730, of the Revised Code, or any rule of the board, and that the records sought are relevant to the alleged violation and material to the investigation. Such records must cover a reasonable period of time surrounding the alleged violation. Upon failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure. Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board, shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

All hearings and investigations of the board shall be considered civil actions for the purposes of section 2305.251 [2305.25.1] of the Revised Code.

The board shall conduct all investigations and proceedings in such a manner as to protect patient confidentiality. The board shall not make public names or other identifying information about patients unless proper consent is given or a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that no such consent or waiver is required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

(2) In the absence of fraud or bad faith, neither the board nor any current or former member, agent, representative, or employee of the board shall be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to his official duties undertaken or performed pursuant to this chapter or Chapter 4730, of the Revised Code. If a current or former member, agent, representative, or employee requests the state to defend him against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to his or her official duties, and if such a request is made in writing at a reasonable time before trial, and if the person requesting defense cooperates in good faith in the defense of the claim or action, the state shall provide and pay for such defense and shall pay any resulting judgment, compromise, or settlement. At no time shall the state pay that part of a claim or judgment which is for punitive or exemplary damages.

(3) On a quarterly basis the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

(a) The case number assigned for the complaint or alleged violation pursuant to division (C)(1) of this section;

(b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;

(c) A description of the allegations contained in the complaint;

(d) The disposition of the case.

The report shall state how many cases are still pending, and shall be prepared in such a manner as to protect the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(D) If the secretary and supervising member determine that there is clear and convincing evidence that a certificate holder has violated division (B) of this section and that the certificate holder's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend his certificate without a prior hearing. Written allegations shall be prepared for consideration by the board members.

The board, upon review of those allegations and by a vote of not less than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking such a vote.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. Such order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the certificate holder requests an adjudicatory hearing by the board, the date set for such hearing shall be within fifteen days, but not earlier than seven days, after the certificate holder has requested a hearing, unless otherwise agreed to by both the board and the certificate holder.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119, of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. A failure to issue the order within sixty days shall result in dissolution of the summary suspension order, but shall not invalidate any subsequent, final adjudicative order.

(E) If the board should take action under division (B)(9), (11), or (13) of this section, and the conviction, judicial finding of guilt, or guilty plea is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of such petition and supporting court documents, the board shall reinstate the petitioner's certificate. The board may then hold an adjudicatory hearing to determine whether the applicant or certificate holder committed the act in question. Notice of op-

portunity for hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to a hearing held under this division, that the applicant or certificate holder committed the act, or if no hearing is requested, it may order any of the sanctions identified under division (B) of this section. The board shall have no jurisdiction under division (B)(10), (12), or (14) of this section in cases where the trial court renders a final judgment in the certificate holder's favor and that judgment is based upon an adjudication on the merits. The board shall have jurisdiction under those divisions in cases where the trial court issues an order of dismissal upon technical or procedural grounds.

(F) Any holder of a certificate or license issued under this chapter who has pleaded guilty to, has been found by a judge or jury to be guilty of, or has had a judicial finding of eligibility for treatment in lieu of conviction entered against him in this state for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or who has pleaded guilty to, has been found by a judge or jury to be guilty of, or has had a judicial finding of eligibility for treatment in lieu of conviction entered against him in another jurisdiction for any substantially equivalent criminal offense, is automatically suspended from practice under this chapter in this state and any certificate or license issued to him under this chapter is automatically suspended as of the date of the guilty plea, verdict or finding of guilt, or judicial finding of eligibility for treatment in lieu of conviction, whether the proceedings are brought in this state or another jurisdiction. An individual's continued practice after the suspension of his certificate or license under this division shall be considered practicing without a certificate or license. The board shall notify the suspended individual of the suspension of his certificate or license under this division by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose certificate or license is suspended under this division fails to make a timely request for an adjudicatory hearing, the board shall enter a final order revoking the certificate or license.

(G) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the certificate holder may be reinstated to practice. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended pursuant to division (B) of this section requires an affirmative vote of not less than six members of the board.

(H) Notwithstanding any other provision of the Revised Code, no surrender of a license or certificate issued under this chapter or Chapter 4730. of

the Revised Code shall be effective unless or until accepted by the board. Reinstatement of a certificate surrendered to the board requires an affirmative vote of not less than six members of the board.

Notwithstanding any other provision of the Revised Code, no application for a license or certificate made under the provisions of this chapter or Chapter 4730. of the Revised Code may be withdrawn without approval of the board.

\*HISTORY: 143 v H 208 (Eff 4-11-90); 143 v H 615. Eff 3-27-91.

The provisions of § 3 of HB 615 (143 v —) read as follows:

SECTION 3. The amendments to sections 2317.02 and 4731.22 of the Revised Code made in this act and the provisions of section 2305.33 of the Revised Code as enacted by this act shall apply only to civil actions, or professional discipline proceedings, that are commenced against a physician on or after the effective date of this act and that are based on or associated with a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee. As used in this section, "civil action," "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

#### Cross-References to Related Sections

Court of common pleas to hear appeal from an order of the state medical board. RC § 119.12.

Open meetings; exceptions. RC § 121.22.

#### Ohio Administrative Code

Adjudication hearings of state medical board; hearing examiners; procedures. OAC ch. 4731-13.

#### Text Discussion

Nonrecognition as a person. 1 Anderson Fam. L. § 1.4

Ohio abortion statutes. 1 Anderson Fam. L. § 1.7

State regulation of abortion. 1 Anderson Fam. L. § 1.8

Status of the unborn child. 1 Anderson Fam. L. § 1.1

The unwanted child. 1 Anderson Fam. L. § 1.6

When life begins. 1 Anderson Fam. L. § 1.5

#### ALR

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 ALR4th 132.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 ALR4th 1104.

Liability of osteopath for medical malpractice. 73 ALR4th 24.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 ALR4th 969.

#### Law Review

Prince v. St. Francis-St. George Hospital, Inc. Note. 20 AkronLRev 145 (1986).

Updating Ohio's medical practice act (ORC 4731): automatic and summary suspension of physician's licenses. Comment. 21 AkronLRev 489 (1985).

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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.