

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO

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CLERK OF COURTS-CV

LONNIE MARSH, II, M.D.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

Case No. 02CVF-02-02029

JUDGE FAIS

TERMINATION NO. <u>18</u> BY _____

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S
FEBRUARY 13, 2002 ORDER PERMANENTLY REVOKING
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the February 13, 2002, order of the State Medical Board of Ohio which permanently revoked Appellant, Lonnie Marsh, II, M.D.'s license to practice medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on December 20, 2002, and filed on December 26, 2002, 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 Appellee, State Medical Board of Ohio, and the February 13, 2002, order of the State Medical Board in the matter of Lonnie Marsh, II, M.D., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

Date

JUDGE DAVID W. FAIS

APPROVED:

BETTY D. MONTGOMERY (0007102)

Attorney General

Rebecca J. Albers

REBECCA J. ALBERS (0059203)

KYLE WILCOX (0063219)

Assistant Attorneys General

Health and Human Services Section

30 East Broad Street, 26th Floor

Columbus, Ohio 43215-3428

(614) 466-8600

(614) 466-6090 (Facsimile)

Counsel for the State Medical Board

*Stephen R. Kleinman by Rebecca Albers per phone
authorization*

STEPHEN R. KLEINMAN (0064860)

MELISSA C. LLOYD (0071413)

Schottenstein, Zox & Dunn

41 South High Street, Suite 2600

Columbus, Ohio 43215

(614) 462-2287

Counsel for Lonnie Marsh, M.D.

entitled to deference from the reviewing court on technical medical issues. *Pons vs. Ohio State Medical Board*, (1993), 66 O. St. 3d 619, *Arlen vs. State Medical Board of Ohio*, (1980), 61 O. St. 2d 168. The second prong of the test of R.C. §119.12 (“The court may affirm...if it finds...the order...is in accordance with law.”) is a legal one, in which the court has the requisite expertise and the statutory authority to make legal determinations. As held in *Ohio Historical Society vs. State Employment Relations Board*, (1993), 66 O. St. 3d 466, at 471:

“An agency adjudication is like a trial, and while the reviewing court must defer to the lower tribunal’s findings of fact, it must construe the law on its own. To the extent that an agency’s decision is based on construction of the state or federal Constitution, a statute, or case law, the common pleas court must undertake its R.C. 119.12 reviewing task completely independently.”

To summarize the facts, Appellant Marsh is an internal medicine specialist practicing in a working class neighborhood in Cleveland. During his career, he has done many good things for his patients and his community. He has also pleaded guilty to five state and two federal felonies. All the felonies related to his medical practice; i.e. Medicaid fraud, illegal processing of drug documents, forgery, receiving Medicare and Medicaid kickbacks, and defrauding the United States through a kickback scheme. Following hearings before a Board Hearing Examiner and later the Board itself, Dr. Marsh’s medical license was permanently revoked. Dr. Marsh has now appealed to this Court under R.C. §119.12.

Appellant does not argue about the accuracy of the Board’s determination of the underlying facts, but argues strenuously about the severity of the penalty imposed, a permanent revocation. Appellant also addresses an alleged failure of the Board to consider other possible sanctions and/or mitigating factors. The record of the Board’s deliberation demonstrates that the Board members, among other thoughts, did consider “salvaging” Dr. Marsh and did compare his penalty to similar cases. The members also reviewed the issue of the presence or absence of patient harm. This Court finds the Boards deliberations as to penalty to be both complete and proper.

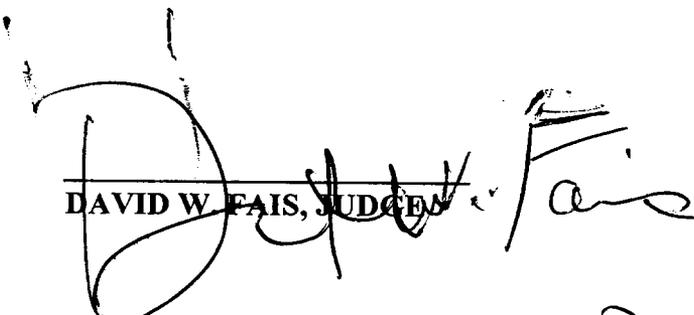
As to the review by this Court of the penalty, under time honored Ohio case law, *Henry's Cafe vs. Board of Liquor Control*, (1958) 170 Ohio St. 233, a reviewing court has no authority to alter a penalty imposed by an administrative agency if the underlying decision passes the substantial evidence test. Counsel for Appellant has cited various cases for the premise that there is some flexibility on the part of a reviewing court to modify or adjust an improper penalty imposed by a state licensing agency. This Court could envision an administrative appeal where the state agency had imposed a penalty so harsh or so arbitrary that justice might require a modification of the penalty. There may be cases where court modification of a capricious penalty would be necessary to protect the citizens involved from the unfettered, arbitrary discretion of a board or commission. But with a record of seven felonies, this is not such a case. While it may be possible, under some set of facts and circumstances, to argue for a re-examination of *Henry's Cafe* after 44 years, such a review must be conducted by a higher-level court.

Therefore, the Court finds that the decision below is supported by reliable, probative, and substantial evidence, and is in accordance with law. The decision of the Board is **AFFIRMED**. Counsel for Appellee shall prepare and submit an appropriate judgment entry within 14 days.

Appearances:

Stephen R. Kleinman, Esq.
Melissa C. Lloyd, Esq.
Attorneys for Appellant

Rebecca J. Albers, Esq.
Kyle C. Wilcox, Esq.
Assistant Attorneys General
Attorneys for Appellee


DAVID W. FAIS, JUDGE

12-20-02

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COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Lonnie Marsh, II, M.D., :
Plaintiff-Appellant : CASE NO. 02CVF02-2029
-vs- : JUDGE FAIS
State Medical Board of Ohio, :
Defendant-Appellee. :

FILED COURT
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2002 APR 23 PM 4:25
CLERK OF COURTS

**DECISION AND ENTRY OVERRULING PLAINTIFF-APPELLANT'S MOTION FOR
STAY OF ENTRY OF ORDER FILED FEBRUARY 22, 2002**

Rendered this 21ST day of April 2002.

FAIS, JUDGE.

I. INTRODUCTION

This matter is before the Court pursuant to Plaintiff-Appellant's Motion for Stay of Entry of Order filed February 22, 2002. The State Medical Board of Ohio filed a Memorandum in Opposition February 27, 2002.

II. BACKGROUND

Plaintiff-Appellant seeks a stay of an Entry of Order of the State Medical Board of Ohio. That Entry of Order permanently revoked Plaintiff-Appellant's certificate to practice medicine and surgery in the State of Ohio. The State Medical Board of Ohio based its decision on the fact that Plaintiff-Appellant pled Guilty to and was convicted of seven (7) felonies. Five (5) of those felonies were in the Franklin County Common Pleas Court and two (2) were in federal court. Three (3) of those felonies involved drug-related crimes, and, pursuant to R.C. 3719.121(C), the State Medical Board of Ohio immediately suspended Plaintiff-Appellant's license to practice medicine and surgery in the State of Ohio. After a hearing was conducted, the State Medical

Board of Ohio then voted to permanently revoke Plaintiff-Appellant's medical license February 13, 2002.

III. ANALYSIS AND FINDINGS OF THE COURT

R.C. 119.12 discusses when it is appropriate to grant a stay when a party is appealing a decision of the State Medical Board:

§ 119.12 Appeal by party adversely affected.

Any party adversely affected by any order of an agency issued pursuant to an adjudication . . . revoking or suspending a license . . . may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, except that appeals from decisions of . . . the state medical board . . . shall be to the court of common pleas of Franklin county.

....

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal. A copy of such notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. For purposes of this paragraph, an order includes a determination appealed pursuant to division (C) of section 119.092 [119.09.2] of the Revised Code.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. If an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section, such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated. No renewal of a license or permit shall be denied by reason of such suspended order during the period of the appeal from the decision of the court of common pleas. *In the case of an appeal from the state medical board or state chiropractic 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 determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. This provision shall not be*

construed to limit the factors the court may consider in determining whether to suspend an order of any other agency pending determination of an appeal.

(emphasis added). In this case, the Court does not find that Plaintiff-Appellant will suffer unusual hardship from the execution of the agency's order, as his convictions involved serious crimes and as he has not been able to legally practice since May 9, 2001, or for almost one (1) year. Moreover, because three (3) of the seven (7) felonies were drug related, and because a total of seven (7) felonies were involved, this Court finds that it is in the best interest of the health, safety, and welfare of the public to deny the stay.

IV. CONCLUSION

The Court has thoroughly reviewed the motion, submitted memoranda, and relevant law. Pursuant to that careful review, the Court finds that Plaintiff-Appellant's motion is not well taken. Accordingly, the Court hereby **OVERRULES** the same.

It is so ORDERED.


DAVID W. FAIS, JUDGE

4-21-02


COPIES TO:
William J. Novak, Esq.
Shawn W. Schlesinger, Esq.
Attorneys for Plaintiff-Appellant

Rebecca J. Albers, Esq.
Assistant Attorney General

STATE MEDICAL BOARD

2002 FEB 22 10 17

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LONNIE MARSH, II, M.D.,)
Lonnie Marsh, II, M.D.)
16603 Harvard Ave.)
Warrensville Heights, OH 44128)

Plaintiff-Appellant,)

v.)

STATE MEDICAL BOARD OF OHIO,)
77 South High Street, 17th Floor)
Columbus, Ohio 43215)

Defendant-Appellee.)

CASE NO.: 02 CV 02 02029

JUDGE:

NOTICE OF APPEAL

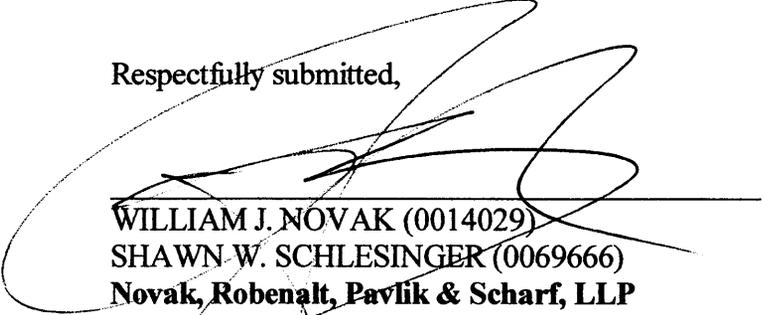
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FRANKLIN COUNTY, OHIO
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CLERK OF COURTS - CV

Plaintiff-Appellant Lonnie Marsh, II, M.D., pursuant to O.R.C. §119.12, hereby files his Notice of Appeal of Defendant-Appellee State Medical Board of Ohio's Order to permanently revoke Plaintiff's certificate to practice medicine and surgery in the State of Ohio. The mailing of the Entry of Order occurred on February 13, 2002.

Attached hereto and incorporated herein as Exhibit A is a true and accurate copy of the following: Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 13, 2002, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

The decision of the State Medical Board of Ohio permanently revoking Plaintiff's certificate was arbitrary and capricious. Accordingly, the decision should be reversed and set aside.

Respectfully submitted,



WILLIAM J. NOVAK (0014029)
SHAWN W. SCHLESINGER (0069666)
Novak, Robenalt, Pavlik & Scharf, LLP
Tower City Center
Skylight Office Tower
1660 West Second Street, Suite 270
Cleveland, Ohio 44113-1498
(216) 781-8700
(216) 781-9227 (fax)

Attorneys for Plaintiff-Appellant

As more fully detailed in the Report and Recommendation filed by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio (attached to Plaintiff-Appellant's Notice of Appeal), Dr. Marsh entered private practice in 1977, and continued the practice without incident until the suspension of his license in May, 2001. Dr. Marsh has had a particular interest in the study of hypertension and diabetes as hypertension runs in his family and both hypertension and diabetes are serious problems in the African-American community. As an African-American physician, Dr. Marsh has continuously practiced in the African-American community and provided medical care and treatment to working people with strong religious beliefs and families who often need assistance. The practice of medicine is all Dr. Marsh has ever done and all he has ever wanted to do, and after he received the notice of suspension of his license, he went into an acute depression.

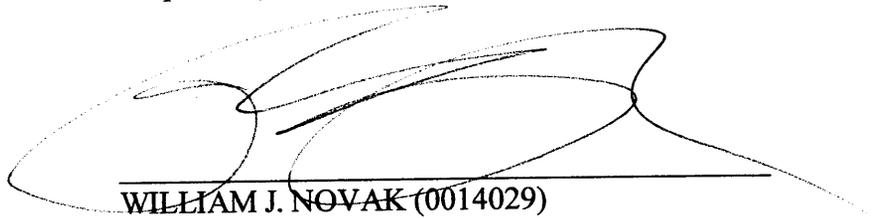
It is clear that the permanent revocation of Dr. Marsh's certificate to practice medicine and surgery pending this appeal will work an unusual hardship upon him. Furthermore, the permanent revocation pending this appeal will work an unusual hardship upon the community in which he has practiced medicine for almost 25 years. As further support for this assertion, approximately 30 patients, relatives, and fellow congregants from Dr. Marsh's church traveled from Cleveland to Columbus for the hearing before the Attorney Hearing Examiner. Several of these individuals testified at the hearing regarding Dr. Marsh's high standing in the community, his superior reputation, and his professionalism. Accordingly, it is also clear that the health, safety, and welfare of the community will not be threatened by the suspension of the permanent revocation of Dr. Marsh's certificate.

Pursuant to O.R.C. §119.12, Dr. Marsh requests that the stay and suspension of the Entry of Order of the Medical Board remain in effect for 15 months after the date of the filing of the Notice

of Appeal in this Court or upon the rendering of a final decision or order in this appeal, whichever occurs first.

Therefore, for all of the foregoing reasons, Dr. Marsh respectfully requests that this Court grant a stay and suspension of the Medical Board's Entry of Order permanently revoking Dr. Marsh's certificate to practice medicine and surgery in the State of Ohio.

Respectfully submitted,



WILLIAM J. NOVAK (0014029)
SHAWN SCHLESINGER (0069666)
Novak, Robenalt, Pavlik & Scharf, LLP
Tower City Center
Skylight Office Tower
1660 West Second Street, Suite 270
Cleveland, Ohio 44113-1498
(216) 781-8700
(216) 781-9227 (fax)

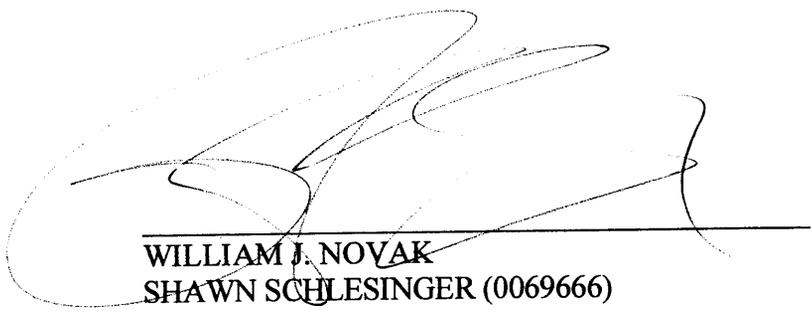
Attorneys for Plaintiff-Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing Plaintiff's Motion for Stay of Entry of Order was sent by certified mail, return receipt requested, on this 2 day of February, 2002 to:

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, Ohio 43215
Defendant-Appellee

Rebecca J. Albers, Assistant Attorney General Attorney for Defendant-Appellee
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428



WILLIAM J. NOVAK
SHAWN SCHLESINGER (0069666)

Attorneys for Plaintiff-Appellant



State Medical Board of Ohio

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

February 13, 2002

Lonnie Marsh, II, M.D.
16603 Harvard Avenue
Cleveland, OH 44128

Dear Doctor Marsh:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 13, 2002, 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 a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 8968
RETURN RECEIPT REQUESTED

Cc: William J. Novak and Gerald M. Jackson, Esqs.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 8951
RETURN RECEIPT REQUESTED

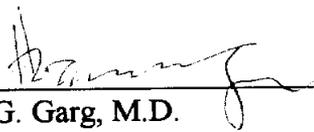
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CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 13, 2002, 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 Lonnie Marsh, II, 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

February 13, 2002

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

LONNIE MARSH, II, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on February 13, 2002.

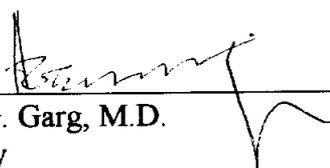
Upon the Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board 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 Lonnie Marsh II, 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 Board.

(SEAL)



Anand G. Garg, M.D.
Secretary

February 13, 2002

Date

2002 JAN 16 P 3: 39

**REPORT AND RECOMMENDATION
IN THE MATTER OF LONNIE MARSH II, M.D.**

The consolidated Matters of Lonnie Marsh II, M.D., were heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 17, 2001.

INTRODUCTION

I. Basis for Hearing

A. By letter dated May 9, 2001, the State Medical Board of Ohio [Board] notified Lonnie Marsh II, M.D., that pursuant to Section 3719.121(C), Ohio Revised Code, his license to practice medicine and surgery in the State of Ohio had been immediately suspended. The Board further notified Dr. Marsh that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state based on the following allegations:

1. On or about March 7, 2001, in the Court of Common Pleas of Franklin County, Ohio, Dr. Marsh pled guilty to five felonies, including one felony count of Medicaid Fraud in violation of Section 2913.40(B), Ohio Revised Code; one felony count of Forgery in violation of Section 2913.31(A), Ohio Revised Code; and three felony counts of Illegal Processing of Drug Documents in violation of 2925.23(A), Ohio Revised Code.

The facts underlying the convictions were that:

- a. As set forth in Count 1 of the Information in Case Number 01CR03-1254, Dr. Marsh knowingly made or caused to be made false and misleading representations to the Ohio Department of Human Services, Medicaid Division [Medicaid Division] for use in obtaining more than five thousand dollars in reimbursement from the Ohio Medical Assistance Program. Specifically, contrary to a written agreement with the Medicaid Division, Dr. Marsh caused invoices to be submitted to the State of Ohio for services which were not properly reimbursable. These invoices were in fact processed and reimbursed by the State of Ohio Medicaid Program.
- b. As set forth in Count 2 of the Information, Dr. Marsh knowingly, as a continuing course of conduct and with the purpose to defraud,

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forged the writing of another without that person's authority in that he forged the signature of Augustine Tuma, M.D., on a prescription for a controlled substance, i.e., Demerol 100 mg., quantity 80 tablets.

- c. As set forth in Counts 3 through 5 of the Information, Dr. Marsh knowingly, as a continuing course of conduct, made false statements in three prescriptions in that he forged the signature of Augustine Tuma, M.D., on prescriptions for controlled substances, i.e., MS Contin 60 mg., quantity 60 tablets; Fentanyl 100 mcg/hr., quantity 10 patches; and Oxycontin 20 mg., quantity 30 tablets.

The Board alleged that Dr. Marsh's pleas of guilty, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."

The Board further alleged that the acts, conduct, and/or omissions underlying Dr. Marsh's guilty pleas, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code."

The Board also alleged that the acts, conduct, and/or omissions underlying Dr. Marsh's guilty pleas, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

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

- B. On May 21, 2001, Dr. Marsh, submitted a written hearing request. (State's Exhibit 1B)

STATE MEDICAL BOARD
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- C. By letter dated November 7, 2001, the Board notified Dr. Marsh that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state based on the following allegations:

On or about October 10, 2001, in the United States District Court for the Northern District of Ohio, Dr. Marsh pleaded guilty to and was found guilty of two felonies, including one count of Criminal Penalties for Acts Involving Federal Health Care Programs (Soliciting and Receiving Medicare and Medicaid Kickbacks) in violation of Title 42, United States Code, Section 1320a-7b(b)(1) and one count of Conspiracy to Commit Offense or to Defraud the United States (Conspiracy to Violate the Federal Antikickback Statute) in violation of Title 18, United States Code, Section 371, to wit: Title 42, United States Code, Section 1320a-7b(b)(1).

The factual basis for Dr. Marsh's guilty pleas included that the payments he received from Diagnostic Testing of Ohio, Inc. [DTO] in the form of purported rent varied directly in proportion to the number of referrals Dr. Marsh made to DTO. If Dr. Marsh ordered no tests, he would receive no rent and that "[t]he payments [Dr. Marsh] received also bore no resemblance to the fair market value of the space purportedly being rented."

Further factual basis for Dr. Marsh's guilty pleas included that "tests...conducted...were often not appropriate or medically indicated for the conditions that [Dr. Marsh] supposedly attempting to diagnose" and that "[t]he number of tests DTO performed on almost all of the patients referred by [Dr. Marsh] was grossly excessive, by any reasonable measure of the appropriate level of testing for an individual patient."

The Board alleged that Dr. Marsh's pleas of guilty and/or judicial findings of guilt in the United States District Court for the Northern District of Ohio, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."

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

- D. On November 16, 2001, William J. Novak, Esq., submitted a written hearing request on behalf of Dr. Marsh. On November 23, 2001, Mr. Novak submitted a Motion to Consolidate requesting that the matters addressed by the May 9 and

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November 7, 2001, Notices of Opportunity for Hearing be heard at the same time. This Request was granted on November 20, 2001. (State's Exhibits 1S, 1U, and 1V)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers and Kyle C. Wilcox, Assistant Attorneys General.
- B. On behalf of the Respondent: William J. Novak, Esq., and Gerald M. Jackson, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

Lonnie. Marsh II, M.D., as on cross-examination.

B. Presented by the Respondent

- 1. Lonnie. Marsh II, M.D.
- 2. Susan Greenawalt
- 3. John Bemis
- 4. John Turk
- 5. Marianne Morgan
- 6. Ron Morgan
- 7. Laura J. Biggers

II. Exhibits Examined

A. Presented by the State:

- 1. State's Exhibits 1A-1AA: Procedural exhibits.
- 2. State's Exhibit 2: Certified copy of March 1, 2001, Bill of Information in *State v. Lonnie Marsh II, M.D.*, Case Number 01CR-03-1254 in the Court of Common Pleas of Franklin County [*State v. Marsh*].

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OF OHIO
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3. State's Exhibit 3: Certified copies of March 7, 2001, Entry of Guilty Plea and June 1, 2001, Judgment Entry in *State v. Marsh*.
4. State's Exhibit 4: Certified copy of July 18, 2001, Bill of Information in *The United States of America v. Lonnie Marsh II, M.D.*, Case Number 1:01CR345 in the United States District Court for the Northern District of Ohio, Eastern Division [*U.S. v. Marsh*].
5. State's Exhibit 6: Certified copy of August 8, 2001, Plea Agreement in *U.S. v. Marsh*.
6. State's Exhibit 7: Certified copy of August 8, 2001, Transcript of Proceedings, Waiver of Indictment and Plea Hearings in *U.S. v. Marsh*.
7. State's Exhibit 8: Certified copy of October 10, 2001, Judgment in a Criminal Case with attached copy of August 8, 2001, Plea Agreement in *U.S. v. Marsh*.
8. State's Exhibit 9: Certified copy of October 10, 2001, Transcript of Proceedings in *U.S. v. Marsh*.
9. State's Exhibit 10: Certified copy of September 29, 1998, Settlement Agreement between Dr. Marsh and the Ohio Department of Human Services.

B. Presented by the Respondent:

1. Respondent's Exhibit B: April 1996 article: *The Cleveland Medical Association at Work in the Community* from *Cleveland Physician*.
2. Respondent's Exhibit C: Undated article: *The History and Future of the Cleveland Medical Association* from *Cleveland Physician*.

PROCEDURAL MATTERS

Patients appearing at hearing have waived their physician-patient privilege as to patient identity and history disclosed in the record. (Hearing Transcript at 75-77, 95, 99, 105, 111, 114, 118)

SUMMARY OF THE EVIDENCE

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

Background

1. Lonnie Marsh II, M.D., testified at hearing that he had grown up on a farm in Alabama. From the age of three, Dr. Marsh's father had impressed in him the desire to become a physician. Dr. Marsh graduated from Stillman College in Tuscaloosa, Alabama with a degree in biology in 1969. He then participated in a one-year post baccalaureate fellowship at Oberlin College before entering medical school. Dr. Marsh graduated from the Case Western Reserve University School of Medicine in 1974. He completed one year of internship and two years of residency in internal medicine at University Hospitals and the Veterans Administration Hospital in Cleveland. Dr. Marsh testified that he has been a Senior Clinical Instructor at the Case Western Reserve University School of Medicine since completing his residency program. In 1977 he entered private practice with another physician. They practiced together until early 2001. Dr. Marsh continued the practice until the Board suspended him in May 2001. (State's Exhibits [St. Exs.] 1A and 7; Hearing Transcript [Tr.] at 17-19, 45-49, 56-59)

Dr. Marsh testified that he had privileges at St. Luke's Hospital from 1977 until it closed. He also testified that he had courtesy privileges at Marymount Hospital for about 18 years. He explained that he no longer had privileges at Marymount because he had not been using them. Dr. Marsh stated that he also has privileges at Southpointe Hospital and at St. Vincent's Charity Hospital. (Tr. 53-54)

Dr. Marsh testified that he has a particular interest in the study of hypertension and diabetes. Dr. Marsh noted that hypertension runs in his family and that both hypertension and diabetes are serious problems in the African-American community. (Tr. 49)

The Criminal Convictions

3. On September 22, 1998, Dr. Marsh entered into a Settlement Agreement, effective October 1, 1998, with the Ohio Department of Human Services. [ODHS] In that agreement he surrendered his Provider Agreement with ODHS. The Settlement Agreement made Dr. Marsh ineligible to apply for reinstatement of any ODHS Medicaid Fee for Service Provider Agreement prior to October 1, 2003. Dr. Marsh is barred by the terms of the Settlement Agreement from rendering or authorizing physician services to patients who are fee for service Medicaid patients unless such services are provided

without charge. The Settlement Agreement also bars Dr. Marsh from prescribing medications to fee for service Medicaid patients whether or not he charges for the services rendered. Dr. Marsh testified that, subsequent to entering into the Settlement Agreement he had referred his Medicaid patients to his associate, Augustine Tuma, M.D. (St. Ex. 10; Tr. 19-23, 30-31, 70, 73, 80-81)

4. By Bill of Information in, *State of Ohio v. Lonnie, Marsh II, M.D.*, case number 01CR-03-1254, filed March 1, 2001, in the Court of Common Pleas of Franklin County, Ohio, Dr. Marsh was charged with five felonies, including one felony count of Medicaid Fraud in violation of Section 2913.40(B), Ohio Revised Code; one felony count of Forgery in violation of Section 2913.31(A), Ohio Revised Code; and three felony counts of Illegal Processing of Drug Documents in violation of Section 2925.23(A), Ohio Revised Code. (St. Ex. 2)

On March 7, 2001, while represented by legal counsel, Dr. Marsh waived his right to indictment and pleaded guilty to the Bill of Information in *State v. Marsh*. By Judgment Entry filed on June 1, 2001, Dr. Marsh was convicted of the five felony charges. The court imposed Community Control Sanctions for a period of four years. The Court ordered Dr. Marsh to comply with standard conditions of Community Control Sanctions. The court also ordered Dr. Marsh to perform 100 hours of community service, obtain and maintain employment, and pay restitution in the amount of \$44,108.66 to the State of Ohio. (St. Exs. 2 and 3; Tr. 23, 33-34)

At the present hearing, Dr. Marsh testified that he had already completed 79 hours of the community service and had paid the \$44,108.66 in restitution on May 31, 2001. (Tr. 31, 87)

5. The court found that Dr. Marsh had engaged in the following conduct:
 - He knowingly made or caused to be made false and misleading representations to the Ohio Department of Human Services, Medicaid Division [Medicaid Division] for use in obtaining more than five thousand dollars in reimbursement from the Ohio Medical Assistance Program. Contrary to a written agreement with the Medicaid Division, Dr. Marsh caused invoices to be submitted to the State of Ohio for services, which were not properly reimbursable. These invoices were in fact processed and reimbursed by the State of Ohio Medicaid Program.
 - He knowingly, as a continuing course of conduct and with the purpose to defraud, forged the writing of another without that person's authority in that he forged the signature of Augustine Tuma, M.D., on a prescription for 80 tablets of Demerol 100 mg., a controlled substance.

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- He knowingly, as a continuing course of conduct, made false statements in three prescriptions in that he forged the signature of Augustine Tuma, M.D., on prescriptions for 60 tablets of MS Contin 60 mg., 10 patches of Fentanyl 100 mcg/hr., quantity 10 patches and 30 tablets of Oxycontin 20 mg. Each of these drugs is a controlled substance.

(St. Exs. 2 and 3; Tr. 23-24, 73-74)

At hearing Dr. Marsh testified that the restitution he had paid reflected the costs to the government of his conduct. However, he asserted that he actually received about \$2,700 of that money himself. Dr. Marsh offered no other disagreement with the facts stated in the Bill of Information and Judgment Entry in *State v. Marsh*. (St. Exs. 2 and 3; Tr. 29-32, 77-81)

Dr. Marsh testified that he had written the prescriptions for Medicaid patients because Dr. Tuma would not see these patients and that they could not obtain the medications without the prescriptions. (Tr. 70, 80-81)

Dr. Marsh testified that his forgeries, which led to counts two through five of the Information in *State v. Marsh*, occurred because, on each occasion, the patient had come to the office after Dr. Tuma had left for the day. He explained that, on each occasion, the patient had been in sickle cell crisis. Dr. Marsh further explained that a patient in sickle cell crisis is in great pain. Dr. Marsh testified that he had not received any payment for writing these prescriptions. (St. Exs. 2 and 3; Tr. 74-75, 83-84, 86-87)

Dr. Marsh testified that he had understood the restrictions imposed by the Settlement Agreement. Dr. Marsh further testified that he had understood at the time he had written the prescriptions that he had been violating the Settlement Agreement. He admitted that he could have referred the patient to another physician or to a hospital emergency department. Dr. Marsh asserted that he had knowingly violated the Settlement Agreement to provide pain care for a sickle cell patient. He explained that the drugs prescribed were not new to the patient. (St. Ex. 10; Tr. 74-75, 88-90)

6. On August 8, 2001, while represented by legal counsel, in the United States District Court for the Northern District of Ohio, in *The United States of America v. Lonnie Marsh II, M.D.*, case number 1:01CR345 [*U.S. v. Marsh*], Dr. Marsh pleaded guilty to and was found guilty of two felonies, including one count of Criminal Penalties for Acts Involving Federal Health Care Programs (Soliciting and Receiving Medicare and Medicaid Kickbacks) in violation of Title 42, United States Code, Section 1320a-7b(b)(1) and one count of Conspiracy to Commit Offense or to Defraud the United States (Conspiracy to Violate the Federal Antikickback Statute) in violation of Title 18, United States Code,

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Section 371, to wit: Title 42, United States Code, Section 1320a-7b(b)(1). (St. Exs. 4, 6-9; Tr. 32-34, 64-65)

The Court imposed probation for a period of three years, which includes a six-month period of home confinement. In addition to the standard conditions of probation, the Court ordered Dr. Marsh to perform 350 hours of community service, remain current in the payment of child support and pay restitution in the amount of \$99,253.50. The court also imposed fines and assessments totaling \$5,500.00. At hearing, Dr. Marsh testified that he had paid the restitution ordered in *U.S. v. Marsh*. (St. Exs. 6-9; Tr. 33, 87)

7. The Court found that Dr. Marsh had engaged in the following conduct:

- He had received payments from Diagnostic Testing of Ohio, Inc. [DTO] in the form of purported rent, which varied directly in proportion to the number of referrals Dr. Marsh made to DTO. If Dr. Marsh ordered no tests, he would receive no rent and that “[t]he payments [Dr. Marsh] received also bore no resemblance to the fair market value of the space purportedly being rented.”
- “Tests that DTO conducted on patients [Dr. Marsh] referred were often not appropriate or medically indicated for the conditions that [Dr. Marsh] supposedly attempting to diagnose” and that “[t]he number of tests DTO performed on almost all of the patients referred by [Dr. Marsh] was grossly excessive, by any reasonable measure of the appropriate level of testing for an individual patient.”

(St. Exs. 4 and 6-9)

8. The Plea Agreement in *U.S. v. Marsh* describes the facts underlying the federal convictions. DTO was a mobile medical laboratory in the business of performing certain electrodiagnostic tests. On or about July 1, 1994, Dr. Marsh entered into a contract with DTO, which purported to be a lease. DTO initially agreed to pay Dr. Marsh \$75.00 per hour for the stated purpose of renting a room in Dr. Marsh’s office suite. Between October 1995 and March 1996 DTO reviewed its hourly lease agreement with Dr. Marsh in order to base future payments on past referral patterns. On or about March 1, 1996, Dr. Marsh entered into a new contract with DTO, which also purported to be a lease. The projected payments under the new agreement were approximately \$100.00 per hour. Dr. Marsh knew that at least one purpose of the rent was to remunerate him for his referral of patients, to and ordering of tests from, DTO. The payments Dr. Marsh received from DTO varied directly in proportion to the number or referrals he made. If Dr. Marsh ordered no tests he received no rent. The payments received by Dr. Marsh from DTO bore no resemblance to the fair market value of the space purportedly being rented. (St. Exs. 5-9)

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9. According to the Plea Agreement in *U.S. v. Marsh*, DTO never tested patients in Dr. Marsh's office that had not been referred by Dr. Marsh. Tests that DTO conducted on patients referred by Dr. Marsh were often not appropriate or medically indicated for the conditions that Dr. Marsh was supposedly attempting to diagnose. Approximately seventy nine percent of the monies paid by insurers as a result of Dr. Marsh's referrals to DTO were paid out as a result of Dr. Marsh's purported effort to diagnose "radiculopathy." Had *U.S. v. Marsh* gone to trial, the government was prepared to introduce evidence that the non-invasive testing performed by DTO was not the appropriate test to perform. The government was prepared to introduce evidence that a needle-EMG would be a necessary part of a battery of tests to diagnose radiculopathy. In entering his Plea Agreement in *U.S. v. Marsh*, Dr. Marsh agreed that, had the case gone to trial, the government would have been able to prove this fact beyond a reasonable doubt. (St. Exs. 5-9)

10. The Plea Agreement in *U.S. v. Marsh* states that the number of tests DTO performed on almost all of the patients referred by Dr. Marsh was grossly excessive, by any reasonable measure of the appropriate level of testing for an individual patient. Dr. Marsh did not use any other electrodiagnostic laboratories while receiving remuneration from DTO. Prior to entering the kickback agreement with DTO, Dr. Marsh had not referred patients for electrodiagnostic testing "with any frequency." After the termination of payments by DTO, Dr. Marsh did not refer patients to other labs for electrodiagnostic testing. (St. Exs. 5-9)

However, at Dr. Marsh's plea hearing, the Assistant United States Attorney [AUSA] explained that "there is no indication or suggestion here or in the charges that [Dr. Marsh] knew at the outset that what was being done to the patients by the lab based upon referrals that he was making was, in fact, medically unnecessary at the outset. It's just not charged here. It's an open question." The AUSA pointed out that Dr. Marsh had not been charged with fraud in *U.S. v. Marsh* and that as a result, medical necessity or lack of medical necessity was not an element of the offenses to which Dr. Marsh was pleading guilty. (St. Ex. 7)

During the course of Dr. Marsh's federal plea hearing the court Responded that "if paragraph 21, 22, 23, and 24 [of the Plea Agreement] are accurate statements, a trier of fact would be virtually compelled to conclude that you knew that your referrals were excessive or unnecessary in some instances." (St. Ex. 7)

At the Board hearing, Dr. Marsh testified that he had felt that the patients he referred to DTO needed to have the tests he had ordered. (Tr. 65)

Dr. Marsh's patient records do not explain why needle-EMGs were not ordered, even when laboratory reports from DTO suggested that they should be considered. Further, the patient records do not indicate what action Dr. Marsh took in the course of his treatment of patients based on the results of DTO testing. (St. Exs. 5-9)

At the Board hearing, Dr. Marsh testified that he is in agreement with the statements of fact in the Plea Agreement and in the Judgment in a Criminal Case in *U.S. v. Marsh*. (Tr. 32-33)

11. Dr. Marsh testified that Mr. Sears, the owner of DTO, who is now deceased, approached him sometime in 1993 with an invitation to refer patients for electro-velocity testing by DTO in a mobile laboratory that would be set up at Dr. Marsh's office. Dr. Marsh explained that patients tested at his office would not have to be scheduled outside at a hospital. Dr. Marsh explained that he had felt comfortable with his association with DTO. He further testified that he had not felt like he had been committing a crime at the time. (St. Ex. 6; Tr. 61-64, 66-67, 72)

Dr. Marsh testified that he was aware that the American Medical Association Code of Ethics prohibits the receiving of remuneration for referral of a patient. Dr. Marsh understood, at the time he engaged in a business relationship with DTO, that remuneration or kickbacks in exchange for medical referrals is both illegal and unethical. (St. Ex. 5-9; Tr. 32-33, 66-68)

Dr. Marsh received approximately \$14,212.50 from DTO between September 27, 1994, and January 8, 1998. This money had been paid to DTO by various private and governmental insurance programs. Dr. Marsh testified that the amounts of money he received from DTO had not had a significant impact on his lifestyle. (St. Ex. 5-9; Tr. 32-33, 66-68)

Community Activities

12. Dr. Marsh testified that he had practiced internal medicine in the Lee-Harvard area of Cleveland since 1977. Dr. Marsh described the Lee-Harvard area as a working class community that is neighborhood oriented. He explained that many of the residents of Lee-Harvard are working people with strong religious beliefs and families who often need assistance. He noted that the distance between his office and the nearest internal medicine physician is about three miles. (Respondent's Exhibits [Resp. Exs.] B and C; Tr. 49-51, 54, 93-119)

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13. Dr. Marsh has been active as a community leader as well as in the medical profession in Cleveland. Dr. Marsh has received a number of awards for his activities on behalf of the medical professional and civic activities. (Resp. Exs. B and C; 56-61)

Dr. Marsh is a member of the Ohio State Medical Association; The Cleveland Academy of Medicine, where he served on the board for several years; and The Cleveland Medical Association [CMA]. At the Board hearing, Dr. Marsh described his activities with the CMA. Dr. Marsh testified that when he had begun his involvement with the CMA it had been a rather loose association with no scheduled meetings and without vigorous leadership. Dr. Marsh served in a variety of leadership roles for the CMA before becoming President. He had completed three two-year terms as President. Dr. Marsh noted that the normal practice had been for each physician to serve as President for only two years. Dr. Marsh served on the editorial board for the CMA. (Resp. Exs. B and C; Tr. 58-61)

Dr. Marsh testified that he has been active with the Cleveland Treatment Center [CTC], a drug treatment facility. Dr. Marsh served on the CTC board for about fifteen years. His departure was occasioned by the legal problems arising out of the matters at issue in the present hearing. (Tr. 56-57)

Support for Dr. Marsh in the Community

14. Dr. Marsh testified that approximately thirty patients, relatives, and fellow congregants from his church had accompanied him from Cleveland to attend the Board Hearing. (Tr. 51, 69)
15. Susan Greenawalt testified on behalf of Dr. Marsh. Ms. Greenawalt testified that she teaches special education classes for boys aged twelve to twenty-one. She first met Dr. Marsh while she was working at the Cuyahoga Hills Juvenile Correctional Facility [CHJCF]. Dr. Marsh had been the physician on staff at CHJCF. Ms. Greenawalt testified that she had been impressed with Dr. Marsh's interaction with the inmates. (Tr. 93-95) Ms. Greenawalt testified that she was also a patient of Dr. Marsh. She further testified that she had received far superior care from Dr. Marsh than she had received from other physicians and that she had observed others receive from other physicians. She explained that Dr. Marsh is aggressive in utilizing new treatments in an effort to address her medical problems. She further explained that she has seen her diabetic neuropathy improve under Dr. Marsh's care. Ms. Greenawalt testified that she had never observed Dr. Marsh behave in a manner detrimental to her or any other patient. (Tr. 94-96)

Ms. Greenawalt testified that she is familiar with Dr. Marsh's reputation in the Lee-Harvard community. She stated that Dr. Marsh has a superior reputation as a

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physician and as a caring person. She added that Dr. Marsh has made many positive contributions to the community. (Tr. 96-97)

16. John Bennis testified on behalf of Dr. Marsh. Mr. Bennis stated that he had been licensed as a pharmacist. However, his license is not current because his continuing education is not up to date. He explained that he is currently disabled. Mr. Bennis testified that he had first had telephone contact with Dr. Marsh in the context of the physician-pharmacist relationship. He became a patient of Dr. Marsh's about seven years ago. Mr. Bennis explained that he had chosen to see Dr. Marsh as a patient because treatments he had received from his previous physician had been unsuccessful. (Tr. 98-101)

Mr. Bennis testified that he has been pleased with his physician-patient relationship with Dr. Marsh. Mr. Bennis described Dr. Marsh as professional, courteous and possessing a good bedside manner. Mr. Bennis noted that he had not observed Dr. Marsh behave in a way that was detrimental to himself or any other patient. (Tr. 101-103)

17. John Turk testified on behalf of Dr. Marsh. Mr. Turk is a retired teacher who was employed at CHJCF for thirty-seven years. Mr. Turk noted that he still works with delinquent youth at CHJCF. Mr. Turk testified that he had been unhappy with unsuccessful medical treatment for his leg and back that he had received elsewhere. At the recommendation of an acquaintance, Mr. Turk became a patient of Dr. Marsh. He has been pleased with the professional treatment by Dr. Marsh. (Tr. 103-105)

Mr. Turk noted that he had also observed Dr. Marsh's interaction with the inmates at CHJCF. Mr. Turk has always been impressed with the professionalism of Dr. Marsh in his treatment of the inmates and himself. He was particularly impressed with Dr. Marsh's willingness to take the time to talk to patients. He has never observed Dr. Marsh do anything that would be detrimental to a patient. Mr. Turk noted that Dr. Marsh was well liked by the inmates and worked well with these young men. (Tr. 103-107)

Mr. Turk testified that he is aware of some of Dr. Marsh's contributions to the community. He specifically noted that Dr. Marsh gives of his time to his church and to speak, as a volunteer, to the inmates of CHJCF. (Tr. 106-107)

18. Marianne Morgan testified on behalf of Dr. Marsh. Ms. Morgan testified that Dr. Marsh is her personal physician. Ms. Morgan further testified that she has been pleased with her treatment by Dr. Marsh. She described his manner as professional and noted that she had never observed him engage in any activity that was detrimental to patients. (Tr. 110-111)

Ms. Morgan testified that Dr. Marsh has an excellent reputation in the Lee-Harvard community. Dr. Marsh participates in health fairs and makes presentations at the senior

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citizen center where she is employed. She stated that there are no other internal medicine physicians in the Lee-Harvard area like Dr. Marsh. (Tr. 111-113)

19. Ron Morgan testified on behalf of Dr. Marsh. Mr. Morgan testified that Dr. Marsh is his doctor. Mr. Morgan noted that Dr. Marsh reminds him of the country doctor who is professional and attentive; a physician, friend, and advisor. Mr. Morgan explained that when his brother-in-law was dying of cancer, Dr. Marsh had been very helpful to the entire family. (Tr. 113-116)
20. Laura J. Biggers testified on behalf of Dr. Marsh. Ms. Biggers testified that she had been Dr. Marsh's patient since 1983 or 1984. Ms. Biggers further testified that she lives in the Lee-Harvard community. Ms. Biggers stated that she had observed Dr. Marsh with other patients. She observed that Dr. Marsh treated all with professionalism. (Tr. 117-118)

Ms. Biggers testified that Dr. Marsh's reputation in the Lee-Harvard community is excellent. She opined that there are no physicians in the Lee-Harvard community as good as Dr. Marsh. (Tr. 118-119)

Additional Information

21. Dr. Marsh testified that, prior to the criminal cases and Notices of Opportunity for Hearing at issue in the present hearing, he had never had any difficulties with the Board or his hospital affiliations. (Tr. 51-43)

Dr. Marsh testified that the practice of medicine is "all I've ever done. It's all I ever wanted to do." He explained that he misses seeing patients. Dr. Marsh testified that, shortly after he had received notice that the Board had suspended his license pending hearing, he had gone into an acute depression. After a few days he sought the assistance of a psychiatrist in coping with the depression. (Tr. 68-69)

Dr. Marsh testified that he felt "really terrible" about the idea of fees for referral of patients. He asserted he knew that the criminal acts he had committed were wrong, and further asserted that he would never repeat them. He also testified that he has apologized to his family and his church for his conduct. (Tr. 51-52, 66-69)

FINDINGS OF FACT

1. On or about March 7, 2001, in the Court of Common Pleas of Franklin County, Ohio, Lonnie Marsh II, M.D., pled guilty to five felonies, including one felony count of Medicaid Fraud in violation of Section 2913.40(B), Ohio Revised Code; one felony count of

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- Forgery in violation of Section 2913.31(A), Ohio Revised Code; and three felony counts of Illegal Processing of Drug Documents in violation of 2925.23(A), Ohio Revised Code.
2. Dr. Marsh knowingly made or caused to be made false and misleading representations to the Ohio Department of Human Services, Medicaid Division [Medicaid Division] for use in obtaining more than five thousand dollars in reimbursement from the Ohio Medical Assistance Program. Specifically, contrary to a written agreement with the Medicaid Division, Dr. Marsh caused invoices to be submitted to the State of Ohio for services which were not properly reimbursable. These invoices were in fact processed and reimbursed by the State of Ohio Medicaid Program.
 3. Dr. Marsh knowingly, as a continuing course of conduct and with the purpose to defraud, forged the writing of another without that person's authority in that he forged the signature of Augustine Tuma, M.D., on a prescription for 80 tablets of Demerol 100 mg., a controlled substance.
 4. Dr. Marsh knowingly, as a continuing course of conduct, made false statements in three prescriptions in that he forged the signature of Augustine Tuma, M.D., on prescriptions for 60 tablets of MS Contin 60 mg.; 10 patches of Fentanyl 100 mcg/hr., quantity 10 patches; and 30 tablets of Oxycontin 20 mg. Each of these drugs is a controlled substance.
 5. On or about October 10, 2001, in the United States District Court for the Northern District of Ohio, Dr. Marsh pleaded guilty to and was found guilty of two felonies, including one count of Criminal Penalties for Acts Involving Federal Health Care Programs (Soliciting and Receiving Medicare and Medicaid Kickbacks) in violation of Title 42, United States Code, Section 1320a-7b(b)(1); and one count of Conspiracy to Commit Offense or to Defraud the United States (Conspiracy to Violate the Federal Antikickback Statute) in violation of Title 18, United States Code, Section 371, to wit: Title 42, United States Code, Section 1320a-7b(b)(1).
 6. Payments Dr. Marsh received from Diagnostic Testing of Ohio, Inc. [DTO] in the form of purported rent varied directly in proportion to the number of referrals Dr. Marsh made to DTO. If Dr. Marsh ordered no tests, he would receive no rent, and the payments Dr. Marsh received bore no resemblance to the fair market value of the space purportedly being rented.
 7. Tests that DTO conducted on patients referred by Dr. Marsh were often not appropriate or medically indicated for the conditions that Dr. Marsh was supposedly attempting to diagnose.

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The number of tests DTO performed on almost all of the patients referred by Dr. Marsh was grossly excessive, by any reasonable measure of the appropriate level of testing for an individual patient.

CONCLUSIONS OF LAW

1. The guilty pleas entered by Lonnie Marsh II, M.D., and the resulting convictions, as described in Findings of Fact 1, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.
2. The acts, conduct, and/or omissions underlying Dr. Marsh’s guilty pleas as described in Findings of Fact 1, and 3 through 4, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.
3. The acts, conduct, and/or omissions underlying Dr. Marsh’s guilty pleas, as described in Findings of Fact 1 through 4 individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
4. Dr. Marsh’s pleas of guilty and/or judicial findings of guilt in the United States District Court for the Northern District of Ohio, as described in Findings of Fact 5 through 7, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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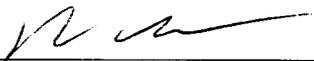
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PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Lonnie Marsh II, 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 Board.



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 13, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani 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 matter of John A. Campa, III, M.D.; Khozema Campwala, M.D.; Dannie K. Gipe, Jr., M.D.; Lonnie Marsh, II, M.D.; Arturo Portales, D.O.; Susan M. Stone, M.D.; Stephen J. Sveda, M.D.; Philip G. Wagman, M.D.; and Jimmie Steve Ward, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Somani	- aye

Dr. Somani 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. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Somani	- aye

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

Dr. Somani 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.

.....

LONNIE MARSH, II, M.D.

.....

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF LONNIE MARSH, II, M.D. DR. EGNER SECONDED THE MOTION.

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- abstain
	Dr. Somani	- aye

The motion carried.



State Medical Board of Ohio

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November 7, 2001

Lonnie Marsh, II, M.D.
16603 Harvard Avenue
Cleveland, OH 44128

Dear Doctor Marsh:

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about October 10, 2001, in the United States District Court for the Northern District of Ohio, you pled guilty to and were found guilty of two felonies, including one (1) count of Criminal Penalties for Acts Involving Federal Health Care Programs (Soliciting and Receiving Medicare and Medicaid Kickbacks) in violation of Title 42, United States Code, Section 1320a-7b(b)(1), and one (1) count of Conspiracy to Commit Offense or to Defraud the United States (Conspiracy to Violate the Federal Antikickback Statute) in violation of Title 18, United States Code, Section 371, to wit: Title 42, United States Code, Section 1320a-7b(b)(1). Copies of the Information, Plea Agreement and Judgment Entry are attached hereto and incorporated herein.

The factual basis for your guilty plea(s) as set forth in the Plea Agreement included that the payments you received from Diagnostic Testing of Ohio, Inc. (hereinafter "DTO") in the form of purported "rent" "varied directly in proportion to the number of referrals [you] made [to DTO]; if [you] ordered no tests then [you] would receive no 'rent[.]'" and that "[t]he payments [you] received also bore no resemblance to the fair-market value of the space purportedly being rented." Further, the factual basis for your guilty plea(s) as set forth in the Plea Agreement also included that the "tests ... conducted ... were often not appropriate or medically indicated for the conditions that [you were] supposedly attempting to diagnose" and that "[t]he number of tests DTO performed on almost all of the patients referred by [you] was grossly excessive, by any reasonable measure of the appropriate level of testing for an individual patient."

Your pleas of guilty and/or the judicial findings of guilt as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Mailed 11-8-01

Lonnie Marsh, II, M.D.

Page 2

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.

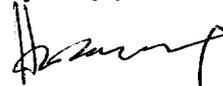
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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 (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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,



Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #7000 0600 0024 5147 0510
RETURN RECEIPT REQUESTED

cc: William J. Novak, Esq.

CERTIFIED MAIL #7000 0600 0024 5147 0527
RETURN RECEIPT REQUESTED

FILED

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CLEVELAND DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LONNIE MARSH, II, M.D.

Defendant.

INFORMATION

CR. NO. ~~1:01 CR 345~~
JUDGE: ~~JUDGE O'MALLEY~~
Title 18 U.S.C. § 371
Title 42 U.S.C. §§ 1320a-7b(b)(1)

A copy of the judgment on me in my office.
Geni M. Smith, Clerk
U.S. District Court
Northern District of Ohio
Clerk

The United States Attorney charges:

At all times material to this information:

GENERAL ALLEGATIONS:

1. Defendant LONNIE MARSH, II, M.D. was a licensed medical doctor and the owner of Lonnie Marsh, II, M.D., Inc. in the city of Cleveland, the Northern District of Ohio, Eastern Division.

NOV - 5 2001

- 2 -

2. Diagnostic Testing of Ohio, Inc. (DTO) was a mobile-medical laboratory in the business of performing certain electrodiagnostic tests, including nerve-conduction studies (NCVs), somatosensory-evoked potentials (SSEPs), and dermatomal-evoked potentials (DEPs), a type of SSEP. When used properly, electrodiagnostic tests are used to test function of the nervous system. DTO did business in the Northern District of Ohio, Eastern Division. DTO was both a Medicare and Medicaid provider authorized to submit claims to these programs for certain electrodiagnostic tests provided to patient-beneficiaries for both programs.

3. Medicare was and is a federal health-care benefit program designed to provide medical services, medical equipment, and supplies to elderly, blind, and disabled beneficiaries pursuant to the Social Security Act (Title 42, United States Code, Section 301 et seq.). The Medicare program was and is administered by the United States Department of Health and Human Services ("HHS"), through the Health Care Financing Administration (HCFA).

4. Medicaid was and is a federal health-care benefit program designed to provide medical services, medical equipment, and supplies to the poor, under the Social Security Act (Title 42, United States Code, Section 1396 et seq.). Approximately 60% of the funding for the Ohio Medicaid program was supplied by the United States Department of Health and Human Services. The Medicaid program was administered by the State of Ohio, through what was then known as the Ohio Department of Human Services, now known as the Ohio Department of Job and Family Services.

5. To prevent fraud and abuse in the Medicare, Medicaid, and other federal health-care programs, to avoid creating incentives for unnecessary medical treatments, and to prevent unnecessary increases in the costs of federal health-care programs, Congress made it unlawful for

a person to pay, offer to pay, solicit, or receive kickbacks or other remuneration in return for ordering medical services or products that might be paid for by a federal health-care benefit program, or for referring beneficiaries of such a program to providers of medical services.

Defendant LONNIE MARSH, II, M.D. understood that it was both illegal and unethical for a medical doctor to solicit and/or accept remuneration in return for the referral of a patient to, or for ordering tests from, a clinic, laboratory or other health-service entity.

The United States Attorney further charges:

COUNT 1
(CONSPIRACY WITH DIAGNOSTIC TESTING OF OHIO, INC. AND OTHERS TO VIOLATE THE FEDERAL ANTIKICKBACK STATUTE)

6. Paragraphs one through five above, are incorporated by reference as though set forth fully herein.

7. From on or about July 1, 1994, and continuing through on or about April 23, 1998, in the Northern District of Ohio, and elsewhere, Defendant LONNIE MARSH, II, M.D. did knowingly and willfully combine, conspire, confederate, and agree with Diagnostic Testing of Ohio, Inc., and others known and unknown to the United States Attorney, to commit offenses against the United States, namely soliciting and receiving remuneration directly and indirectly, overtly and covertly, in return for MARSH referring his patients, and arranging for the furnishing of, and ordering and arranging for the ordering of, services, namely, electrodiagnostic tests, for which payment might be made in whole and in part by the Medicare and Medicaid programs, in violation of Title 42, United States Code, Section 1320a-7b(b)(1).

OBJECTS OF THE CONSPIRACY

8. It was an object of the conspiracy that Defendant LONNIE MARSH, II, M.D. would receive kickbacks, directly and indirectly, from DTO in return for MARSH referring and arranging for the referral of his patients for electrodiagnostic tests, and ordering, and arranging for the ordering of, electrodiagnostic tests, for which payment might be made by the Medicare and Medicaid programs.

9. It was also an object of the conspiracy that DTO would pay kickbacks, directly and indirectly, overtly and covertly, to Defendant MARSH in return for MARSH referring, and arranging for the referral of, his Medicare, Medicaid, and other patients for electrodiagnostic tests, and ordering, and arranging for the ordering of, electrodiagnostic tests, for which payment might be made by the Medicare and Medicaid programs.

MANNER AND MEANS OF THE CONSPIRACY

10. Defendant LONNIE MARSH, II, M.D., and others effected the conspiracy by entering into agreements that purported to be "lease" agreements, but which were in fact agreements to exchange kickbacks for medical referrals and ordering of tests. The payments MARSH accepted were determined in a manner that took into account the volume or value of the referrals and business that MARSH would generate. Moreover, the payments MARSH accepted under these agreements bore no resemblance to the fair-market rental value of the "space" purportedly being rented.

11. To further effect the conspiracy, Defendant LONNIE MARSH, II, M.D. knowingly and willfully accepted and deposited, approximately 34 checks totaling about \$14,212.50 and constituting direct and indirect kickbacks to MARSH for MARSH's various

patient referrals.

OVERT ACTS

12. In furtherance of the conspiracy and to effect its objects, at least one or more of the following overt acts, among others, were committed in the Northern District of Ohio by at least one of the conspirators:

- (A) On or about July 1, 1994, Defendant LONNIE MARSH, II, M.D. signed and entered into a written agreement with DTO, entitled "Lease Agreement."
- (B) Between about October 1995 and March 1996, DTO reviewed all of its hourly purported "lease" agreements with its various referring medical professionals, including MARSH, to base future kickbacks to these professionals on the basis of previous referral patterns.
- (C) On or about March 1, 1996, Defendant LONNIE MARSH, II, M.D. signed and entered into another written agreement with DTO, entitled "Lease Agreement."
- (E) On or about September 27, 1994, DTO provided to Defendant LONNIE MARSH, II, M.D. and MARSH accepted and deposited, and caused to be accepted and deposited, the first of approximately 34 checks.
- (F) On or about January 8, 1998, DTO provided to Defendant LONNIE MARSH, II, M.D. and MARSH accepted and deposited, and caused to be accepted and deposited, the last of approximately 34 checks.

All in violation of Title 18, United States Code, Section 371.

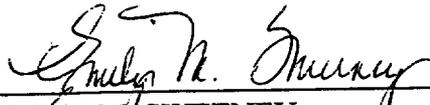
The United States Attorney further charges:

COUNT 2
**(SOLICITING AND RECEIVING MEDICARE AND MEDICAID KICKBACKS FROM
DTO)**

13. Paragraphs one through five, and ten through twelve, of this Information are incorporated by reference as though set forth fully herein.

14. From on or about September 27, 1994 through on or about January 8, 1998, in the Northern District of Ohio, Eastern Division, Defendant LONNIE MARSH, II, M.D. did knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in the form of about 34 checks from DTO totaling about \$14,212.50 and made payable to MARSH in return for MARSH referring his patients to DTO, and arranging for the furnishing of, and ordering, and arranging for the ordering of, services, namely, certain electrodiagnostic tests from DTO, for which payment might be made in whole and in part by the Medicare and Medicaid programs, in violation of Title 42, United States Code, Section 1320a-7b(b)(1).

All in violation of Title 42, United States Code, Section 1320a-7b(b)(1).



EMILY M. SWEENEY
United States Attorney

have the burden of proving him guilty beyond a reasonable doubt on all elements of the charges against him. He further understands that at such a trial he would have the following rights:

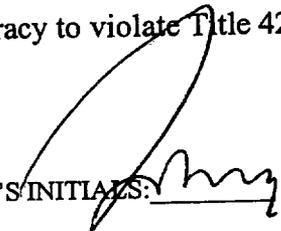
- (a) The right to a trial by jury. Defendant could also waive that right and have the case tried before a judge, if both the Government and the Court consented to the waiver.
- (b) The right to the assistance of counsel.
- (c) The right not to be compelled to testify against himself. If Defendant chose not to testify, the Government could not comment on his failure to testify and the jury could not draw an adverse inference from that fact.
- (d) The right to confront and cross-examine the witnesses against him.
- (e) The right to present witnesses on his own behalf, including his own testimony, and to compel the attendance of witnesses if necessary.

3. Defendant understands and agrees that by his guilty pleas, he expressly waives those rights and acknowledges that no trial will, in fact, occur and that following the Court's acceptance of his guilty pleas the only actions remaining in this case will be the Court's determination and imposition of sentence.

II. CHARGES AND POSSIBLE MAXIMUM PENALTIES.

4. Defendant agrees to enter pleas of guilty to all counts of an Information to be filed in the Northern District of Ohio, Eastern Division.

5. Count 1 of the Information charges Defendant with conspiracy to violate Title 42,

DEFENDANT'S INITIALS: 

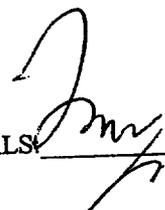
United States Code, Section 1320a-7b(b)(1), in violation of Title 18, Section 371, United States Code. Defendant understands that the maximum statutory penalty for each violation of Title 18, Section 371, United States Code, is a period of five years imprisonment, a fine of \$250,000, or both, and a period of supervised release of at least two years, but not more than three years to follow any period of incarceration.

6. Count 2 of the Information charges Defendant with soliciting and receiving health-care kickbacks in return for referring patients and ordering services, in violation of Title 42, United States Code, Section 1320a-7b(b)(1). Defendant understands that the maximum statutory penalty for each violation of Title 42, United States Code, Section 1320a-7b(b)(1) is a period of five years imprisonment, a fine of \$25,000, or both, and a period of supervised release of at least two years, but not more than three years to follow any period of incarceration.

7. Defendant understands that the Court may impose any costs of prosecution and may order him to make restitution. The Court may further order Defendant to pay the costs of any sentence, including but not limited to imprisonment, community confinement, home detention, probation, or supervised release.

8. Defendant further understands that if he receives a prison sentence or other custodial sentence, followed by a period of supervised release, he may be sentenced to an additional period of incarceration if he violates a term of supervised release, beyond the sentence imposed. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

DEFENDANT'S INITIALS



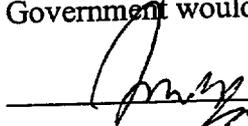
9. Defendant further understands and agrees that he shall pay a mandatory \$100.00 special assessment per count and that such assessment is due and payable on the date of sentencing.

10. Defendant acknowledges that his attorney has explained to him the operation of the sentencing guidelines as they apply to this case and that no agreement has been reached concerning the determination of his sentence pursuant to the guidelines, except as expressly stated in this Agreement.

11. Defendant further understands and accepts that in addition to any criminal sanctions, he may be subject to other civil and/or administrative consequences, including but not limited to a prohibition against owning or possessing firearms, mandatory exclusion from participation in federal and/or state health-care benefit programs, civil liability, and/or loss of any professional license(s).

III. FACTUAL BASIS FOR THE PLEA.

12. The Government and Defendant agree that the following is the factual basis for the plea. Defendant, by his initials here, further agrees that had the matter proceeded to trial, the Government would have proved these facts beyond a reasonable doubt

 [DEFENDANT'S INITIALS]:

A. BACKGROUND.

13. Defendant was a licensed medical doctor and the owner of Lonnie Marsh, II, M.D., Inc. in the city of Cleveland, which is in the Northern District of Ohio, Eastern Division.

DEFENDANT'S INITIALS: 

14. Diagnostic Testing of Ohio, Inc. (DTO), whose owner is now deceased, was a mobile-medical laboratory in the business of performing certain electrodiagnostic tests, including nerve-conduction studies (NCVs), somatosensory-evoked potentials (SSEPs), and dermatomal-evoked potentials (DEPs), a type of SSEP. When used properly, electrodiagnostic tests are used to test function of the nervous system. DTO was both a Medicare and Medicaid provider authorized to submit claims to these programs for certain electrodiagnostic tests provided to patient-beneficiaries for both programs. DTO, which had a corporate office in Akron, Ohio, also did business in the Northern District of Ohio, Eastern Division.

15. Remuneration or kickbacks in return for medical referrals are widely understood in the health-care industry, and were understood by Defendant, to be both illegal and unethical. For example, to prevent fraud and abuse in the Medicare, Medicaid, and other federal health-care programs, to avoid creating incentives for unnecessary medical treatments, and to prevent unnecessary increases in the costs of federal health-care programs, Congress made it unlawful for a person to pay, offer to pay, solicit, or receive kickbacks or other remuneration in return for ordering medical services that might be paid for by a federal health-care benefit program, or for referring beneficiaries of such a program to providers of medical services or products that might be paid for by such a program. Ohio law further expressly bars remuneration for referrals. In addition, the American Medical Association (AMA), of which Defendant was a member, provided in its ethical rules, which are incorporated by reference in Ohio law, that "Clinics, laboratories, hospitals, or other health care facilities that compensate physicians for referral of

DEFENDANT'S INITIALS: 

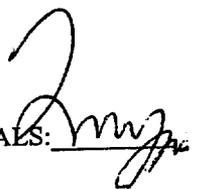
patients are engaged in fee splitting which is unethical.”

B. DEFENDANT'S KICKBACK RELATIONSHIP WITH AND ORDERS OF TESTS FROM DTO.

16. On or about July 1, 1994, Defendant entered into an initial purported “lease” agreement with DTO, in which DTO agreed to pay Defendant \$75 per hour purportedly for renting a room in his office, when in fact, as Defendant then well knew, at least one purpose of the purported “rent” DTO paid him and his businesses under the agreement was actually to remunerate him for his referrals of patients to and ordering of tests from DTO. The payments were determined in a manner that took into account the volume or value of the referrals and business that Defendant would generate. That is, the payments Defendant received varied directly in proportion to the number of referrals he made; if Defendant ordered no tests then he would receive no “rent.” The payments Defendant received also bore no resemblance to the fair-market value of the space purportedly being rented.

17. Between about October 1995 and March 1996, DTO reviewed all of its hourly purported “lease” agreements with its various referring medical professionals, including Defendant, to base future remuneration to these professionals on the basis of previous referral patterns. DTO did in fact base future remuneration on this basis.

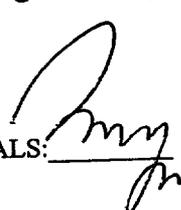
18. Accordingly, on or about March 1, 1996, Defendant entered into a new purported “lease” agreement with DTO, in which DTO agreed to pay Defendant purportedly “fixed” monthly “lease” payments, when in fact, as Defendant then well knew, at least one purpose of

DEFENDANT'S INITIALS: 

these payments were to remunerate him for his patient referrals and orders of tests. Again, the remuneration Defendant received were determined based upon the volume or value of referrals and business Defendant had previously generated, and bore no resemblance to the fair-market value of the "space" purportedly being "rented." Indeed, the projected payments to Defendant under the new "lease" worked out to \$100 per hour for use of a single room in Defendant's office for a few hours a month, even more than he had been receiving earlier.

19. DTO included a thirty-day cancellation clause in the new "lease" that was nothing more than an attempt to protect DTO against the possibility that its various referring medical professionals, including Defendant, would not live up to their referral commitments. Although the new lease purportedly permitted DTO to use Defendant's space for patients Defendant himself did not refer—making it appear that Defendant was now entering into a legitimate lease under which his "tenant" could and would test patients referred by any physician—in reality, DTO never tested non-Defendant patients in Defendant's clinic.

20. Tests that DTO conducted on patients Defendant referred were often not appropriate or medically indicated for the conditions that he was supposedly attempting to diagnose. For example, approximately 79% of what various insurers, including the Medicare and Medicaid programs, paid out due to Defendant's referrals, was paid out as a result of Defendant's purported effort to diagnose a condition known as "radiculopathy." Radiculopathy is injury of the nerve fibers where they arise from the spinal chord, and are known as "roots." According to neurologist-specialists in the field of electrodiagnostic testing, and indeed according to readily

DEFENDANT'S INITIALS: 

available medical and chiropractic literature, when electrodiagnostic tests are used to diagnose radiculopathy, a needle-EMG—a medically invasive test—must be performed to complement the surface tests for the electrodiagnostic tests to have diagnostic value. The needle-EMG is highly sensitive and detects abnormality in nerve-roots in many patients who do not have muscle weakness. Without the needle-EMG, nerve-conduction studies may only *suggest* the presence of radiculopathy in less than fifteen percent of the cases, while the needle-EMG actually *shows* abnormality in about 70 to 80% of cases of confirmed radiculopathy.

21. As Defendant knew, DTO did not have physicians, only technicians, on staff conducting tests, although DTO did use consulting physicians to interpret the test results. In the state of Ohio, technicians may not perform medically-invasive tests. Thus, DTO did not perform the needle-EMGs necessary as part of the battery of testing to actually consistently diagnose radiculopathy. Defendant's patient progress notes did not explain why these necessary needle-EMGs were not ordered, even when DTO's test reports said to "consider" ordering them.

22. Defendant's patient progress notes did not indicate what action Defendant took in his course of treatment based upon the results.

23. The number of tests DTO performed on almost all of the patients referred by Defendant was grossly excessive, by any reasonable measure of the appropriate level of testing for an individual patient.

24. While DTO was paying Defendant remuneration, Defendant did not use other electrodiagnostic-testing laboratories. Once DTO stopped paying Defendant remuneration after

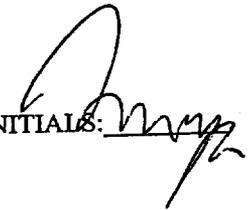
DEFENDANT'S INITIALS: 

about January 1998, Defendant did not refer any of his patients to other labs for electrodiagnostic testing. Nor had Defendant referred patients for electrodiagnostic testing with any frequency before entering his relationship with DTO.

25. Between on or about September 27, 1994 through on or about January 8, 1998, Defendant accepted and deposited about 34 checks from DTO totaling approximately \$14,212.50. Defendant was aware that at least one purpose of these payments was for DTO to remunerate him for his patient referrals to and orders of tests from DTO. Various governmental and private health-care benefit programs that insured Defendant's patients were the ultimate source of monies that DTO paid to Defendant as remuneration. Such insurers included the Medicare and Medicaid programs.

C. DEFENDANT'S INTENT GENERALLY.

26. At all times material to the Information and this Plea Agreement, Defendant generally was aware that (a) soliciting and/or receiving remuneration in return for referring patients, and that (b) soliciting and/or receiving remuneration for ordering medical tests, was wrong and both unethical and illegal. Defendant was also aware that at least one purpose of his relationship with DTO was for him to receive remuneration for his referrals and orders of medical tests. Patients were not aware that Defendant was receiving payments from DTO. The payments Defendant received under all of his purported "leases" also bore no resemblance to fair-market value for the actual rental value of the space.

DEFENDANT'S INITIALS: 

IV. SENTENCING GUIDELINES AND ACCEPTANCE OF RESPONSIBILITY.

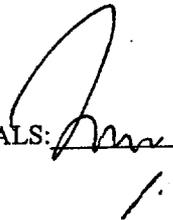
27. Defendant understands that the recommendations contained in this Agreement are not binding on the Court, and that the Court may impose any sentence provided for by law. Defendant further understands and agrees that if the Court imposes a sentence different from that which is recommended, or if Defendant is otherwise dissatisfied with the sentence, Defendant will not be permitted to withdraw his guilty pleas.

28. Based on the foregoing stipulated facts and the following guideline provisions, the parties, stipulate, agree, and jointly recommend to the Court that the following guideline calculations be applied to Defendant:

Base offense level:	8	§ 2B4.1(a)
<u>Amount of loss (\$14,212.50):</u>	<u>3</u>	§§ 2B4.1(b); 2F1.1(b)(1)
Total offense level:	11	

29. If Defendant does indeed accept full responsibility for his conduct, the Government agrees to recommend a two-level reduction in the offense level for acceptance of responsibility, for a final offense level of 9. Defendant agrees that should he fail to acknowledge his criminal conduct when meeting with the Probation Department or to the Court at sentencing, the Government is relieved of its obligation to recommend any reduction to his offense level for acceptance of responsibility.

30. Defendant understands that Defendant's criminal history will be determined by the Court after an investigation by the Federal Probation Department.

DEFENDANT'S INITIALS: 

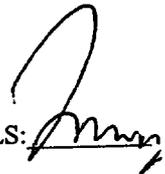
V. NO DEPARTURES TO BE SOUGHT.

31. The parties agree that there are no bases for either an upward or downward departure from the guidelines. Accordingly, Defendant agrees not to seek a downward departure from the applicable sentencing guidelines, and the Government agrees not to seek an upward departure from the applicable sentencing guidelines.

VI. FINES, RESTITUTION, AND SPECIAL ASSESSMENTS.

32. Defendant agrees that he is liable and obligated to pay, and agrees to pay, restitution, in the form of the above-discussed \$14,212.50 in remuneration he received from Diagnostic Testing of Ohio, Inc., to various governmental and private health-care benefit programs. Defendant also agrees that he is liable and obligated to pay restitution to various governmental and private health-care benefit programs, as additional monies that were paid out as a result of his conduct, \$85,041 (additional monies paid out by insurers for Defendant's referrals to DTO to diagnose radiculopathy, but where needle electromyography (EMG) was not performed). Thus, the total restitution figure is agreed to be \$99,253.50, although Defendant acknowledges that the final restitution figure may increase based on additional information obtained from other victims, including patients, in this case. Defendant and the Government agree and recommend, however, that any portion of the restitution beyond the \$14,212.50 in remuneration received, and any additional amounts identified from victims in the case, should not be considered a part of the intended loss for sentencing-guideline calculation purposes. The Government will identify and allocate total restitution amounts to victims within 90 days of the

DEFENDANT'S INITIALS:



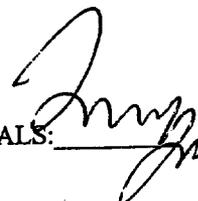
date of sentencing.

33. Defendant further understands that restitution he is required to pay under this agreement is not intended to compromise any civil or administrative claim that may be made against Defendant. Defendant understands that all restitution that he is required to pay under this Agreement is due and payable immediately, upon such terms and conditions that may be imposed by the Court and the Probation Department. Defendant further understands that if he fails to provide complete and truthful information concerning his and his businesses' finances to the Probation Department and the Court as required, he could be subject to further prosecution. To ensure that Defendant not be relieved of his restitution obligations and that monies not be returned to him, Defendant agrees and the parties recommend that, if victims, their successor entities (if any), or their addresses cannot practically be identified, or if restitution amounts cannot practically be allocated, any remaining portion of Defendant's restitution obligation be paid to the Federal Crime Victims Fund. Defendant understands that a failure to pay his restitution in full may, in some circumstances, be considered by the Court a violation of his supervised release.

34. Defendant understands that the amount of any fine the Court may impose is left to the discretion of the Court.

35. Defendant agrees to pay the special assessment of \$200 on or before the date of sentencing.

DEFENDANT'S INITIALS: _____



VII. COSTS OF PROSECUTION AND COSTS OF SENTENCE.

36. Defendant further agrees to reimburse the United States Department of Justice, on or before the date of sentencing, in the amount of \$300 for the costs of prosecution, specifically, for the cost of the services of a statistics expert at the investigative stage.

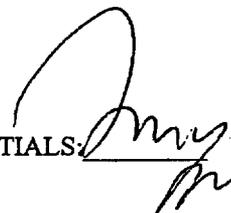
37. Defendant further agrees that, if the Court so orders, he shall pay the costs of any sentence, including but not limited to imprisonment, community confinement, home detention, probation, or supervised release.

VIII. FULL COOPERATION; TRUTHFUL INFORMATION AND TESTIMONY.

38. Defendant agrees to cooperate fully with attorneys and/or prosecutors for the Government and any other state, county, or city; all federal, state, and local investigative agents; and federal and state grand juries, as required by the United States Attorney's Office; by providing complete, truthful, and accurate information and testimony, if required, before any grand jury or tribunal, concerning any unlawful activities and/or forfeitable property of any kind of which Defendant is aware, and by assisting the Government as requested in identifying victims. Defendant also agrees to submit to any and all debriefings that the United States Attorney's Office, in its discretion, may require, by any federal, state, or local prosecutors and/or law-enforcement agencies.

39. Defendant acknowledges that, to the best of his ability, he will give complete, truthful, and accurate information and testimony at all times. Defendant will not commit any

DEFENDANT'S INITIALS:



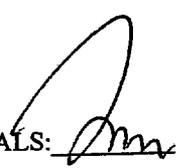
further crimes. Should Defendant commit any additional crimes or should he give false, incomplete, or misleading information or testimony, or should he willfully and knowingly incriminate any innocent person, or otherwise violate any terms or provisions of this Agreement, then this Agreement shall be void and Defendant shall thereafter be subject to prosecution for any federal-criminal violation of which the Government has knowledge.

40. It is understood by the parties that, in the event Defendant, in connection with any criminal proceeding, commits or has committed perjury, suborns perjury, or obstructs justice, nothing in this Agreement precludes the Government from prosecuting him fully for those crimes and from using any of his sworn or unsworn statements against him.

41. Defendant further understands and agrees that, in the event that Defendant has given, or does give, false, incomplete, or misleading information, or has incriminated, or does willfully and knowingly incriminate any innocent person or otherwise violate any terms or provisions of this Agreement, Defendant will have no right to vacate his plea of guilty, the statutory sentence will apply, and the Government may recommend any sentence permissible up to the statutory maximum.

42. Defendant agrees to testify upon retrial of others following appeal and reversal, or motion for a new trial should that be necessary.

43. The Government agrees to advise the Court, if requested, at the time of sentencing of the nature and extent of Defendant's cooperation to date, which Defendant agrees will continue after sentencing.

DEFENDANT'S INITIALS: 

IX. FURTHER CHARGES.

44. In consideration of the foregoing promises, the Government agrees that it will not bring additional criminal health-care fraud charges against Defendant concerning his conduct charged in the Information or based exclusively on information now known by the United States Attorney's Office for the Northern District of Ohio.

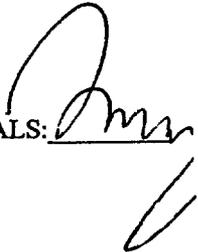
X. OTHER DISTRICTS, OTHER PROSECUTORS.

45. This Agreement is binding only upon the United States Attorney's Office for the Northern District of Ohio. It does not bind any United States Attorney outside the Northern District of Ohio; nor does it bind any state or local prosecutor.

XI. OTHER LIABILITY AND SANCTIONS; GRAND-JURY MATERIAL WAIVER.

46. In addition, this Agreement has been reached without regard to any civil or administrative actions that may now be pending or that may arise from the subject matter of the Information including any proceedings by the Internal Revenue Service relating to civil tax liability, if any, actions by the State Medical Board of Ohio including, but not limited to, the loss of Defendant's medical license, and exclusion from participation in federal, state, and private health-benefit programs including, but not limited to, Medicare, Medicaid, and the Workers' Compensation, all of which are risks that Defendant acknowledges. Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, interest, or penalties from Defendant.

47. Defendant further understands that he and his business(es) remain subject to civil-

DEFENDANT'S INITIALS: 

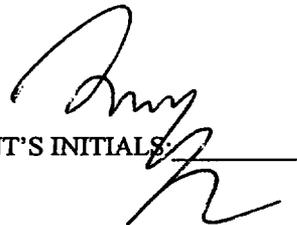
liability claims by the Government, and others.

48. Defendant understands that under Rule 6(e) of the Federal Rules of Criminal Procedure, matters occurring before the grand jury generally are not to be disclosed by attorneys for the Government. He also understands that certain records; namely patient files and business records possessed and controlled by Defendant, were subpoenaed and received by the grand jury during the course of the investigation in this case. Defendant agrees and authorizes that any and all such material may be provided to the Civil Division of the United States Department of Justice, to the Ohio Bureau of Workers' Compensation, private health-care benefit programs, the State Medical Board of Ohio, and to any other entities or individuals at the United States Attorney's discretion.

XII. WAIVER OF DEFENSES AND APPELLATE RIGHTS.

49. Defendant understands and agrees that by this Agreement, he knowingly, intelligently, voluntarily, and expressly waives any right to appeal his plea, conviction, or sentence on any ground, including any appeal right conferred by Title 18, United States Code, Section 3742. Defendant further expressly waives any right to challenge his conviction, sentence, or any other matters pertaining to this prosecution, by way of any post-conviction collateral attack, including but not limited to a proceeding pursuant to Title 28, United States Code, Section 2255 or a *coram nobis* proceeding, including issues concerning all possible

DEFENDANT'S INITIALS



motions, defenses, the voluntary nature of the plea, and the effectiveness of counsel.¹ Both parties, however, reserve the right to appeal the following:

- (a) any punishment imposed in excess of the statutory maximum, and
- (b) any punishment to the extent it constitutes an upward or downward departure from the guideline range deemed most applicable by the sentencing court.

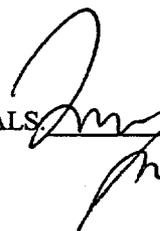
50. In the event Defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time and for any reason, the Government will be free to prosecute Defendant for all charges

¹ Defendant also agrees to waive any potential claim of conflict of interest. Defendant acknowledges that he is aware that one of his attorneys, Thomas Robenalt of the law firm of Novak, Robenalt, Pavlik & Scharf, presently represents in a related State of Ohio civil matter, Monica M. Wloszek, D.C., who pleaded guilty, and was sentenced to probation, in U.S. District Court for the Northern District of Ohio Case Number 1:00 CR 300. Defendant understands that the conduct with which Wloszek was charged and to which she pleaded guilty was similar to that with which Defendant has been charged.

Defendant is further aware that had this matter proceeded to indictment and trial, the Government intended to call Wloszek in its case-in-chief against Defendant. One of Defendant's current attorneys would then likely have been placed in the position of having to cross-examine a client of the firm, and consequently may have been required withdraw from their representation of Defendant. Defendant fully, voluntarily, knowingly, and intelligently waives any claim of conflict of interest concerning the Novak, Robenalt, Pavlik & Scharf joint representation. The Government will recommend that, under Rule 44 of the Federal Rules of Criminal Procedure, the Court inquire with respect to such joint representation, and personally advise Defendant of his right to effective assistance of counsel, including separate representation, and that the Court obtain a full, voluntary, knowing, and intelligent waiver on the record.

In any event, Defendant understands that he is also being separately represented and advised in this matter by Gerald M. Jackson of the Jackson Law Firm, which is not affiliated with the Novak, Robenalt, Pavlik & Scharf firm.

DEFENDANT'S INITIALS



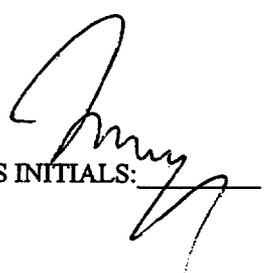
of which it has knowledge, and any charges that had been otherwise resolved because of this Plea Agreement will be automatically reinstated. In such event, Defendant waives any objections, motions, or defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional restrictions on bringing charges.

XIII. NO THREATS, PROMISES, OR OTHER REPRESENTATIONS.

51. Defendant acknowledges that his offer to plead guilty on all counts is freely and voluntarily made and that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to induce Defendant to plead guilty. This Plea Agreement sets forth the full and complete terms and conditions of the agreement between Defendant and the Government. No other terms exist. Defendant further declares that he is fully satisfied with the assistance provided by his attorney.

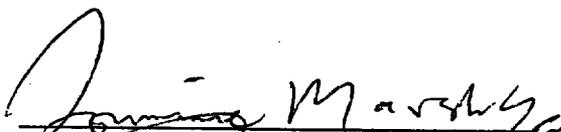
XIV. BREACH OF PLEA AGREEMENT.

52. Defendant further understands and agrees that if the United States Attorney's Office for the Northern District of Ohio determines, in its discretion, that Defendant has failed to fulfill completely each and every obligation under this Plea Agreement, the United States Attorney's Office for the Northern District of Ohio will be free from its obligations under the Plea Agreement and Defendant shall be fully subject to criminal prosecution as if this Plea

DEFENDANT'S INITIALS: 

Agreement never existed. In any such prosecution, the prosecuting authorities, whether federal, state, or local, shall be free to use against him any and all information or statements, in whatever form, that he has provided pursuant to this Plea Agreement or otherwise.

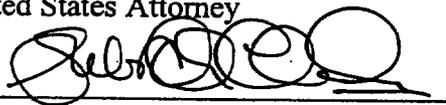
Dated: 7/11/01


LONNIE MARSH, II, M.D.
Defendant

Dated: 7/17/01


William J. Novak
Thomas D. Robenalt
Gerald M. Jackson
Attorneys for Defendant

EMILY M. SWEENEY
United States Attorney

By: 
SUBODH CHANDRA
Assistant United States Attorney
1800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2654
216.622.3810
216.522.2403 fax
subodh.chandra@usdoj.gov

APPROVED:

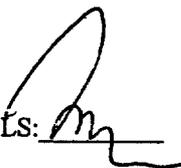
Dated: _____

UNITED STATES DISTRICT JUDGE

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By: Christine M. Huth
Deputy Clerk

DEFENDANT'S INITIALS: 

OCT 30 2001

United States District Court
Northern District of Ohio
Eastern Division

UNITED STATES OF AMERICA
V.
LONNIE MARSH, II

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 1:01CR345-01
Counsel For Defendant: William Novak/Gerald Jackson
Counsel For The United States: Subodh Chandra, Asst. U.S. Atty.
Court Reporter: Heidi Geizer

OCT 25 11:10:17
OCT 11 11:10

THE DEFENDANT:

pleaded guilty to count(s) 1 and 2 of the Information.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section Number(s)</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. § 371	Conspiracy to violate the Federal Antikickback statute	04/23/1998	1
42 U.S.C. § 1320a-7b(b)(1)	Soliciting and receiving Medicare and Medicaid kickbacks	01/08/1998	2

The defendant is sentenced as provided in pages 1 through 7 Of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

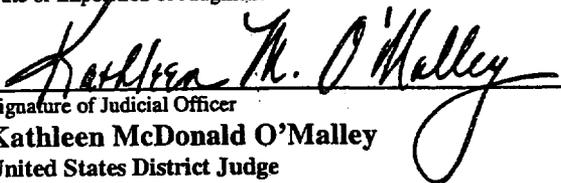
IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.:
Defendant's Date of Birth: 05-23-49
Defendant's USM Number: :

Defendant's Residence Address:
2641 Coventry Road
Shaker Heights, OH 44120

Defendant's Mailing Address:
2641 Coventry Road
Shaker Heights, OH 44120

October 10, 2001
Date of Imposition of Judgment


Signature of Judicial Officer
Kathleen McDonald O'Malley
United States District Judge

Date: October 25, 2001

DEFENDANT: MARSH, II, LONNIE
CASE NUMBER: 1:01CR345-01

PROBATION

The defendant is hereby placed on probation for a term of three (3) years.

The defendant shall report immediately to the probation department unless otherwise directed by the Court.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

Unless otherwise stated in this Judgment, the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days after being placed on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of probation in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF PROBATION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) The defendant shall support his or her dependents and meet other family responsibilities;
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) The defendant shall permit a probation officer to visit him or her at anytime at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MARSH, II, LONNIE
CASE NUMBER: 1:01CR345-01

ADDITIONAL CONDITIONS OF PROBATION

- The defendant shall participate in the Home Confinement Program with Electronic Monitoring for a period of six (6) months beginning no later than 30 calendar days from sentencing. You are required to remain in your residence unless you are given permission in advance by your Probation Officer to be elsewhere. You may leave your residence to work, to receive medical treatment and to attend religious services. You shall wear an electronic monitoring device, follow electronic monitoring procedures and submit to random drug/alcohol tests as specified by the Probation Officer. The defendant may participate in the Earned Leave Program under terms set by the Probation Officer. The defendant shall be required to pay the cost of the Home Confinement Program as directed by the Probation Officer.
- The defendant shall perform 350 hours of community service as directed by the Probation Officer.
- The defendant shall provide the Probation Officer access to any requested financial information.
- The defendant shall remain in compliance with his child support obligations.

DEFENDANT: MARSH, II, LONNIE
 CASE NUMBER: 1:01CR345-01

FINE AND/OR RESTITUTION

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	\$ 200.00	\$ 5,000.00	\$ 99,253.50

FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- The interest requirement is waived for the
 - fine and/or
 - restitution.

RESTITUTION

- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order Or Percentage of Payment
BWC Fraud Recovery Unit - Level 28, William Green Bldg. 30 W. Spring Street Columbus, OH 43215		\$ 48,392.80	
Department of Job & Family Services (Medicaid) P.O. Box 182367 Columbus, OH 43218		\$ 8,357.05	
Metrahealth, adm. for the Travelers P.O. Box 2511 Augusta, GA 30903-2511		\$ 3,060.53	

- Additional Restitution Payees.
 ** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: MARSH, II, LONNIE
CASE NUMBER: 1:01CR345-01

ADDITIONAL RESTITUTION PAYEES

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order Or Percentage of Payment
Metrahealth, adm. for the Travelers P.O. Box 1200 Lansing, IL 60438-0965		\$ 2,648.54	
Emerald Health Network 1100 Superior Avenue, 16th Floor Cleveland, OH 44114-2591		\$ 5,482.80	
Administrative Service Consultants 3301 E. Royalton Road Cleveland, OH 44147-2886		\$ 5,288.56	
Oswald Risk Management Services Company One Erieview Plaza, Ste. 610 Cleveland, OH 44114-1715		\$ 4,976.63	
U.S. Department of Labor Office of Workers Comp Program 1240 E. Ninth Street, Room 867 Cleveland, OH 44199		\$ 4,352.77	
Nationwide Medicare Operations P.O. Box 182703 Columbus, OH 43218-2703		\$ 3,536.36	
Blue Cross/Blue Shield 2060 E. Ninth Street Cleveland, OH 44115-1355		\$ 915.51	
Yellow Freight Systems P.O. Box 7932/66207 10990 Roe Avenue Overland Park, KS 66211		\$ 2,862.63	
Health Claim Services P.O. Box 273940 Boca Raton, FL 33427-3940		\$ 326.89	
Personal Physician Care 1255 Euclid Avenue, Ste. 500 Cleveland, OH 44115		\$ 1,367.01	
Step 2 Corporation 10010 Aurora-Hudson Road Streetsboro, OH 44241		\$ 237.35	

DEFENDANT: MARSH, II, LONNIE
CASE NUMBER: 1:01CR345-01

ADDITIONAL RESTITUTION PAYEES

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order Or Percentage of Payment
Veterans Services Commission 3101 Euclid Avenue, 2nd Floor Cleveland, OH 44115		\$ 1,247.70	
"Individual's name" under seal and on file with Clerk of Court		\$ 3,224.18	
"Individual's name" under seal and on file with Clerk of Court		\$ 2,920.76	
"Individual's name" under seal and on file with Clerk of Court		\$ 55.43	
Totals:		\$ 99,253.50	

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: MARSH, II, LONNIE
CASE NUMBER: 1:01CR345-01

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A Special assessment of \$ 200.00 is due in full immediately on count(s) 1 and 2 of the Information.
- B Restitution: Lump sum payment of \$ 20,000.00 due within 30 days. Payments thereafter to be paid according to a schedule to be determined by the U.S. Probation Office.
- C Fine: Payments to be made according to a schedule to be determined by the U.S. Probation Office.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.
PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

- The defendant shall pay the cost of prosecution in the amount of \$ 300.00 to the U.S. Department of Justice.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

I hereby certify that this instrument is a true and correct copy of the original on file in my office.
 Attest: Geri M. Smith, Clerk
 U.S. District Court
 Northern District of Ohio
 By: Christene M. Hath
 Deputy Clerk



State Medical Board of Ohio

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

NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

May 9, 2001

Lonnie Marsh, II, M.D.
16603 Harvard Ave
Cleveland, OH 44128

Dear Doctor Marsh:

In accordance with Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Office of the Attorney General for the State of Ohio reported that on or about March 7, 2001, in the Court of Common Pleas of Franklin County, Ohio, you pleaded guilty to three (3) felony counts of counts of Illegal Processing of Drug Documents, in violation of Section 2925.23(A), Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, 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, permanently revoke, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about March 7, 2001, in the Court of Common Pleas of Franklin County, Ohio, you pled guilty to five felonies, including one (1) felony count of Medicaid Fraud in violation of R.C. 2913.40(B), one (1) felony count of Forgery in violation of R.C. 2913.31(A), and three (3) felony counts of Illegal Processing of Drug Documents in violation of R.C. 2925.23(A).
 - (a) As set forth in Count 1 of the Information in Case No. 01 CR 03 1254, you knowingly made or caused to be made false and misleading representations to the Ohio Department of Human Services, Medicaid

Mailed 5-9-01

Division [hereinafter "Medicaid Division"] for use in obtaining more than five thousand dollars in reimbursement from the Ohio Medical Assistance Program, i.e., contrary to a written agreement with the Medicaid Division, you caused invoices to be submitted to the State of Ohio for services which were not properly reimbursable. These invoices were in fact processed and reimbursed by the State of Ohio Medicaid Program.

- (b) As set forth in Count 2 of the above-referenced Information, you knowingly, as a continuing course of conduct and with the purpose to defraud, forged the writing of another without that person's authority in that you forged the signature of Augustine Tuma, M.D., on a prescription for a controlled substance, i.e., Demerol 100 mg., quantity 80 tablets.
- (c) As set forth in Counts 3 through 5 of the above-referenced Information, you knowingly, as a continuing course of conduct, made a false statement in three prescriptions in that you forged the signature of Augustine Tuma, M.D., on prescriptions for controlled substances, i.e., MS Contin 60 mg., quantity 60 tablets; Fentanyl 100 mcg/hr., quantity 10 patches and Oxycontin 20 mg., quantity 30 tablets.

Your pleas of guilty as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, your acts, conduct, and/or omissions underlying your guilty pleas as alleged in paragraph (1) above, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.

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

LONNIE MARSH, II, M.D.

Page 3

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, 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 (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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,



Anand G. Garg, M.D.
Secretary

AGG/krt

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 5628
RETURN RECEIPT REQUESTED