



State Medical Board of Ohio

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September 14, 2005

Philip F. Myers, M.D.
4109 Blue Jay Trail
Stow, OH 44224

Dear Doctor Myers:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 14, 2005, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7002 2410 0002 3141 4779
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 7002 2410 0002 3141 4786
RETURN RECEIPT REQUESTED

Mailed 10-11-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 14, 2005, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Philip F. Myers, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

September 14, 2005

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

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PHILIP F. MYERS, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 14, 2005.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Philip F. Myers, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Myers' certificate shall be SUSPENDED for an indefinite period of time, but not less than 180 days.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Myers' certificate to practice medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Myers shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Controlled Substances Prescribing Course:** At the time he submits his application for reinstatement or restoration, Dr. Myers shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the

specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Myers submits the documentation of successful completion of the course dealing with the prescribing of controlled substances, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

3. **Professional/Personal Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Myers shall provide acceptable documentation of successful completion of a course or courses dealing with professional and personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

4. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Myers has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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

1. **Obey the Law**: Dr. Myers shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Declarations of Compliance**: Dr. Myers shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating

whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances**: Dr. Myers shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Controlled Substances Log**: Dr. Myers shall keep a log of all controlled substances he prescribes, orders, administers, or personally furnishes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Myers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Myers shall make his patient records with regard to such controlled substances available for review by an agent of the Board upon request.
 5. **Absence from Ohio**: Dr. Myers shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 6. **Violation of Terms of Probation**: If Dr. Myers violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Myers's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Myers shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Myers shall provide a copy of this Order to all employers or entities with which he contracts to provide health care

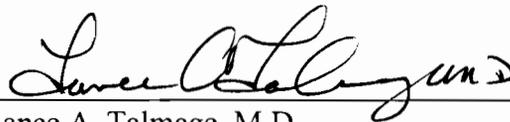
services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

F. REQUIRED REPORTING TO OTHER STATE LICENSING

AUTHORITIES: Within thirty days of the effective date of this Order, Dr. Myers shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Myers shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Myers shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

September 14, 2005

Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF PHILIP F. MYERS, M.D.**

The Matter of Philip F. Myers, M.D., was heard by Sharon W. Murphy, Hearing Examiner for the State Medical Board of Ohio, on March 22 2005.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 11, 2004, the State Medical Board of Ohio [Board] notified Philip F. Myers, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Myers had inappropriately prescribed Schedule II and IV controlled substances to a family member.

The Board further alleged that Dr. Myers' conduct constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code." Further, the Board alleged that Dr. Myers' conduct constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code." In addition, the Board advised that, pursuant to Rule 4731-11-02(F), Ohio Administrative Code, the violation of Rule 4731-11-02(D) also violates Sections 4731.22(B)(2) and (6) of the Ohio Revised Code.

Accordingly, the Board notified Dr. Myers that he was entitled to a hearing in this matter. (State's Exhibit 2A)

- B. On February 21, 2004, Lawrence J. Cook, Esq., submitted a written hearing request on behalf of Dr. Myers. (State's Exhibit 2B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Tara L. Berrien, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Philip F. Myers, M.D., as upon cross-examination
2. Jay Williamson, M.D.
3. Thomas Miksch

B. Presented by the Respondent

1. Philip F. Myers, M.D.
2. John Maskarinec, D.O.

II. Exhibits Examined

A. State's Exhibits

- * 1. State's Exhibit 1A: Patient Key.
- * 2. State's Exhibits 1B and 1C: Prescriptions written for Patient 1.
- * 3. State's Exhibits 1D through 1J: Medical records for Patient 1 as maintained by various providers of Patient 1's medical care.
4. State's Exhibits 2A through 2CC: Procedural exhibits.
- * 5. State's Exhibit 3: Transcript of an interview of Dr. Myers by a Compliance Agent of the Ohio Board of Pharmacy.
- * 6. State's Exhibit 4: Transcript of an interview of Patient 1 and Dr. Myers by a Compliance Agent of the Ohio Board of Pharmacy.
7. State's Exhibits 5A through 5C: Calendars for 2000, 2001, and 2002.
8. State's Exhibit 6: State's Motion to File Exhibit and Close Hearing Record, with attached chart pertaining to prescriptions written for Patient 1.

B. Respondent's Exhibits

- * 1. Respondent's Exhibit A: Copy of a January 27, 2004, letter to the Board from Robin L. Znidarsic, M.D., Primary Care Associates of Northeast Ohio, Inc., Stow/Hudson and Kent, Ohio.

2. Respondent's Exhibit B: Copy of an August 25, 2004, letter to the Board from David L. Hoff, M.D., Vice-President of Medical Affairs, Robinson Memorial Hospital, Ravenna, Ohio.
3. Respondent's Exhibit C: Copy of an August 27, 2004, letter to the Board from Carol Martin, N.P., Family Nurse Practitioner, Ulrich Professional Group, Kent, Ohio.

* Note: Exhibits marked with an asterisk [*] have been sealed to protect patient confidentiality.

PROCEDURAL MATTERS

At hearing, the parties requested additional time to review a chart listing medications prescribed to Patient 1 by Philip F. Myers, M.D., during 2000, 2001, and 2002. (Hearing Transcript at 196) On April 18, 2005, the State filed The State's Motion to File Exhibit and Close Hearing Record. In its motion, the State noted that Counsel for the State had conferred with Counsel for the Respondent in preparing the exhibit. Moreover, the Respondent did not object to the State's motion. Accordingly, the motion and chart were admitted to the record as State's Exhibit 6, and the hearing record closed on April 18, 2005.

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.

Testimony of Philip F. Myers, M.D.

1. Philip F. Myers, M.D., received a medical degree in 1974 from The Ohio State University College of Medicine. Dr. Myers then participated in a residency at Akron General Medical Center in Akron, Ohio. After engaging in private practice as a family physician for one year in Salem, Ohio, Dr. Myers accepted a position at the Akron General Medical Center residency program teaching fourth year medical students of the Northeast Ohio University College of Medicine [NEOUCOM]. He left that position in 1985. From 1985 to 1988, Dr. Myers practiced with Blue Cross/Blue Shield Healthguard HMO in the Akron area. From 1988 through 1992, he practiced family medicine in Fairlawn, Ohio. From 1992 through 2002, Dr. Myers worked as a salaried physician at Goodyear, caring for employees and retirees. Finally, in September 2002, Dr. Myers accepted a position at the Ulrich Professional Group, a Robinson Health Affiliate, in Kent, Ohio, where he currently practices. (Hearing Transcript [Tr.] at 9-11, 150; Respondent's Exhibit [Resp. Ex] C)

2. Patient 1 is a female member of Dr. Myers' family. Dr. Myers testified that Patient 1 had been from suffering chronic back and pelvic pain for many years. He added that, in 1989 or 1990, he had referred Patient 1 to Jay Williamson M.D., whom he had known since working at Akron General Medical Center. Dr. Williamson became Patient 1's primary care physician. (Tr. at 15-19, 159-160; State's Exhibit [St. Ex.] 1E)

Dr. Myers testified that he generally accompanied Patient 1 to her office visits with CPEP Dr. Williamson. Dr. Myers also spoke with Dr. Williamson by telephone, both at Dr. Williamson's office and at his home, regarding Patient 1's care. Dr. Myers testified that these phone calls were generally requests for pain medication for Patient 1. He stated that, at that time, Dr. Williamson had been prescribing Percocet 5 mg for pain and Valium 5 mg for spasm. (Tr. at 20-22, 154-155) Dr. Williamson also sent Patient 1 for evaluations by various medical and surgical specialists and by physical therapists. (Tr. at 27-28)

In a later evaluation of Patient 1, James P. Klejka, M.D., a practitioner of physical medicine and rehabilitation, wrote as follows:

[Patient 1] is a 54-year-old, right-handed, white female with chronic left-sided back pain with radiation into the left lower limb intermittently for approximately the last 17 years. She describes the pain as a spasm-like pain, excruciating to severe at times and causing her to cry from the pain. She had severe endometriosis and underwent laparoscopy being noted to have endometriosis on the neurovascular structures on the left side. She underwent a hysterectomy, which helped her pelvic pain but did not relieve her left sided back and leg pain. * * * Her pain is typically made worse with lifting or bending. It is made better with hot soaks, massage therapy, and taking Percocet or Valium.

(St. Ex. 1E at 332)

3. Dr. Myers testified that he had been aware that, in 2000, Dr. Williamson had been prescribing Patient 1 five to six Percocet per day. Therefore, Dr. Williamson gave Patient 1 a prescription for 100 Percocet every twenty days. Dr. Myers was also aware that Dr. Williamson had been trying to decrease the amount of Percocet Patient 1 took daily to four or five tablets. Dr. Myers also knew that Dr. Williamson would not have expected physicians outside of Dr. Williamson's practice to also prescribe controlled substances for Patient 1. (Tr. at 25, 38-40)

Dr. Myers stated that, in 2000, during one of the 20-day periods in which Patient 1 was supposed to be taking five Percocet per day, she had taken six per day and ran out of Percocet early. Dr. Myers called Dr. Williamson's office for an early refill, but was told that Patient 1 had an appointment the following week and should have enough medication to last until then. Dr. Myers testified that he had written a prescription for enough Percocet to last until Patient 1's next appointment and had told Dr. Williamson that he had done so. Dr. Myers stated that Dr. Williamson had said, "OK," and then renewed the medication.

Dr. Myers added that he had also told Dr. Williamson that he had written a supplemental prescription on two or three other occasions. (Tr. at 38-40)

4. In fact, Dr. Myers had continued writing prescriptions to supplement the controlled substances that Dr. Williamson was prescribing for Patient 1. Dr. Myers continued to write prescriptions for controlled substances for Patient 1 through November 2002. (Tr. at 31-32) Dr. Myers wrote a total of 73 prescriptions for controlled substances for Patient 1, as follows:

	Date	Quantity	Drug	Schedule
1	01/02/00	20	Percocet 5 mg	II
2	02/04/00	20	Valium 2 mg	IV
3	02/13/00	20	Percocet 5 mg	II
4	03/04/00	24	Percocet 5 mg	II
5	03/08/00	6	Percocet 5 mg	II
6	03/19/00	20	Valium 2 mg	IV
7	03/25/00	20	Percocet 5 mg	II
8	04/14/00	30	Percocet 5 mg	II
9	04/18/00	12	Percocet 5 mg	II
10	04/20/00	40	Valium 2 mg	IV
11	05/04/00	24	Percocet 5 mg	II
12	05/07/00	12	Percocet 5 mg	II
13	05/07/00	20	Valium 2 mg	IV
14	09/03/00	12	Percocet 5 mg	II
15	10/13/00	20	Percocet 5 mg	II
16	11/01/00	30	Percocet 5 mg	II
17	11/20/00	12	Percocet 5 mg	II
18	12/31/00	30	Percocet 5 mg	II
19	12/31/00	30	Valium 2 mg	IV
20	01/21/01	32	Percocet 5 mg	II
21	02/12/01	15	Percocet 5 mg	II
22	03/28/01	12	Percocet 5 mg	II
23	04/16/01	20	Percocet 5 mg	II
24	05/08/01	24	Percocet 5 mg	II
25	05/27/01	30	Percocet 5 mg	II
26	06/13/01	12	Percocet 5 mg	II
27	07/04/01	25	Percocet 5 mg	II
28	07/22/01	25	Percocet 5 mg	II
29	07/25/01	10	Percocet 5 mg	II
30	08/11/01	10	Percocet 5 mg	II
31	08/12/01	25	Percocet 5 mg	II
32	08/14/01	20	Valium 2 mg	IV
33	08/30/01	25	Percocet 5 mg	II
34	09/03/01	12	Percocet 5 mg	II

35	09/04/01	12	Percocet 5 mg	II
36	09/18/01	12	Percocet 5 mg	II
37	09/20/01	25	Percocet 5 mg	II
38	09/23/01	20	Percocet 5 mg	II
39	09/25/01	12	Percocet 5 mg	II
40	10/07/01	25	Percocet 5 mg	II
41	10/11/01	12	Percocet 5 mg	II
42	10/26/01	15	Percocet 5 mg	II
43	10/28/01	24	Percocet 5 mg	II
44	11/01/01	12	Percocet 5 mg	II
45	11/02/01	20	Percocet 5 mg	II
46	11/06/01	12	Percocet 5 mg	II
47	11/22/01	20	Percocet 5 mg	II
48	11/25/01	24	Percocet 5 mg	II
49	12/13/01	16	Percocet 5 mg	II
50	12/29/01	24	Percocet 5 mg	II
51	01/03/02	12	Percocet 5 mg	II
52	02/11/02	20	Percocet 5 mg	II
53	02/19/02	12	Valium 5 mg	IV
54	02/25/02	20	Valium 5 mg	IV
55	03/03/02	20	Percocet 5 mg	II
56	03/22/02	24	Percocet 5 mg	II
57	03/22/02	20	Valium 5 mg	IV
58	04/10/02	24	Percocet 5 mg	II
59	04/13/02	20	Percocet 5 mg	II
60	04/30/02	24	Percocet 5 mg	II
61	05/15/02	20	Percocet 5 mg	II
62	05/17/02	30	Percocet 5 mg	II
63	06/05/02	30	Percocet 5 mg	II
64	06/25/02	20	Percocet 5 mg	II
65	07/16/02	30	Percocet 5 mg	II
66	07/20/02	24	Percocet 5 mg	II
67	08/02/02	24	Percocet 5 mg	II
68	08/05/02	24	Percocet 5 mg	II
69	08/10/02	12	Percocet 5 mg	II
70	09/29/02	12	Percocet 5 mg.	II
71	10/14/02	30	Percocet 5 mg	II
72	10/24/02	42	Percocet 5 mg	II
73	11/10/02	14	Percocet 5 mg	II

(St. Ex. 1B; St. Ex. 1C; St. Ex. 6; Tr. at 104-105) Dr. Myers testified that, on most of the prescriptions he had written for Patient 1, he had added the words, "Emergency, PCP [primary care physician] unavailable." (Tr. at 37-38)

Dr. Myers acknowledged that he had not kept medical records regarding the prescriptions he had written for Patient 1. Moreover, Dr. Myers did not keep a list of the medications he prescribed. (Tr. at 40, 42)

5. Initially, Dr. Myers testified that, between January 2000 and November 2002, he had used six to seven different pharmacies to fill prescriptions written for Patient 1. (Tr. at 44) Later, however, Dr. Myers acknowledged that he had used a total of sixteen pharmacies to fill prescriptions he had written for Patient 1. Additionally, Dr. Myers explained that his family had moved several times during that time period. (Tr. at 160-161) Later, however, Dr. Myers acknowledged that his family had moved only once during that time period. (Tr. at 176)
6. Dr. Myers testified that, by late 2002, Patient 1 had been taking eight Percocet per day. Dr. Myers also testified that there had been numerous other physicians who prescribed controlled substances, including Percocet, for Patient 1 on occasion during this period. (Tr. at 30-31, 52-60)
7. Dr. Myers testified that he had had repeated conversations with Dr. Williamson during which he had told Dr. Williamson that the attempt to taper the amount of Percocet Patient 1 was taking was not working. (Tr. at 31) Dr. Myers testified that he had been concerned that Dr. Williamson's care was not producing positive results for Patient 1. Dr. Myers explained that:

I saw her increasingly limited in what she could do over this period of time because of the pain she was in. I saw her quit driving when she used to drive. I saw her essentially become an invalid over this period of time. This is a person who previously worked, managed a house and two children, did the shopping and the cooking, and does none of that now, and has not for several years. So, no, I didn't see it producing positive results.

(Tr. at 152)

8. Dr. Myers testified that one of the reasons why he had prescribed these medications for Patient 1 had been that he was afraid she would go through withdrawal or have seizures because she had run out of medication. (Tr. at 38)
9. Dr. Myers testified that he has never had a concern that Patient 1 was addicted to controlled substances. He stated,

I believe there's no question of chronic pain, and the cause of it hasn't yet been completely discerned. Xanax is as addictive a drug as I've ever run across, and with adjunctive therapy, with the psychiatrist, she got off of that without a great deal of trouble. It took some time tapering it, but I don't think she has an addictive personality. I think she's in chronic pain.

I've observed a lot of people in pain in 30 years, and she's as miserable as anybody I've seen.

(Tr. at 169)

10. Dr. Myers testified that Patient 1 had kept a log of all the medications she took. He added that she had discussed her log with Dr. Williamson. Nevertheless, Dr. Myers acknowledged that Patient 1 had not discussed the medications that she had received from Dr. Myers. Finally, Dr. Myers acknowledged that he had been aware that Patient 1 had not told Dr. Williamson about the medications Dr. Myers prescribed for her. (Tr. at 41-42)
11. Dr. Myers acknowledged that he had continued prescribing controlled substances for Patient 1, despite the fact that he had been warned by pharmacists that he should not prescribe for a family member, and after pharmacists had refused to fill prescriptions he had written for that family member. (Tr. at 45)
12. Dr. Myers testified that, in August 2002, Dr. Williamson had written a letter to Patient 1 and Dr. Myers stating that he had discovered Dr. Myers' prescribing for Patient 1. Dr. Williamson terminated Patient 1 from his practice. (Tr. at 45-46)
13. Dr. Myers testified that Patient 1 is currently seeing another physician. Patient 1 is taking OxyContin 40 mg three times a day. In addition, she takes Percocet 5 mg six per day for breakthrough pain on a fairly regular basis. She also takes Valium 5 mg two to three times per day and Fioricet one or two times per day. In addition, Patient 1 takes Neurontin, Zoloft, and other non-controlled medications. (Tr. at 164-165; Resp. Ex. A)

Testimony of Jay Williamson, M.D.

14. Jay Williamson, M.D., testified at hearing on behalf of the State. Dr. Williamson testified that he had received a medical degree in 1973 from The Ohio State University College of Medicine. In 1976, Dr. Williamson completed a residency in family medicine at the Akron City Hospital, now known as Summa Health System. Dr. Williamson is employed by the Northeastern Ohio University College of Medicine and the Family Practice Center of Akron. He is board certified in family medicine. (Tr. at 63-64)

Dr. Williamson testified that there are several physicians in his practice. The office hours are from 8:30 a.m. until 3:30 or 4:00 p.m., Monday through Friday. Dr. Williamson testified that the practice has a physician on call 24 hours a day, seven days a week. This on-call schedule was in effect during the period of 2000 through 2002. (Tr. at 65-66)

15. Dr. Williamson testified that he has known Dr. Myers since early in Dr. Myers' career. Dr. Williamson further testified that he is familiar with Dr. Myers through

Dr. Williamson's care of Patient 1. Dr. Williamson testified that Dr. Myers has a good reputation in the community and is seen as a quality family practitioner. (Tr. at 67-68, 87)

16. Dr. Williamson testified that he started treating Patient 1 in March 1991. He treated her for panic disorder and pain. Dr. Williamson noted that Patient 1 had a history of endometriosis and she continued to have pain from that. Overall, Patient 1 complained of back pain, pelvic pain, and sinus pain. Dr. Williamson testified that it had appeared at that time that her pain was chronic. When Patient 1 started seeing Dr. Williamson, she had already been taking Percodan and Xanax for several years. (Tr. at 68-69, 89)

Dr. Williamson explained that Percodan and Xanax are medications that can not be stopped abruptly because of the possibility of withdrawal. Dr. Williamson testified that he had been able to wean Patient 1 from the use of Xanax for her panic disorder by 1996, but later started prescribing Valium due to muscle spasms. Moreover, Dr. Williamson eventually started prescribing Percocet instead of Percodan. (Tr. at 69-70)

Dr. Williamson testified that he had referred Patient 1 to other specialists in an attempt to wean her from her pain medication. Dr. Williamson testified that he had also tried to send her to pain clinics, but that she had not been receptive to that suggestion. Eventually, Patient 1 attended one pain center at Akron Children's Hospital. Dr. Williamson testified that he had tried everything he knew to help her deal with the pain and to try to wean her from her controlled substance medications. (Tr. at 74-75, 87-89)

17. Dr. Williamson testified that his office has strict policies regarding the prescription of controlled substances. By 2000, the office had instituted flow sheets to track the use of such medications. By using the flow sheets, any physician in the office could determine when a patient's medications were due to be refilled. (Tr. at 72, 95-96)

Dr. Williamson testified that he had had a verbal agreement with Patient 1. He stated that they would discuss and agree upon the number of pain pills that Patient 1 would use over the next twenty-day period. Then, Dr. Williamson would write a prescription for that number of pills and he would advise Patient 1 of the date upon which she could receive her next prescription. (See, for example, St. Ex. E at 240) (Tr. at 75-77)

In addition, Patient 1 kept a detailed log of the controlled substances she took. Patient 1 brought the log to each visit and discussed it with Dr. Williamson. It was by reviewing the log with Patient 1 that Dr. Williamson would determine the appropriate number of pills to prescribe for the next twenty-day period. (Tr. at 90-92)

Dr. Williamson testified that both Patient 1 and Dr. Myers had been familiar with and understood Patient 1's controlled substance schedule. Moreover, Dr. Williamson stated that he believed Dr. Myers had been aware that Dr. Williamson did not want Patient 1 to have any additional narcotic medication. (Tr. at 75-77, 83-84)

Dr. Williamson testified that Dr. Myers had, on a number of occasions, called the office or called Dr. Williamson at home to obtain refills of Percocet for Patient 1. Dr. Williamson testified that Dr. Myers also had access to Dr. Williamson through the hospital pager system. (Tr. at 72-74, 78-80) Dr. Williamson testified that, early in his treatment of Patient 1, he had been willing on occasion to refill prescriptions early. By 2000, however, he was much more strict with Patient 1's medications. (Tr. at 96-98, 99-100)

Dr. Williamson testified that he had been aware that Patient 1 was having difficulty tapering her use of Percocet. He stated that, routinely, Patient 1 had been reluctant to reduce the dose or to try an alternative therapy. Dr. Williamson explained that this reluctance had caused a constant tension between Patient 1 and him (Tr. at 80-81)

18. Dr. Williamson stated that, in August 2002, he had received a telephone call from a pharmacist. The pharmacist advised Dr. Williamson that Dr. Myers had written a number of prescriptions for Patient 1. After receiving the phone call from the pharmacist, Dr. Williamson sent Patient 1 a termination letter addressed to Patient 1 and Dr. Myers. Dr. Williamson also called Dr. Myers and confronted him with the information provided by the pharmacist. Dr. Williamson told Dr. Myers that his conduct had violated the doctor-patient relationship and trust. Dr. Williamson testified that he had given Dr. Myers and Patient 1 thirty days to find another physician, in conformance with Dr. Williamson's office policy. (Tr. at 84-85)

Thereafter, during November 2002, Thomas Miksch, a compliance agent with the Ohio State Board of Pharmacy, contacted Dr. Williamson. Mr. Miksch advised Dr. Williamson that Dr. Myers had written several prescriptions for Percocet for Patient 1. Moreover, Mr. Miksch showed Dr. Williamson the prescriptions written by Dr. Myers. Dr. Williamson testified that he had not seen any of those prescriptions previously. Dr. Williamson added that he had never given Dr. Myers any reason to believe that it was acceptable for him to supplement what Dr. Williamson had been prescribing to Patient 1. (Tr. at 82-84)

Dr. Williamson further testified that he had had no idea that other physicians were prescribing controlled substances for Patient 1. Dr. Williamson testified that, if he had known that Patient 1 was receiving medication from other physicians, he would have terminated her from the practice. (Tr. at 84)

Testimony of Thomas Miksch

19. Thomas Miksch, a compliance agent with the Ohio State Board of Pharmacy, testified at hearing on behalf of the State. Mr. Miksch testified that he had been involved in the investigation of Dr. Myers. Mr. Miksch testified that Dr. Myers had been cooperative in the investigation. (Tr. at 105-107, 121)

20. Mr. Miksch testified that, in early August 2002, he had received a telephone call from a pharmacist in Stow, Ohio. The pharmacist advised Mr. Miksch that Dr. Myers had presented to him a prescription he had written for Patient 1. The pharmacist had been aware that Patient 1 was a close family member of Dr. Myers. Moreover, the pharmacist advised Dr. Myers that it was inappropriate for him to prescribe controlled substances to a family member. The pharmacist further reported that he had explained the code provisions to Dr. Myers that prohibit prescribing to a family member. (Tr. at 105, 111-112)

The pharmacist further advised Mr. Miksch that Dr. Myers had stated that the prescription had been written in an emergency situation; therefore, it was appropriate for the pharmacist to fill the prescription. The pharmacist agreed to fill the prescription but cautioned Dr. Myers that he must notify Patient 1's primary care physician as soon as possible. Nevertheless, the pharmacist later learned that Dr. Myers had not contacted Patient 1's primary care physician. (Tr. at 111-112)

Mr. Miksch further testified that he had interviewed Dr. Myers on January 16, 2003. (Tr. at 113; St. Ex. 3) In this interview, Dr. Myers admitted writing some prescriptions for Patient 1, but said he considered them to be emergency prescriptions. When asked the nature of the emergency, Dr. Myers responded that, if Patient 1 had run out of medication, she might have experienced withdrawal, and possibly seizures. In addition, Dr. Myers said that Patient 1 had been in a lot of pain due to a bladder infection, a back condition, and endometriosis. (Tr. at 113; St. Ex. 3 at 6)

Mr. Miksch testified that, when he asked Dr. Myers how many prescriptions he had written for Patient 1, Dr. Myers had said he thought it was "about 25." Mr. Miksch later learned that actual number was more than seventy. Mr. Miksch further stated that Dr. Myers had admitted that he had not kept medical records for Patient 1; nor had he kept a list of his prescriptions for Patient 1. Further, Dr. Myers admitted that he had been aware of the rule regarding the prohibition against prescribing for a family member except in the case of an emergency. (Tr. at 113-116, 119; St. Ex. 3 at 1, 4-5; St. Ex. 6)

In addition, Mr. Miksch testified that Dr. Myers had told him that he had not written a prescription for Patient 1 since June or July 2002. Nevertheless, Mr. Miksch stated that Dr. Myers had continued to write such prescriptions through November 2002. (Tr. at 114; St. Ex. 3 at 4; St. Ex. 6)

Dr. Miksch further testified that he had interviewed approximately eight other pharmacists who reported that they had refused to fill prescriptions written by Dr. Myers for Patient 1. In addition, these pharmacists had explained to Dr. Myers that he was prohibited from writing prescriptions for family members except in an emergency. Furthermore, Mr. Miksch testified that Dr. Myers had used sixteen different pharmacies when submitting prescriptions he had written for Patient 1. (Tr. at 116-117, 120, 124-127; St. Ex. 6)

Finally, Mr. Miksch testified that, during his interview of Dr. Myers, Dr. Myers admitted that, “he understood that once it got to the point where issuing prescriptions became repetitive, he could see where it was no longer an emergency.” (Tr. at 118)

Testimony of John K. Maskarinec, D.O.

21. John K. Maskarinec, D.O., testified at hearing on behalf of Dr. Myers. Dr. Maskarinec testified that he had received a degree in osteopathic medicine in Kansas City, Missouri. He completed an internship at South Pointe Hospital in Cleveland, Ohio, and two years of an obstetrics and gynecology residency in Allentown, Pennsylvania. In 1994, after practicing for several years, Dr. Maskarinec completed a family practice residency at South Pointe Hospital in Cleveland. Since 1994, Dr. Maskarinec has practiced with the Ulrich Professional Group, the same group that employs Dr. Myers. (Tr. at 136-140, 141)

Dr. Maskarinec testified that Dr. Myers has a very good reputation in the medical community. Dr. Maskarinec noted that, when Dr. Myers relocated to the Ulrich office, some of his former patients had chosen to drive an extra twenty to thirty miles just to continue treating with him. Dr. Maskarinec concluded that such patient loyalty is “fairly impressive.” (Tr. at 140, 146)

Dr. Maskarinec recalled that Dr. Myers had asked him to prescribe pain medication for Patient 1 when Dr. Myers first joined the practice in September 2002. Dr. Maskarinec prescribed Percocet and provided a referral to a pain-management specialist. Dr. Maskarinec acknowledged that he had not examined Patient 1; nor had he kept any patient records for Patient 1. (Tr. at 142-145, 150)

Dr. Maskarinec concluded that Dr. Myers’ conduct in prescribing for Patient 1 “is totally out of his character” and that it was not the Dr. Myers he knew. (Tr. at 145)

Additional Testimony of Dr. Myers

22. Dr. Myers acknowledged that, during his conversation with Mr. Miksch, he had stated that the last prescription he had written for Patient 1 had been in July or August of 2002. He further acknowledged that he had written a prescription as late as November 2002. In addition, Dr. Myers acknowledged that he had misrepresented the number of prescriptions he had prescribed to Patient 1 in his interview with Mr. Miksch. Dr. Myers testified that he had not realized how long he had been writing prescriptions for Patient 1. (Tr. at 33-34, 151)

In addition, Dr. Myers acknowledged that he had told Mr. Miksch that he had written most of the prescriptions on weekends. Nevertheless, upon review of the prescriptions written by Dr. Myers for Patient 1, Dr. Myers admitted that he had written approximately half of the prescriptions on non-weekend days. (Tr. at 34-37; St. Exs. 5A through 5C; St. Ex. 6)

23. Dr. Myers testified that it is his understanding that physicians are not to prescribe to family members except in an emergency situation. Dr. Myers described an emergency situation as follows:

[A] painful condition that comes on at – in an hour when you cannot reach the primary care physician or the patient’s physician. The – basically you try to reach the primary care physician, the patient’s physician initially. If you cannot do that for a condition whereby a controlled substance is appropriate, that’s an emergency.

(Tr. at 13) Dr. Myers testified that he had considered it to be an emergency when Patient 1 ran out of her medications, despite the fact that a physician in Dr. Williamson’s practice was always on call, because “it had not occurred to [Dr. Myers] to impose on [Dr. Williamson] at home.” (Tr. at 50-51)

24. Dr. Myers further testified that the Board has enacted a rule prohibiting prescribing for family members except for an emergency for the following reasons:

The first reason is the Board wants to protect physicians from the pressure that family members are in a position to exert on a family member who is a physician. And also to protect the patient, the family member, from prescriptions that may delay appropriate diagnostics or referrals or therapies.

(Tr. at 14)

Dr. Myers acknowledged that his conduct had been inappropriate. Dr. Myers explained:

I compromised my own integrity; I compromised Dr. Williamson’s care; I delayed my wife getting to the specialists who would find out better what the exact cause of her problem is and deal with it. I put my license in jeopardy, which is my livelihood and that’s how I take care of my wife and my daughter.

The thing that bothers me the most is the fact that * * * keeping her more comfortable apparently kept Dr. Williamson from realizing the degree of her misery and involving more appropriate specialists to find out what the cause of the problem was.

(Tr. at 50)

25. Dr. Myers submitted letters written in his support. (Resp. Exs. A through C)

FINDINGS OF FACT

1. Philip F. Myers, M.D., prescribed Schedule II and IV controlled substances to Patient 1, a family member, as follows:

	Date	Quantity	Drug	Schedule
1	01/02/00	20	Percocet 5 mg	II
2	02/04/00	20	Valium 2 mg	IV
3	02/13/00	20	Percocet 5 mg	II
4	03/04/00	24	Percocet 5 mg	II
5	03/08/00	6	Percocet 5 mg	II
6	03/19/00	20	Valium 2 mg	IV
7	03/25/00	20	Percocet 5 mg	II
8	04/14/00	30	Percocet 5 mg	II
9	04/18/00	12	Percocet 5 mg	II
10	04/20/00	40	Valium 2 mg	IV
11	05/04/00	24	Percocet 5 mg	II
12	05/07/00	12	Percocet 5 mg	II
13	05/07/00	20	Valium 2 mg	IV
14	09/03/00	12	Percocet 5 mg	II
15	10/13/00	20	Percocet 5 mg	II
16	11/01/00	30	Percocet 5 mg	II
17	11/20/00	12	Percocet 5 mg	II
18	12/31/00	30	Percocet 5 mg	II
19	12/31/00	30	Valium 2 mg	IV
20	01/21/01	32	Percocet 5 mg	II
21	02/12/01	15	Percocet 5 mg	II
22	03/28/01	12	Percocet 5 mg	II
23	04/16/01	20	Percocet 5 mg	II
24	05/08/01	24	Percocet 5 mg	II
25	05/27/01	30	Percocet 5 mg	II
26	06/13/01	12	Percocet 5 mg	II
27	07/04/01	25	Percocet 5 mg	II
28	07/22/01	25	Percocet 5 mg	II
29	07/25/01	10	Percocet 5 mg	II
30	08/11/01	10	Percocet 5 mg	II
31	08/12/01	25	Percocet 5 mg	II
32	08/14/01	20	Valium 2 mg	IV
33	08/30/01	25	Percocet 5 mg	II
34	09/03/01	12	Percocet 5 mg	II
35	09/04/01	12	Percocet 5 mg	II
36	09/18/01	12	Percocet 5 mg	II
37	09/20/01	25	Percocet 5 mg	II

38	09/23/01	20	Percocet 5 mg	II
39	09/25/01	12	Percocet 5 mg	II
40	10/07/01	25	Percocet 5 mg	II
41	10/11/01	12	Percocet 5 mg	II
42	10/26/01	15	Percocet 5 mg	II
43	10/28/01	24	Percocet 5 mg	II
44	11/01/01	12	Percocet 5 mg	II
45	11/02/01	20	Percocet 5 mg	II
46	11/06/01	12	Percocet 5 mg	II
47	11/22/01	20	Percocet 5 mg	II
48	11/25/01	24	Percocet 5 mg	II
49	12/13/01	16	Percocet 5 mg	II
50	12/29/01	24	Percocet 5 mg	II
51	01/03/02	12	Percocet 5 mg	II
52	02/11/02	20	Percocet 5 mg	II
53	02/19/02	12	Valium 5 mg	IV
54	02/25/02	20	Valium 5 mg	IV
55	03/03/02	20	Percocet 5 mg	II
56	03/22/02	24	Percocet 5 mg	II
57	03/22/02	20	Valium 5 mg	IV
58	04/10/02	24	Percocet 5 mg	II
59	04/13/02	20	Percocet 5 mg	II
60	04/30/02	24	Percocet 5 mg	II
61	05/15/02	20	Percocet 5 mg	II
62	05/17/02	30	Percocet 5 mg	II
63	06/05/02	30	Percocet 5 mg	II
64	06/25/02	20	Percocet 5 mg	II
65	07/16/02	30	Percocet 5 mg	II
66	07/20/02	24	Percocet 5 mg	II
67	08/02/02	24	Percocet 5 mg	II
68	08/05/02	24	Percocet 5 mg	II
69	08/10/02	12	Percocet 5 mg	II
70	09/29/02	12	Percocet 5 mg.	II
71	10/14/02	30	Percocet 5 mg	II
72	10/24/02	42	Percocet 5 mg	II
73	11/10/02	14	Percocet 5 mg	II

2. Dr. Myers wrote the words “emergency, PCP [primary care physician] unavailable” on the majority of the above-listed prescriptions but, in fact, Patient 1’s primary-care physician or a covering physician was available at all times during which Dr. Myers had written the prescriptions.
3. Dr. Myers failed to maintain medical records documenting his treatment of Patient 1.

CONCLUSION OF LAW

1. The conduct of Philip F. Myers, M.D., as set forth in the Findings of Fact, constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code.
2. Dr. Myers’ conduct, as set forth in the Findings of Fact, constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Moreover, pursuant to Rule 4731-11-02(F), Ohio Administrative Code, the violation of Rule 4731-11-02(D) also violates Sections 4731.22(B)(2) and (6) of the Ohio Revised Code.

* * * * *

Dr. Myers wrote prescriptions for Patient 1, a family member, in direct contravention of the Board’s rule that prohibits such conduct. Moreover, Dr. Myers wrote these prescriptions knowing that Patient 1 was receiving prescriptions from her primary care physician and other physicians. In addition, Dr. Myers failed to report his prescribing to Patient 1’s primary care physician, thereby causing the primary care physician to believe that Patient 1 was being treated appropriately. Furthermore, Dr. Myers failed to keep records regarding his diagnosis and treatment of the patient’s problems. As a result, Dr. Myers had no idea how many prescriptions he had written for Patient 1. Finally, Dr. Myers engaged in repeated deception. He repeatedly represented to pharmacies that an “emergency” existed when, in fact, he knew there was no genuine emergency. He also assisted Patient 1 in deceiving her primary care physician.

On the other hand, Dr. Myers’ inappropriate treatment was limited to the care of one patient. Moreover, his conduct was induced by the suffering of a close family member. In addition, there is no evidence that Dr. Myers was motivated by greed when he engaged in this inappropriate conduct. Finally, there is little chance that Dr. Myers will repeat this conduct in the future.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Philip F. Myers, M.D., to practice medicine and surgery in the State of Ohio shall be

PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Myers' certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.

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

1. **Application for Reinstatement or Restoration:** Dr. Myers shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Controlled Substances Prescribing Course:** At the time he submits his application for reinstatement or restoration, Dr. Myers shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Myers submits the documentation of successful completion of the course dealing with the prescribing of controlled substances, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

3. **Professional/Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Myers shall provide acceptable documentation of successful completion of a course or courses dealing with professional and personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Myers has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board

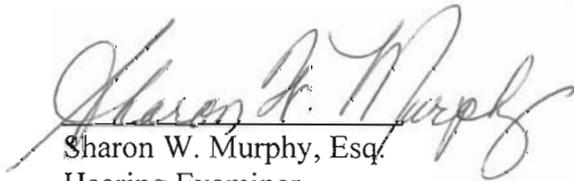
may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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

1. **Obey the Law:** Dr. Myers shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Declarations of Compliance:** Dr. Myers shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Personal Appearances:** Dr. Myers shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Controlled Substances Log:** Dr. Myers shall keep a log of all controlled substances he prescribes, orders, administers, or personally furnishes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Myers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Myers shall make his patient records with regard to such controlled substances available for review by an agent of the Board upon request.
5. **Absence from Ohio:** Dr. Myers shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
6. **Violation of Terms of Probation:** If Dr. Myers violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Myers's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Myers shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Myers shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Myers shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Myers shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Myers shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 14, 2005

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: David Andrew Dougherty, D.O.; John Paul Hanyak, M.D.; and Philip F. Myers, M.D. A roll call was taken:

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

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

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

Dr. Steinbergh - aye
Dr. Davidson - aye

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

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

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

.....
PHILIP F. MYERS, M.D.

Dr. Davidson directed the Board's attention to the matter of Dr. Myers. She advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Dr. Myers. Five minutes would be allowed for that address.

Dr. Myers was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that they hope that the Board has had the chance to seriously consider the objections that were filed, and has had a chance to look at the totality of the record and the Report and Recommendation, as well. Mr. Byers stated that he hopes that Board members will realize that this case is distinct from many other family prescribing cases. The distinctions of Dr. Myers' situation from many of the others that have appeared before the Board are the fact that there were no criminal charges against any party involved and the patient who was involved has never been treated or diagnosed as a substance abuser or as suffering from any kind of impairment. This is not one of those cases where there was family prescribing going on to feed a habit. There are simply no issues of addiction in this record on behalf of the patient that's involved.

Mr. Byers stated that Dr. Myers also learned the previous week that, if he suffers a license suspension, his group's insurance plans prohibit him from practicing under those plans for a period of two years. Mr. Byers stated that he knows that the Board can't make decisions based on what may or may not happen in the future, but he thinks that this is pertinent to the Board's consideration when it adjudicates the matter today. Mr. Byers suggested that the Board might impose some community service, turning Dr. Myers into

the Board's emissary. Dr. Myers has already talked with many of his physician peers and told them the dangers of family prescribing. He would be willing to go on a speaking circuit or do any kind of community service to spread the Board's message. There's no one better to spread that message than someone who has been through the process.

Mr. Byers at this time introduced Dr. Myers.

Dr. Myers commented that he is very nervous and will refer to notes. He added that he will try to maintain the protocol of referring to Patient 1 in that term, but he'll probably slip up.

Dr. Myers stated that he had a close family relationship with Patient 1 for about twelve years when she developed pelvic pain that was ultimately diagnosed as endometriosis. A few years after that, she underwent a TAHBSO (total abdominal hysterectomy bilateral salpingo-oophorectomy) in an attempt to cure her pain. This seemed to help temporarily, but the pain returned. During this time she was started on Percocet. When her regular physician retired and transferred to Maine, they switched to Dr. Jay Williamson, who is a physician with whom Dr. Myers worked at the medical school. Dr. Myers stated that he has a great deal of respect for Dr. Williamson's knowledge, ability and compassion.

Dr. Myers continued that 1999 was the worst year of his life. In February, he and his wife had to file Chapter 11 bankruptcy as a result of insurmountable debt from a failed private practice and dealings with a predatory lending company to which they had been referred by a business professional, which wasn't very helpful. In the end of March 1999, he walked into his parents' house on his mother's birthday to find her in cardiopulmonary arrest. He started CPR, directed the paramedics when they arrived, and then drove his father to the hospital, where he watched the ER team work for an hour and 15 minutes. He then told them to stop, and he held her hand until her heart stopped.

Dr. Myers stated that, in the first week of May 1999, they surrendered the house in which they raised their children as part of the bankruptcy agreement. That same week, his uncle, who had married him and his wife and most of their cousins, died. In June another uncle died. Dr. Myers commented that he saw more out-of-town relatives in those three months than he'd seen in the previous 20 years. In December of that year, his wife's father went into the hospital for what turned out to be a terminal admission for lung cancer.

Dr. Myers stated that it was during this time, in the fall of 1999, that Dr. Williamson made the decision to reduce Patient 1's medication from the six or seven tablets a day to five. He understood at the time, because he was present at that visit, that Dr. Williamson was trying to see if she could get by on a lesser amount of medicine, as do all physicians who are responsibly taking care of people on chronic psychotropic medications or chronic narcotic analgesics. Dr. Myers asked Dr. Williamson whether he would prescribe an adjunctive medication and he said, "no." Dr. Myers then asked whether Dr. Williamson would want Patient 1 to try more physical therapy and again he said, "no." Dr. Myers asked Dr. Williamson what she should do if the pain wasn't controlled on the five tablets of medication he prescribed a day. Dr. Myers stated that he remembers Dr. Williamson advising her to try the best she can, but to remember that she's been on this medicine long enough that if she runs out, she'll go withdrawal and

she may have seizures.

Dr. Myers stated that Patient 1 reduced her medication to five a day for about four days and was miserable. She increased it to six or seven and ran out a few days early. Dr. Myers stated that he contacted Dr. Williamson, who told him that he would re-prescribe the medication and she should try again. Dr. Myers stated that she tried reducing the medication a second time and again wound up taking the six to seven she'd been on before. Dr. Williamson again re-prescribed the medication and again advised that she try it again. Dr. Myers stated that, the third time they reduced it, she ran out on a Friday, which was normally Dr. Williamson's day in the office, so he didn't think anything of the day, but when he called in the morning, he got no response. He called again in the afternoon, and Dr. Williamson's nurse called him back at about a quarter to five and said that Dr. Williamson wasn't in the office and no one else in the practice would renew the medication for him. The nurse indicated that Patient 1 should have enough medicine to last until her scheduled appointment the following Tuesday.

Dr. Myers stated that, with no recourse to any of the other attendings in the office, he wrote the first prescription for 24 tablets to get her to her appointment on Tuesday, as an emergency. On Tuesday, when they saw Dr. Williamson, he told Dr. Williamson exactly what had happened, that he didn't feel that Dr. Williamson's staff's response was appropriate, and he asked Dr. Williamson for help. Dr. Williamson renewed the prescription for 100 doses, which was the five a day he expected to last for 20 days.

Dr. Myers stated that, unfortunately, this pattern continued. Whenever he could reach Dr. Williamson, he would renew the prescription; but when he couldn't reach Dr. Williamson, the staff in the office was not responsive and he personally renewed the prescription. Dr. Myers added that, on three occasions, he took her to emergency rooms in the community. He told the ER doctors at the emergency room who her doctor was, what the situation was, that she was out of medication, and to please report this to Dr. Williamson. The ER doctors would renew three, four or five days' worth of medications.

Dr. Myers stated that the amount of medication he supplemented was almost exactly what had been previously prescribed and has been a lot less than what she'd been prescribed during the previous three years by another physician. Dr. Myers stated that he doesn't claim to be a better physician than Dr. Williamson. He doesn't pretend to be a better diagnostician or therapist. He does claim that he has had a greater experience with Patient 1 and has observed her in pain most hours of the day for over 15 years. To prescribe a narcotic analgesic in an inadequate dose is hard for him to understand. If the medication itself is appropriate, shouldn't the dose be adequate to assuage the patient's pain?

Dr. Myers stated that he told Patient 1 on several occasions that he couldn't continue to prescribe like this, and they looked for another physician. He talked with several physicians in the Akron/Fairlawn area, where they were living, and they all told him that they didn't deal with chronic pain or chronic pain medication therapy. They switched doctors after they moved to the Kent area and after Dr. Williamson became aware of Dr. Myers' prescribing and terminated them appropriately. The new physician has been using methods that the Board has outlined as proper for chronic pain, and has directed Patient 1 to specialists who have been able to diagnose her problem. On May 25 this year, Patient 1 underwent a laparoscopy by Dr. Bob Flora, who is a urogynecologist at Akron City Hospital. He found extensive

adhesions from the diaphragm to the bladder. It took him an hour and a half to get into the abdomen and pelvis. When he did get into the abdomen and pelvis, he found adhesions between the descending colon in the bladder and later advised that normal peristalsis through the bowel would cause pain because of traction on pelvic organs. Dr. Flora found spasm under anesthesia in the left pelvic wall that was inducing pain in her back and masking the back pain they thought they were treating.

Dr. Davidson at this time advised Dr. Myers that this is meant to be a five-minute discussion. She asked him to wind up his statement.

Dr. Myers stated that Dr. Flora also diagnosed interstitial cystitis, which is a chronic ongoing condition. Patient 1 is now undergoing treatments to try to ease her pain.

Dr. Myers stated that over the last 18 months, since the Pharmacy Board and the Medical Board have been investigating his prescribing, he's talked with more than six practitioners with whom he works regularly or on a part-time basis about the hazards of prescribing to family members. He's told them all that the hazards of prescribing relate not only to the patient's not getting the care that he or she needs by being unable to accurately report to the primary physician how they're really doing and by giving the primary care physician an inaccurate view of the therapy prescribed. He also tells them that the guidelines also exist to protect the physician. Only in a true emergency, when no other course is available, should a practitioner prescribe for family, and then only infrequently and according to the existing guidelines.

Dr. Myers stated that it is to his shame and regret that he didn't follow those guidelines. It's been almost three years since the last prescription was written, and he assured the Board that it will never happen again.

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

Ms. Berrien stated that she absolutely agrees with the proposed sanction in this case. The facts of this particular case justify a one-year suspension. Ms. Berrien stated that she just heard excuses more than she heard remorse or declarations that he would not do it again.

Ms. Berrien continued that, as the Board is well aware, it can decide each case on its own facts and circumstances; however, in his written objections, Dr. Myers attempted to compare this case to the case of Dr. Hugunin, another physician who prescribed for a family member. She stated that the Board considered Dr. Hugunin's case at its August 2005 meeting. She noted that one similarity is that both physicians prescribed for about three years. Dr. Hugunin prescribed twelve times, while Dr. Myers prescribed a total of 73 times. Another similarity is that both physicians were deceitful in using different pharmacies to fill these prescriptions. The record in Dr. Hugunin's case didn't specify how many different pharmacies he used, but, if the Board will recall, some Board members indicated that they were bothered by the fact that Dr. Hugunin was pharmacy shopping to cover up his acts and to get around the system. In this case, at hearing, Dr. Myers at first testified to using six or seven pharmacies, but later admitted to using 16. Shopping around at 16 different pharmacies, prescribing 73 times, and not maintaining any medical records or communicating with the primary care physician, all in less than three years, demonstrates willful misconduct.

Ms. Berrien continued that the timing of Dr. Myers' prescribing also shows willful misconduct. When Patient 1's primary care physician started a schedule to wean her off the controlled substances, Dr. Myers started prescribing Percocet and Valium to her. The manner in which he was prescribing was also indicative of willful misconduct. On most of the prescriptions, he wrote, "emergency – PCP not available." Today Dr. Myers stated that he knew the primary care physician, and he knew that Patient 1 had regular visits with him. Patient 1 was also seeing other physicians at this time. Dr. Myers and the primary care physician held privileges at the same hospital as Dr. Myers. Dr. Myers knew how to get in touch with Patient 1's primary care physician at the office, at the hospital and even at his home, because he had Dr. Williamson's private phone number. Ms. Berrien stated that, even if the primary care physician wasn't available, there was a physician on call at the practice at all times. When Dr. Myers wrote on the prescriptions, "emergency – PCP not available," he knew that that was not true.

Ms. Berrien stated that the fundamental rule is that physicians don't prescribe for family members unless it is an emergency. Dr. Myers prescribed 73 times in less than three years. That wasn't an emergency; it was repetitive.

Ms. Berrien stated that the Board recognizes the special relationship between a physician and a family member. There are compassionate and emotional ties. That is why the Board has the rule. A physician can be overwhelmed by compassion and lose his good judgment. The rule also protects the physician from being put into a compromising position and being compelled to write prescriptions. In his written objections, Dr. Myers said that he started prescribing with an innocent mindset, and the first two times he may have told her primary care physician. At some point, Dr. Myers' mindset and his conversations with the primary care physician stopped, and it turned into deliberate disregard of the Board's rules.

Ms. Berrien advised that pharmacists warned Dr. Myers about prescribing for Patient 1. Some of them refused to fill the prescriptions. Yet, Dr. Myers continued to write the prescriptions. At the same time he was writing the prescriptions, he was telling Patient 1 that he shouldn't be doing this. Ms. Berrien stated that that is outright disregard. Also, in Dr. Myers' written objections, he said that this was an isolated incident involving one patient, where the patient wasn't harmed. Ms. Berrien stated that this did involve one patient, and she may not be addicted, but there was harm. Her physicians and her primary care physician thought that she was abiding by the schedule that they had for her and that she was being weaned off the controlled substances, because they didn't know that Dr. Myers was prescribing for her and that he was supplementing her prescriptions. By deliberately keeping Patient 1's physicians in the dark, Dr. Myers delayed any further treatment or therapy that may have eased Patient 1's chronic pain.

Ms. Berrien stressed that an "isolated incident" doesn't occur 73 times. That develops into a pattern. Ms. Berrien asked that the Board adopt the Report and Recommendation, as written.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF PHILIP F. MYERS, M.D. DR. KUMAR SECONDED THE MOTION.

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

Dr. Steinbergh spoke in support of the Report and Recommendation in this case. She stated that, although she wasn't present in August when the Board discussed Dr. Hugunin's case, she did review the record and she agrees that there isn't a comparison in this. There is no question that Patient 1 was in pain, and any physician who is compassionate would want to help a patient in pain. Regardless of the decision of the attending physician to wean the patient off the pain medications, if the patient was in pain, one would think that one would want to get a second opinion and not delay the treatment of the patient. Over the years this woman has suffered. She suffered at the hands of two physicians: One who probably wasn't adequately prescribing, but attempting to care for her, and the other, Dr. Myers, who was misprescribing, overprescribing and delaying treatment of Patient 1. Dr. Myers had no medical record to substantiate any decision-making he may have done in regard to this patient.

Dr. Steinbergh stated that she does agree that this was not an isolated incident. She noted the frequency of times that Dr. Myers prescribed, and recounted a few such incidents: On May 4, 2000, Dr. Myers prescribed 24 Percocet, and three days later he prescribed 12 Percocet. Dr. Steinbergh stated that you can see a pattern: One day he prescribed 10, the next day 25, two days later 20. This is not consistent with occasional help if he can't reach the patient's physician. Dr. Steinbergh commented that she thinks that the relationship between Dr. Myers and Dr. Williamson was inappropriate in the sense that one was attempting to support the other's, perhaps, lack of treatment. Nevertheless, prescribing in this fashion was inconsistent with the Board's rules and the laws of the State of Ohio. Dr. Myers definitely delayed appropriate medical care for this patient.

Dr. Steinbergh stated that cases such as this vary a little bit, and you can't compare one to another exactly. Sometimes the Board does modify suspension time if it thinks the physician's intention was good. Dr. Steinbergh stated that, in this case, a stayed permanent revocation, with a suspension of his certificate for an indefinite period of time, but not less than one year, and consistent probationary conditions are appropriate.

Dr. Kumar stated that he sees what the Board did in August. Though there are some different circumstances and a different set of events, with more prescribing in this case than the last, he doesn't see the difference being of a magnitude that would call for six times more penalty in this case than in the last. The facts were basically the same, although in this situation, the prescribing had been more frequent, and there was more pain and suffering for the individual. Dr. Kumar stated that he is uncomfortable with a one-year suspension at this time.

Dr. Buchan stated that he's also familiar with the Hugunin case, and he has read the minutes concerning that case. Prior to that he reviewed this case thoroughly. Dr. Buchan stated that he believes the Board made the appropriate decision in August. As he reviewed this case, he had already decided that the Report and Recommendation, as written, was too harsh. Dr. Buchan stated that this incident is not likely to recur. At the end of the day, Dr. Myers made a bad choice. He spent 80% of his time today, talking about justifying that bad choice. Dr. Buchan commented that he wishes that Dr. Myers had spent 80% of his time today talking about why he made the bad choice, and that he was remorseful for it. Dr. Buchan stated

that he didn't hear that from Dr. Myers.

Dr. Buchan continued that he does believe that Dr. Myers understands what he did. Based upon the fact that there was no personal greed or self-interest involved in this case, the Board should sanction him, impose a period of sanction, and then allow Dr. Myers to get on with his practice and on with his life. Dr. Buchan stated that this is a harsh order, based upon what, at the end of the day, was a bad choice by Dr. Myers, but he thinks that Dr. Myers and others will learn, and that the Board needs to let Dr. Myers return to practice.

Dr. Egner asked what Dr. Buchan would recommend.

Dr. Buchan stated that he would like to hear more discussion on this matter, and then he may make a proposal.

Dr. Egner agreed, stating that she had the same feelings about this case as she did about the case the Board heard in August. This is against the rules and there needs to be a sanction. Dr. Egner stated that there was patient harm in this case, and there always is in cases such as this. This case went on for a longer period of time and there were more prescriptions written than in the previous case. She asked whether that equates to a longer suspension, and added that she doesn't know. Whether the Board suspends Dr. Myers for one day or one year, the repercussions are very long lasting.

Dr. Robbins stated that last month he came across as being more severe, and he feels pretty much the same this month. Dr. Robbins stated that what happened in this case was egregious; it was willful. It occurred over the course of a number of years, delaying treatment. The rules are there specifically for this kind of a situation. No one was saying that Patient 1 didn't have pain. He thinks that she was in a lot of pain, but the way she was treated was totally inappropriate. They went to 16 different pharmacies.

Dr. Robbins added that he was disappointed in Dr. Myers' statement today. He stated that he wishes that Dr. Myers had spent a lot more time apologizing for the action, not justifying the action. Dr. Robbins stated that he doesn't know if Dr. Myers gets it. But, like the Hugunin case, he thinks that the Board can come up with a compromise. He would prefer a longer suspension.

Dr. Varyani stated that everyone is talking about the similarities, the differences, and the penalty imposed in August, but the difference here is that Dr. Myers knew what he was doing. Unfortunately, because of the narcotics given over such a prolonged period, the patient did not go in for the final diagnosis. It was delayed because of Dr. Myers' decision to relieve the patient's pain. Dr. Varyani stated that he feels sorry for Patient 1, but one must realize that it's not just the deceit or the willful writing of prescriptions, but Dr. Myers delayed treatment for at least three years. The patient could have had the laparoscopy two years earlier. Dr. Varyani stated that he doesn't think that this is something mild, and he doesn't think a one-year suspension is too much. Dr. Varyani stated that he would support the current motion.

Ms. Sloan agreed with Dr. Varyani. She commented that the length of time in which Patient 1 did not receive appropriate treatment and suffered is alarming to her. Ms. Sloan stated that the deceit was

definitely there. She stated that it was intentional on Dr. Myers' part to deceive not only the pharmacists but also the other doctors involved with this case. Ms. Sloan stated that she agrees with the Report and Recommendation, as written.

Dr. Kumar stated that the comment has been made that the treatment that Patient 1 needed was delayed by three years or so. He stated that, to some degree, that is accurate; but the patient had a hysterectomy two and a half years ago and the patient's symptoms did improve for a period of time after that. Dr. Kumar agreed that Dr. Myers should have sought a second opinion, but one shouldn't jump to the conclusion that a laparoscopy would immediately relieve the problem. It takes a few years for adhesions to develop.

Dr. Buchan stated that he doesn't disagree with some of his colleagues today, but, having reviewed a lot of these cases over the years, he is ultimately motivated by what will best serve the public. Dr. Myers was in the trenches with a clear record for a number of years. Dr. Buchan stated that he has some compassion for this physician as a practitioner in this state. He doesn't feel the public will be served any better if the Board takes him out of practice for 30 days or if the Board takes him out for a year and 30 days. The decision speaks for itself. What he did was absolutely wrong, for all the reasons that Board members have described; but his sentiment for this physician today is to take him out of practice, but he doesn't think the public is better served by taking him out for a longer term.

DR. BUCHAN MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF DR. MYERS BY REMOVING THE STAYED PERMANENT REVOCATION LANGUAGE, BY CHANGING THE MINIMUM SUSPENSION PERIOD TO 90 DAYS, AND BY LOWERING THE PROBATIONARY PERIOD TO TWO YEARS RATHER THAN THREE. DR. KUMAR SECONDED THE MOTION.

Dr. Steinbergh spoke in opposition to the motion. She stated that, regarding the comments made about post-hysterectomy and so forth, the bottom line is that, in this degree of pain and requiring this amount of medication, there should be no delay in getting an appropriate diagnosis. This patient's ultimate diagnosis and treatment was unquestionably delayed.

Dr. Steinbergh noted that the Hearing Examiner's Proposed Order is already outside of the Board's guidelines. She feels to move further outside of the guidelines is inappropriate. Dr. Steinbergh stated that it's also very important to her that the Board respects what its consumer members say. She noted that Ms. Sloan has spoken and Mr. Albert, as Supervising Member, can't speak. She asked Mr. Browning for his comments on this case.

Mr. Browning stated that these cases are always personal tragedies. People get involved with family members for what they think are the right reasons, emotionally and otherwise, and things fall apart. Bad decisions are usually followed by more bad decisions. Trying to be helpful can often turn into bad medicine in a hurry, and that's what happened here. It wasn't just like you had a physician doing what any physician would do. Mr. Browning stated that there ought to be a penalty in this case and the Board has to send a message to one and all that it won't tolerate these decisions, even though Board members understand the decision on a human level.

Mr. Browning stated that he agrees that a one-year suspension is reasonable on one hand, and on the other, his sense is that some sort of compromise is reasonable in this case. He stated that he feels a 90-day suspension is too short and sends the wrong signal. He would support a suspension of twice that length or more.

Dr. Robbins stated that he refuses to potentially classify Dr. Williamson as someone who is inept in taking care of this patient, and he feels that is what has been presented here. He has no idea whether Dr. Williamson is or isn't inept, but he refuses to accept that he is. Dr. Robbins stated that he believes that it is possible, without exception, that the patient was able to manipulate Dr. Myers because of the personal relationship. Although he feels for Dr. Myers being in that situation, that's why the rule is in place. If Dr. Williamson had been able to do the job that he was there to do, things would have been different. Dr. Robbins stated that he could not support a suspension period of only 90 days, but he could probably support double that.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Varyani	- nay
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- nay
	Ms. Sloan	- nay
	Dr. Robbins	- nay
	Dr. Saxena	- aye
	Dr. Steinbergh	- nay
	Dr. Davidson	- nay

The motion failed.

DR. STEINBERGH MOVED TO AMEND THE MINIMUM SUSPENSION PERIOD IN THE PROPOSED ORDER IN THE MATTER OF DR. MYERS TO 180 DAYS. DR. ROBBINS SECONDED THE MOTION.

Dr. Steinbergh noted that the rest of the Proposed Order would remain the same.

Dr. Buchan spoke against the motion, adding that he thinks that the "permanent revocation" language in the Proposed Order is too harsh in this particular case. Dr. Buchan added that the message is clear without that language. Dr. Buchan stated that he would like to show some support for this physician.

Dr. Steinbergh stated that the reason she has not removed the "permanent revocation" language is that the

Board's guidelines call for permanent revocation when someone fails to perform according to minimal standards of care.

Dr. Buchan stated that he understands that, but he appreciates the guidelines for what they are. The merits of this case suggest a different course for this physician.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- nay
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF PHILIP F. MYERS, M.D. MS. SLOAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- nay
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.



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 11, 2004

Philip F. Myers, M.D.
4109 Blue Jay Trail
Stow, OH 44224

Dear Doctor Myers:

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

- (1) You prescribed Schedule II and IV controlled substances to Patient 1 (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure), a family member as that term is used in Rule 4731-11-08(C), Ohio Administrative Code, as follows:

Date	Quantity	Drug	Schedule
01/02/00	20	Percocet 5 mg	II
02/04/00	20	Valium 2 mg	IV
02/13/00	20	Percocet 5 mg	II
03/04/00	24	Percocet 5 mg	II
03/08/00	6	Percocet 5 mg	II
03/19/00	20	Valium 2 mg	IV
03/25/00	20	Percocet 5 mg	II
04/14/00	30	Percocet 5 mg	II
04/18/00	12	Percocet 5 mg	II
04/20/00	40	Valium 2 mg	IV
05/04/00	24	Percocet 5 mg	II
05/07/00	12	Percocet 5 mg	II
05/07/00	20	Valium 2 mg	IV
09/03/00	12	Percocet 5 mg	II
10/13/00	20	Percocet 5 mg	II
11/01/00	30	Percocet 5 mg	II
11/20/00	12	Percocet 5 mg	II
12/31/00	30	Percocet 5 mg	II

Mailed 2-12-04

12/31/00	30	Valium 2 mg	IV
01/21/01	32	Percocet 5 mg	II
02/12/01	15	Percocet 5 mg	II
03/28/01	12	Percocet 5 mg	II
04/16/01	20	Percocet 5 mg	II
05/08/01	24	Percocet 5 mg	II
05/27/01	30	Percocet 5 mg	II
06/13/01	12	Percocet 5 mg	II
07/04/01	25	Percocet 5 mg	II
07/22/01	25	Percocet 5 mg	II
07/25/01	10	Percocet 5 mg	II
08/11/01	10	Percocet 5 mg	II
08/12/01	25	Percocet 5 mg	II
08/14/01	20	Valium 2 mg	IV
08/30/01	25	Percocet 5 mg	II
09/03/01	12	Percocet 5 mg	II
09/04/01	12	Percocet 5 mg	II
09/18/01	12	Percocet 5 mg	II
09/20/01	25	Percocet 5 mg	II
09/23/01	20	Percocet 5 mg	II
09/25/01	12	Percocet 5 mg	II
10/07/01	25	Percocet 5 mg	II
10/11/01	12	Percocet 5 mg	II
10/26/01	15	Percocet 5 mg	II
10/28/01	24	Percocet 5 mg	II
11/01/01	12	Percocet 5 mg	II
11/02/01	20	Percocet 5 mg	II
11/06/01	12	Percocet 5 mg	II
11/22/01	20	Percocet 5 mg	II
11/25/01	24	Percocet 5 mg	II
12/13/01	16	Percocet 5 mg	II
12/29/01	24	Percocet 5 mg	II
01/03/02	12	Percocet 5 mg	II
02/11/02	20	Percocet 5 mg	II
02/19/02	12	Valium 5 mg	IV
02/25/02	20	Valium 5 mg	IV
03/03/02	20	Percocet 5 mg	II
03/22/02	24	Percocet 5 mg	II
03/22/02	20	Valium 5 mg	IV
04/10/02	24	Percocet 5 mg	II
04/13/02	20	Percocet 5 mg	II
04/30/02	24	Percocet 5 mg	II
05/15/02	20	Percocet 5 mg	II
05/17/02	30	Percocet 5 mg	II

06/05/02	30	Percocet 5 mg	II
06/25/02	20	Percocet 5 mg	II
07/16/02	30	Percocet 5 mg	II
07/20/02	24	Percocet 5 mg	II
08/02/02	24	Percocet 5 mg	II
08/05/02	24	Percocet 5 mg	II
08/10/02	12	Percocet 5 mg	II
09/29/02	12	Percocet 5 mg.	II
10/14/02	30	Percocet 5 mg	II
10/24/02	42	Percocet 5 mg	II
11/10/02	14	Percocet 5 mg	II

You failed to maintain any medical records for Patient 1. Further, although you wrote "emergency, PCP [primary care physician] unavailable" on the majority of the above prescriptions, in fact, either Patient 1's primary care physician or a covering physician was available.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-08, Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-02(D), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code.

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

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

Philip F. Myers, M.D.

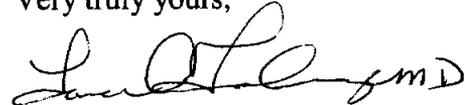
Page 4

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 7438
RETURN RECEIPT REQUESTED