

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES L. KEGLER, M.D.

*

ORDER AND ENTRY

On September 13, 2006, the State Medical Board of Ohio issued a Notice of Opportunity for Hearing to James L. Kegler, M.D., based on allegations that Dr. Kegler provided false, fraudulent, or misleading statements in securing or attempting to secure a certificate to practice by failing to provide complete and accurate information on his license renewal application pertaining to 12 pending felony indictments. The foregoing would constitute grounds for disciplinary action pursuant to Sections 4731.22(B)(5) and 4731.22(A), Ohio Revised Code.

It was subsequently reported to the Board that, on October 31, 2006, the Franklin County Court of Common Pleas entered a Judgment Entry affirming the Board's December 14, 2005 Order permanently revoking Dr. Kegler's license to practice medicine and surgery in the State of Ohio.

In that Dr. Kegler's license to practice medicine and surgery in the State of Ohio has been permanently revoked, further consideration of the September 13, 2006, allegations are rendered moot. It is hereby ORDERED that the Notice of Opportunity for Hearing issued on September 13, 2006, pursuant to Sections 4731.22(B)(5) and 4731.22(A), Ohio Revised Code, be and is hereby DISMISSED WITH PREJUDICE.

This Order is entered by the State Medical Board of Ohio and on its behalf.

So ORDERED this 12th day of December 2006.

(SEAL)



Lance A. Talmage, M.D.
Secretary

December 12, 2006

Date

CERTIFIED MAIL NO. 7003 0500 0002 4330 2177
RETURN RECEIPT REQUESTED

William S. Wyler, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4330 2184
RETURN RECEIPT REQUESTED

"fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board." The Board alleged that Appellant had violated R.C. 4731.22(B)(5) by "making a false, fraudulent, deceptive or misleading statement ... in relation to the practice of medicine and surgery... or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board." The Board also alleged that Appellant had failed to comply with probationary terms and conditions previously placed on his license, in violation of R.C. 4731.22(B)(15).

Appellant requested a hearing, which was conducted on May 17, 2005 before a Hearing Examiner. The Hearing Examiner issued a Report and Recommendation recommending permanent revocation of Appellant's medical license.

On December 14, 2005, the Board issued its Order permanently revoking Appellant's medical license. The Order was mailed to Appellant on December 16, 2005. Appellant filed this appeal on December 29, 2005.

The January 12, 2005 Notice of Opportunity for Hearing letter alleged that Appellant failed to disclose an Ohio felony conviction in an August 9, 1999 application for licensure in Kentucky and failed to disclosure requested information in September 16, 2002 and April 27, 2004 applications for licensure in Ohio. The letter also alleged that Appellant violated probationary terms and conditions imposed by an Order of the Board dated February 14, 1996.

That order was the result of a disciplinary proceeding arising out of Appellant's September 15, 1995 plea of guilty in the Hamilton County Court of

Common Pleas to one felony count of Illegal Processing of Drug Documents. The Board, by order of February 14, 1996, permanently revoked Appellant's medical license; however, the revocation was stayed and the license was suspended for an indefinite time period, but not less than one year. The Order established conditions for reinstatement and probationary terms, conditions, and limitations for a period of at least two years following reinstatement. One of the probationary terms was that Appellant "shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio." (St. Ex. 1A, at 9).

In October, 1998 Appellant requested that his Ohio license be restored. On January 13, 1999, the Board granted the request, subject to Appellant passing the SPEX and the probationary terms, conditions and limitations of the 1996 order.

On August 9, 1999, Appellant filed an application for licensure in Kentucky. (St. Ex. 4). Despite the Ohio felony conviction, Appellant answered "No" to the question in the application: "Have you ever been convicted of a felony or misdemeanor by any State, Federal or International court? Are any criminal charges presently pending against you in any of those courts?" (*Id.*, p. 4, Question 11). Appellant did answer "Yes" to a question asking whether his medical license had ever been revoked, suspended or restricted. (*Id.*, p. 3). Although the instructions indicated Appellant was to provide a "complete written explanation of the event(s) or condition(s), including dates, names, addresses, circumstances, and results. . .", none was included. As a result, the Kentucky State Board of Medical Licensure (the "Kentucky Board") requested that

Appellant provide a detailed explanation of the disciplinary action disclosed in the application. Appellant responded on August 25, 1999 with an explanation. On January 13, 2000, the Kentucky Board issued an order denying Appellant's application for licensure. (St. Ex. 5 at 2).

On September 16, 2002, Appellant filed an application for restoration of his Ohio medical license. Despite the action of the Kentucky Board, Appellant answered "No" to Question 9, which asked whether he had been denied licensure in any state. (St. Ex. 2). Appellant answered "Yes" to questions regarding disciplinary proceedings against his license, denial of federal drug registration, denial or restriction of staff privileges, etc. (Id.). In his written explanation of the items answered "yes", Appellant stated, "Question answered yes, but merely reflects the original infarction (sic) of 10/96 and no change since 10/98 application." Appellant's Ohio medical license was restored on December 2, 2002.

On July 24, 2003, the Kentucky Board filed an Agreed Order of Probation, issuing a Kentucky medical license to Appellant and placing him on probation for five years, subject to probationary terms and conditions. (St. Ex. 6 at 21-27).

On April 27, 2004, Appellant submitted to the Board an application for renewal of his medical license. Despite the 2003 Agreed Order of Probation in Kentucky, Appellant answered "No" to a question regarding whether, since his last application, he had "consented to limitation of ... or probation concerning, a license to practice any healthcare profession" (St. Ex. 3 at 3).

On November 14, 2005, the Hearing Examiner issued a Report and Recommendation which included findings of fact and conclusions of law and concluding that Appellant's failures to truthfully answer questions in the August 9, 1999 application for licensure in Kentucky and the September 16, 2002 and April 27, 2004 applications for licensure in Ohio constituted violations of R.C. 4731.22(A) and 4731.22(B)(5).

The Hearing Examiner stated, in part, as follows:

In 1996, the Board permanently revoked Dr. Kegler's certificate to practice in the State of Ohio, but stayed the permanent revocation. During the intervening years, Dr. Kegler has made repeated untruthful statements on official documents related to the practice of medicine and surgery. Moreover, despite the stayed permanent revocation and the fact that he is being monitored by two licensing agencies, Dr. Kegler loosely and unreasonably interprets the monitoring conditions imposed by those licensing boards, in direct contradiction of the obvious purpose of his probationary conditions. The series of untruths, and Dr. Kegler's unpredictable reasoning, render it extremely problematic for the Board to adequately monitor him. Accordingly, imposing the previously stayed permanent revocation of Dr. Kegler's certificate to practice medicine and surgery in this state is appropriate.

(Report and Recommendation, p. 11-12).

The Hearing Examiner further concluded that the inaccurate answer in the April 27, 2004 application constituted a failure to comply with probationary terms and conditions placed on Appellant's license in the 1996 Order, in violation of R.C. 4731.22(B)(15). (*Id.*, p. 11).

The Board's December 14, 2005 Order approved and confirmed the findings of the Hearing Examiner and permanently revoked Appellant's medical license.

When considering an appeal from a medical board's order, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence and is in accordance with law. R.C. 119.12. Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621; Landefeld v. State Med. Bd. (2000), Tenth Appellate District No. 99AP-612, 2000 Ohio App. LEXIS 2556.

Appellant first argues that he was denied due process because the "Board clearly had already determined Dr. Kegler's 'guilt' prior to any hearing." (brief, p. 5). Appellant bases this argument on the language used in the Notice of Opportunity for Hearing letter and the opening statement of the State's counsel in the administrative hearing.

Appellant quotes from the January 12, 2005 Notice of Opportunity for Hearing letter alleging that Appellant committed the violations at issue. Pursuant to R.C. 119.07, the Board is required to send a notice setting forth "the charges or other reasons for the proposed action" and informing the party of the right to a hearing on the charges. The January 12, 2005 notice is a charge letter of the type typically found in administrative proceedings, setting forth allegations much like a Complaint initiating a lawsuit. The document providing notice of the charges themselves obviously does not show that guilt was predetermined. Appellant requested an evidentiary hearing on the charges, which was held on May 17, 2005, and a determination was made by the Board based on the evidence presented at the hearing. The arguments of counsel for the State, one of the advocates at the hearing, likewise do not show that Appellant's guilt was predetermined. Appellant has cited no evidence whatsoever in support of the

argument that he was deprived of due process and this issue is found to lack merit.

Appellant next contends that the order is not in accordance with the law as there was no finding of fraudulent intent as necessary to establish a violation of R.C. 4731.22(A) and 4731.22(B)(5). The Board found that Appellant violated R.C. 4731.22(A) by engaging in "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board" and violated R.C. 4731.22(B)(5) by "making a false, fraudulent, deceptive or misleading statement in ... securing or attempting to secure any certificate to practice or certificate of registration issued by the board."

In Rajan v. State Medical Board (1997), 118 Ohio App.3d 187, the Court held that to establish a violation of R.C. 4731.22(A) and 4731.22(B)(5), there must be proof of intent to deceive. See also In re Wolfe (1992), 82 Ohio App.3d 675, 687-688.

...to find a violation of R.C. 4731.22(A), the Board must find that the 'statements were made with an intent to mislead the medical board.' Likewise ... we concluded that, 'the same proof with regard to intent is required under R.C. 4731.22(B)(5)... Accordingly, in order to discipline appellant for violations of R.C. 4731.22(A) or 4731.22(B)(5), the Board was required to find that appellant intentionally misled the board. Instanbooly v. State Medical Board (2004), Tenth Dist. No. 04AP-76,2004 Ohio 3696, a physician was charged with violating R.C. 4731.22(A) and 4731.22(B)(5). ¶15.

The Court in Instanbooly further stated, intent "may be inferred from the surrounding circumstances, e.g., as when a licensee clearly knows something,

which he failed to disclose in response to a direct question." Id. at ¶16 quoting Hayes v. State Medical Board (2000), 138 Ohio App.3d 762, 770.

Recently, the Court confirmed that intent to deceive may be inferred from surrounding circumstances. Hoxie v State Medical Board 2006 Ohio 646. In Hoxie, the doctor had answered no to questions concerning whether he had ever been convicted of or entered into any plea bargaining relating to a felony or a misdemeanor. At the hearing, he denied he had been arrested or convicted and offered as explanation that the documents were fabricated. Based upon the false answers, the Board ordered his license be permanently revoked.

On appeal, Hoxie argued that the Board had not found intent to deceive or mislead. The Court stated:

In an administrative appeal, pursuant to R.C 119.12 , the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." University of Cincinnati v. Conrad (1980, 63 Ohio St. 2d 108, 111.

* * *appellant asserts that appellee's order is invalid because appellee did not find that appellant intended to deceive or mislead appellee. In appellant's view, he did not hide his encounters with police and revealed what he believed to be the truth about them, i.e., his arrests were related to traffic violations or a neighbor's complaint about noise. Id at ¶¶22, 35.

The Court went on to state that based upon the hearing examiner's findings of fact it was reasonable to infer appellant's intent from the surrounding circumstances.

Here the hearing examiner found, in part, that Kegler did not disclose his felony conviction on his application for licensure in Kentucky, did not disclose in

his application for restoration of his Ohio license that Kentucky had denied him a license, and did not disclose in his 2004 renewal application that his Kentucky license was subject to conditions of probation. Based upon those findings violations of R.C.4731.22(A) and(B)(5) were found.

Like Hoxie, Appellant seems to take the view that because he had an explanation for his answers, he was not being untruthful. The hearing examiner obviously did not believe the explanations appellant offered. Based upon the report and recommendation and all the evidence considered by the hearing examiner, appellant's intent to mislead or deceive the Board can be inferred from the surrounding circumstances. As intent can be inferred, the order is in accordance with law.

Appellant submits that the order is not supported by reliable, probative, or substantial evidence. In support of this contention Appellant places great weight on the fact that he did disclose the 1996 Ohio disciplinary action, that he provided a written explanation of the felony conviction, that Kentucky ultimately issued a license, and that he testified that he did not intend to deceive the Board.

Giving due deference to the Board's resolution of evidentiary conflicts, there is reliable, probative and substantial evidence to support the Board's order. The evidence supports that Appellant only provided a written explanation after the Kentucky Board requested he explain the circumstances surrounding the Ohio disciplinary action. The Kentucky Board denied his application on January 13, 2000 because he failed to disclose the felony. When the Kentucky Board did grant him a license in 2003, it was subject to certain conditions and Appellant

was on probation for a period of five (5) years. Further, he then failed to disclose that Kentucky had denied him license and failed to disclose the limitations on the license when it was granted. Thus, Appellant failed to make required disclosures on three separate applications. Based upon this evidence as well as all the surrounding circumstances, there was reliable, probative and substantial evidence to support the violations.

Appellant is critical of the hearing examiner's decision because she indicated that he was untruthful, confusing and had unpredictable reasoning. He contends that one cannot discern from this that she found he acted with intent to mislead. The hearing examiner's comments concerning the nature of Appellant's testimony demonstrate why she found him to not be a credible witness. While the hearing examiner did not specifically say "I find appellant acted with intent to deceive" such a finding is implicit in the results she and the Board reached.

Appellant also contends that his failure to disclose the Ohio felony conviction on his 1999 application for license in Kentucky does not fall under R.C. 4731.22(B)(5) because the "board" as referenced there is the Ohio Board. This argument is without merit as the provision relates to the making of false or fraudulent statements in regards to the practice of medicine or surgery. Clearly, an application to obtain a medical license is a document containing statements pertaining to the practice of medicine.

Appellant's final argument is that the Board did not have authority to impose the stayed revocation from its 1996 order. Even if this is correct, the Board had authority to revoke his license for the cited violations.

The remaining issue is the finding of a violation of R.C. 4731.22(B)(15) based on Appellant's alleged failure to comply with the probationary terms and conditions placed on his license in the 1996 Order. R.C. 4731.22(B)(15) authorizes disciplinary action based on a "violation of the conditions of limitation placed by the board upon a certificate to practice." One of the probationary terms imposed by the 1996 Order was that Appellant "shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio."

The allegations of the Notice of Opportunity for Hearing Letter with respect to this issue are as follows:

Your failure to respond truthfully in your 2004 Ohio Board Renewal Application, as provided above, resulted in violations of the state laws of Ohio. Accordingly, you have failed to comply with the probationary terms, conditions and limitations of the 1996 Ohio Order requiring you to obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio. (Letter, pgs. 3-4)

The alleged violation of the probationary terms imposed by the 1996 Order is based on the "failure to respond truthfully" in violation of state law. As set forth above, there was reliable, probative and substantial evidence that Appellant did not respond truthfully. Accordingly, this violation was also supported.

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Board's Order is hereby AFFIRMED. This is a final,

appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.


BEVERLY Y. PFEIFFER, JUDGE

Copies to:
Orly Rumberg, Counsel for Appellant
Steven C. McGann, Counsel for Appellee



State Medical Board of Ohio

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

September 13, 2006

James L. Kegler, M.D.
167 Versailles
Cincinnati, Ohio 45240

Dear Doctor Kegler:

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

- (1) On or about October 11, 1995, pursuant to Section 3719.121(C), Ohio Revised Code, the Board issued to you a Notice of Immediate Suspension and Opportunity for Hearing based upon your September 15, 1995, plea of guilty in the Hamilton County Court of Common Pleas to one felony count of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

Effective on or about March 4, 1996, by Order of the Board [1996 Board Order], your Ohio certificate to practice medicine and surgery was permanently revoked; the revocation was stayed; and your certificate was suspended for an indefinite period of time, but not less than one year. The 1996 Board Order also established conditions for reinstatement and provided subsequent probationary terms, conditions, and limitations for a period of at least two years.

On or about January 13, 1999, the Board granted your request for restoration of your Ohio certificate to practice medicine and surgery subject to the probationary terms, conditions, and limitations of the 1996 Board Order, and contingent upon you passing the Special Purpose Examination (SPEX).

Effective on or about December 16, 2005, by Order of the Board [2005 Board Order], based upon your violations of Sections 4731.22(A), and 4731.22(B)(5) and (B)(15), Ohio Revised Code, your Ohio certificate to practice medicine and surgery was permanently revoked.

On or about December 29, 2005, you filed an appeal of the 2005 Board Order with the Franklin County Court of Common Pleas, Franklin County, Ohio. On or about February 8, 2006, the Court granted your request for a stay of the permanent revocation of your Ohio certificate. Accordingly, as of February 8, 2006, your Ohio certificate to practice medicine and surgery was returned to active status, pending a final decision by the Franklin County Court of Common Pleas on your appeal of the 2005 Board Order. On or

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about May 2, 2006, and on or about July 20, 2006, respectively, the Court denied the Board's motions for reconsideration of such stay.

- (2) On or about June 30, 2006, you submitted to the Board an on-line application for renewal of your Ohio certificate to practice medicine and surgery. By submitting the on-line application, you swore or affirmed that the information provided therein was complete and correct.

Under the Discipline Section of the on-line renewal form, you responded "No" to question four which asks whether at any time since signing your last application for renewal of your certificate:

* * *

[H]as any board, bureau, department, agency or any other body, including those in Ohio other than this Board, filed any charges, allegations or complaints against you?

- (a) In fact, on or about February 15, 2006, an Indictment was filed against you in the Hamilton County Court of Common Pleas, Hamilton County, Ohio, for the following felony counts:

Count 1: Sexual Battery, Section 2907.03(A)(1),
Ohio Revised Code;

Count 2: Gross Sexual Imposition, Section 2907.05(A)(1),
Ohio Revised Code.

On or about March 1, 2006, at the Arraignment on this Indictment, the Hamilton County Court of Common Pleas imposed as a condition of bond:

* * *

If defendant treats female patients, he may not be in [the] room with [the female] patient unless [a] nurse or other person [is] present.

- (b) Further, on or about June 7, 2006, an Indictment was filed against you in the Hamilton County Court of Common Pleas for the following felony counts:

Count 1: Sexual Battery, Section 2907.03(A)(1),
Ohio Revised Code;

Count 2: Gross Sexual Imposition, Section 2907.05(A)(1),
Ohio Revised Code;

- Count 3: Sexual Battery, Section 2907.03(A)(1),
Ohio Revised Code;
- Count 4: Gross Sexual Imposition, Section 2907.05(A)(1),
Ohio Revised Code;
- Count 5: Sexual Battery, Section 2907.03(A)(1),
Ohio Revised Code;
- Count 6: Sexual Battery, Section 2907.03(A)(1),
Ohio Revised Code;
- Count 7: Sexual Battery, Section 2907.03(A)(1),
Ohio Revised Code;
- Count 8: Felonious Sexual Penetration, Section 2907.12(A)(1)(a),
Ohio Revised Code;
- Count 9: Felonious Sexual Penetration, Section 2907.12(A)(1)(a),
Ohio Revised Code;
- Count 10: Felonious Sexual Penetration, Section 2907.12(A)(1)(a),
Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), 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

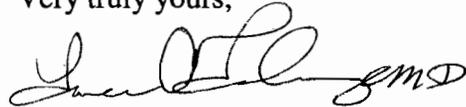
before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7004 2510 0006 9801 8067
RETURN RECEIPT REQUESTED

Orly R. Rumberg, Esq.
Schwartz Manes Ruby & Slovin, L.P.A.
2900 Carew Tower, 441 Vine Street
Cincinnati, Ohio 45202-3090

CERTIFIED MAIL # 7004 2510 0006 9801 8074
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William S. Wyler, Esq.
Schwartz Manes Ruby & Slovin, L.P.A.
2900 Carew Tower, 441 Vine Street
Cincinnati, Ohio 45202-3090

CERTIFIED MAIL #7004 2510 0006 9801 8081
RETURN RECEIPT REQUESTED

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

James L. Kegler, M.D., :
Appellant, : Case No. 05CVF12-14609
-v- : JUDGE PFEIFFER
State Medical Board of Ohio, :
Appellee. :

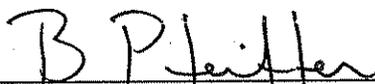
HEALTH & HUMAN
JUL 25 2006
SERVICES SECTION

ENTRY DENYING APPELLEE'S MOTION FOR RECONSIDERATION
FILED JUNE 14, 2006

This matter is before the Court on Appellee's Motion for Reconsideration filed June 14, 2006. The Motion is opposed.

This is Appellee's second Motion seeking reconsideration of the Court's decision granting a stay of the underlying Order revoking Appellant's medical license. Appellee again argues that Appellant is not entitled to a stay due to unrelated criminal charges pending against him in Hamilton County. However, the Hamilton County Court has allowed Appellant to continue to practice medicine with certain restrictions on his bond.

Accordingly, the Motion for Reconsideration is not well-taken and is DENIED.



BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Orly Rumberg
William S. Wlyer
Counsel for Appellant

Steven McGann
Counsel for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
06 JUL 20 PM 4:16
CLERK OF COURTS

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

James L. Kegler, M.D., :

Appellant, :

-v- :

State Medical Board of Ohio, :

Appellee. :

Case No. 05CVF12-14609

JUDGE PFEIFFER

HEALTH & HUMAN

MAY 04 2006

SERVICES SECTION

ENTRY DENYING APPELLEE'S MOTION FOR RECONSIDERATION
FILED MARCH 21, 2006

This matter is before the Court on Appellee's Motion for Reconsideration filed March 21, 2006. The Motion is opposed.

Appellee seeks reconsideration of the Court's decision granting a stay, during the pendency of this appeal, of the underlying Order revoking Appellant's medical license. Upon review, the Motion for Reconsideration is not well-taken and is DENIED.

 4.27.06

BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Orly Rumberg
William S. Wlyer
Counsel for Appellant

Tara L. Berrien
Counsel for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2006 MAY -2 AM 8:23
CLERK OF COURTS

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

STATE MEDICAL BOARD
OF OHIO

2006 FEB 10 A 10: 10

James L.Kegler, M.D., :
Appellant, : Case No. 05CVF12-14609
-v- : JUDGE PFEIFFER
State Medical Board of Ohio,
Appellee. :

ENTRY GRANTING APPELLANT'S MOTION TO SUSPEND REVOCATION FILED
JANUARY 10, 2006

2006 FEB 08 PM 3:35
CLERK OF COURTS

FILED
COURT
FRANKLIN COUNTY,
OHIO

This matter is before the Court on Appellant's Motion to Suspend Revocation filed January 10, 2006. The Motion is unopposed.

Appellant is appealing the State Medical Board's Order permanently revoking his medical license. By way of background, Appellant's medical license was previously suspended for his conduct in illegally writing prescriptions in his daughter's name for Valium intended for himself. His license was reinstated in 2002 and a criminal conviction expunged in 2003. The current disciplinary action stems from the fact that, in a 1999 application to practice medicine in Kentucky, Appellant answered "no" when asked if he had ever been convicted of a felony. However, Appellant asserts that he did describe the circumstances and facts leading to his felony plea within the application.

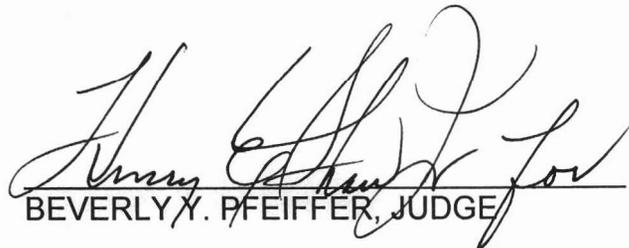
Appellant moves for a stay of the revocation during the pendency of this appeal. He argues that the continuation of his medical practice does not represent a danger to the public. To the contrary, he contends that his patients and the medical group he is employed by will face an unusual hardship if he is not permitted to practice. He

provides the Affidavits of Joseph F. Daugherty III, M.D. and Esly S. Caldwell, M.D. in support.

R.C. 119 provides:

[t]he filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms.

Upon review, the Court finds Appellant has met his burden of demonstrating that an unusual hardship will result should a stay not be issued. Additionally, there is no evidence showing that Appellant's practice of medicine would jeopardize the health and welfare of the public. The record indicates the revocation order was based on an incident occurring in 1999, and Appellant has apparently practiced medicine for a number of years since that time without incident. Accordingly, the Motion to Stay is well-taken and is GRANTED.



BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Orly Rumberg
William S. Wyler
Counsel for Appellant

Ohio State Medical Board
Appellee

STATE MEDICAL BOARD
OF OHIO
2006 FEB 10 A 10: 10

STATE MEDICAL BOARD
OF OHIO

2006 JAN 12 P 1:14

STATE MEDICAL BOARD OF OHIO

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

05CVF12 14609

Common Pleas Case No. _____

Judge _____

In The Matter Of:

JAMES L. KEGLER, M.D.

Appellant

NOTICE OF APPEAL FROM ORDER OF
THE STATE MEDICAL BOARD OF
OHIO, ENTERED ON DECEMBER 14,
2005

Now comes James L. Kegler, Appellant herein, and appeals the Order of the State Medical Board of Ohio ("Medical Board"), entered on December 14, 2005 (the "Order") under authority of R.C. section 119, OAC 4731 and the rules of the Medical Board. The basis for the appeal is as follows:

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2005 DEC 29 PM 3:51
CLERK OF COURTS - CV

1. Finding of Fact No. 2, stating that Dr. Kegler failed to disclose his conviction of a felony to the Kentucky State Board of Licensure.
2. The Order permanently revoking Dr. Kegler's certificate to practice medicine.
3. The Order is against the manifest weight of the evidence.
4. The Order is based up errors of fact set forth in the Findings of Fact.
5. The hearing process and subsequent Order violated R.C. Section 119, OAC Section 4731 and the Disciplinary Guidelines of the Medical Board.

6. The hearing process and Order violate Dr. Kegler's right to due process and equal protection afforded under the U.S. Constitution, the Ohio Constitution, the Ohio Revised Code and the Medical Board Guidelines, Rules and/or Regulations.
7. The Order and penalty imposed upon Dr. Kegler are in violation Title 42 Section 1981, *et seq.* of the United States Code, in that Dr. Kegler has been discriminated against under color of state law.
8. The penalty imposed is disproportionate to the claimed violation.

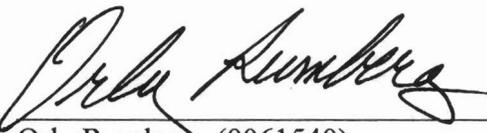

Orly Rumberg (0061540)
William S. Wyler (0006440)

2900 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
513-579-1414
513-579-1418 (fax)
Attorneys for James L. Kegler,
Appellant

STATE MEDICAL BOARD
OF OHIO
2005 JAN 12 P 1:14

CERTIFICATE OF SERVICE

The forgoing Notice of Appeal was duly served upon the State Medical Board of Ohio, at 77 S. High Street, 17th Floor, Columbus, Ohio 43215-6127, by FedEx courier, on this 28th day of December 2005.


Orly Rumberg (0061540)
William S. Wyler (0006440)



State Medical Board of Ohio

175 High St., 17th Floor • Columbus, OH 43215-6127 • Phone: 614-464-5151 • Website: www.smb.org

December 14, 2005

James L. Kegler, M.D.
167 Versailles
Cincinnati, OH 45240

Dear Doctor Kegler:

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

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4333 9968
RETURN RECEIPT REQUESTED

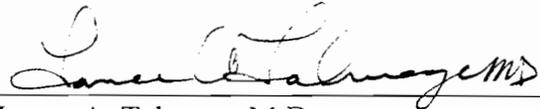
Cc: Caleb Brown, Jr., Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4333 9999
RETURN RECEIPT REQUESTED

Mailed 12-16-05

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 December 14, 2005, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of James L. Kegler, 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)

December 14, 2005

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES L. KEGLER, M.D.

*

ENTRY OF ORDER

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

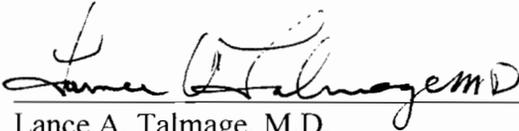
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board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

It is hereby ORDERED that:

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

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

December 14, 2005

Date

REPORT AND RECOMMENDATION 2005 NOV 14 P 2: 34
IN THE MATTER OF JAMES L. KEGLER, M.D.

The Matter of James L. Kegler, M.D., was heard by Sharon W. Murphy, Hearing Examiner for the State Medical Board of Ohio, on May 17, 2005.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated January 12, 2005, the State Medical Board of Ohio [Board] notified James L. Kegler, 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 include the following: (1) the Kentucky State Board of Medical Licensure took an action against Dr. Kegler's application and license to practice medicine in Kentucky; (2) Dr. Kegler failed to provide accurate information on applications for restoration and renewal of his Ohio certificate; and (3) Dr. Kegler failed to comply with probationary terms and conditions placed upon his license by a 1996 Board Order.

The Board further alleged that Dr. Kegler's conduct and/or the action by the Kentucky Board constitute the following violations:

- “‘fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in R.C. 4731.22(A)”;
- “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in R.C. 4731.22(B)(5), as in effect prior to April 10, 2001”;
- “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in R.C. 4731.22(B)(5)”;
- “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in R.C. 4731.22(B)(15) to wit: R.C. 4731.22(A) and R.C. 4731.22(B)(5).”

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

B. On February 5, 2005, the Board received a written hearing request submitted by Caleb Brown, Jr., Esq., on behalf of Dr. Kegler. (State's Exhibit 1C)

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: Caleb Brown, Jr., Esq.

EVIDENCE EXAMINED

I. Testimony Heard

James L. Kegler, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1J: Procedural exhibits.
2. State's Exhibit 2: Certified copies of Dr. Kegler's 2002 Application for License Restoration and related documents as maintained by the Board.
3. State's Exhibit 3: Certified copies of Dr. Kegler's 2004 application for renewal of his certificate to practice in Ohio and related documents as maintained by the Board.
4. State's Exhibit 4: Certified copy of Dr. Kegler's 1999 Application for License to Practice Medicine in Kentucky and related documents as maintained by the Kentucky Board of Medical Licensure [Kentucky Board].
5. State's Exhibit 5: Certified copy of the Kentucky Board's Order denying Dr. Kegler's application for licensure in that state.
6. State's Exhibit 6: Certified copy of Dr. Kegler's 2003 Application for License to Practice Medicine in Kentucky and related documents as maintained by the Kentucky Board.
7. State's Exhibit 7: Copy of a document entitled, "James L. Kegler, M.D., Timeline of Events in Ohio and Kentucky."

B. Presented by the Respondent

1. Respondent's Exhibits 1 through 3, 5, 7, 8: Copies of correspondence between Dr. Kegler and the Board.
2. Respondent's Exhibit 4: Copy of a November 20, 1999, letter to the Kentucky Board from Dr. Kegler.
3. Respondent's Exhibit 6: Copy of a January 15, 2003, Entry Granting Application for Expungement of Record filed in *State of Ohio v. James Kegler*, Case No. B909179, in the Hamilton County [Ohio] Court of Common Pleas.

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.

1. James L. Kegler, M.D., received his medical degree in 1975 from the University of Cincinnati in Cincinnati, Ohio. Dr. Kegler completed a residency in family practice at the University of Cincinnati in 1979. Thereafter, he practiced family medicine in a group practice at Bethesda Hospital in Cincinnati until 1996. After several years, Dr. Kegler returned to that practice and is currently practicing family and internal medicine. Dr. Kegler is licensed in Kentucky and Ohio. (Hearing Transcript [Tr.] at 12-14, 119-120; State's Exhibit [St. Ex.] 4 at 2-3, 11-13)
2. On December 13, 1994, Dr. Kegler contacted the Pharmaceutical Diversion Unit of the Cincinnati Police Department to report that a bottle containing Percocet, a Schedule II controlled substance, had been removed from his desk. When a detective from that unit contacted Dr. Kegler, Dr. Kegler advised that he had written the Percocet prescription for his daughter. Dr. Kegler further admitted that he had written "one or two" additional prescriptions for his daughter. During the course of an investigation, the detective discovered that Dr. Kegler had written twelve prescriptions for his daughter, and that the prescriptions were all for controlled substances, including Percocet, Tylox, and Valium. When confronted, Dr. Kegler admitted that he had prescribed the Percocet and Tylox for his daughter, but that he had kept the Valium for himself. (St. Ex. 3 at 15)
On September 15, 1995, in the Hamilton County Court of Common Pleas, Dr. Kegler pled guilty to one count of illegal processing of drug documents, a felony of the fourth degree, in violation of Section 2925.23, Ohio Revised Code. The basis for the plea was a prescription for sixty tablets of Valium that Dr. Kegler had written for himself in the name of his daughter. (St. Ex. 3 at 16; Tr. at 17-18)

3. On October 11, 1995, pursuant to Section 3719.121(C), Ohio Revised Code, the Board issued to Dr. Kegler a Notice of Immediate Suspension and Opportunity for Hearing based upon the September 15, 1995, guilty plea. (St. Ex. 3 at 5, 12) On February 14, 1996, following an administrative hearing, the Board voted to permanently revoke Dr. Kegler's certificate to practice medicine and surgery in Ohio, but stayed the permanent revocation. In addition, the Board suspended Dr. Kegler's certificate for an indefinite period of time but not less than one year. Finally, the Board established requirements for reinstatement, and terms of probation following reinstatement. Among the terms of probation, the Board ordered that, "Dr. Kegler shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio." (St. Ex. 3 at 5-11)
4. On January 13, 1999, the Board granted Dr. Kegler's request for restoration of his certificate to practice medicine and surgery in Ohio, on the condition that Dr. Kegler first pass the Special Purpose Examination [SPEX]. Moreover, the Board noted that, upon restoration, Dr. Kegler's certificate would be subject to the probationary terms, conditions, and limitations set forth in the February 14, 1996, Board Order. (St. Ex. 3 at 4; Respondent's Exhibit [Resp. Ex.] 1)
5. On August 9, 1999, Dr. Kegler submitted an Application for License to Practice Medicine/Osteopathy by Endorsement to the Kentucky Board of Medical Licensure [Kentucky Board]. In his application to practice medicine in Kentucky, Dr. Kegler answered "No" to a question asking if he had ever been convicted of a felony or misdemeanor. Conversely, Dr. Kegler acknowledged in the application that he had undergone disciplinary action against his medical certificate, staff privileges, and privileges to prescribe controlled substances. (St. Ex. 4 at 5; Tr. at 33-41)

By letter dated August 23, 1999, the Kentucky Board requested that Dr. Kegler provide "a written narrative with a detailed explanation of events concerning the actions taken" by the Ohio Board. (Resp. Ex. 2) By letter dated August 25, 1999, Dr. Kegler advised the Kentucky Board, in part, as follows:

As requested I am providing a narrative account of my time and circumstances surrounding my encounter with the Ohio State Medical board. * * *

Background Information: I now have a twenty-four year old daughter who is developmentally handicap who lives with my X-wife, this child has recurrent bouts of pancreatitis which when treated early can avoid a hospital stay or emergency room visit which is emotionally upsetting to her. I was planning a trip out of town and I wanted to make sure she had enough pain medication should she develop symptoms. I had my hospital pharmacy where all of her prescriptions had been filled prepare here usual prescription and at the same time I had spoken to my personal physician about some stresses in my life; over the ensuing imminent divorce and he recommended valium to aide with getting a restful night for a short course. With no desire to deceitful I had the

pharmacies to add it on her account and hence made out in her name. This was the mental error. I left hastily for the airport and left the prescription on my desk which was located in a hospital based professional building. We I return midday Monday, shortly before office hours was to begin I notice the prescription was not there. It was neatly folded inside a staple envelope for which only a limited number of people actually would have known just what was in the envelope. I contact the hospital security and reported the lost; which was subsequently reported to the Regional Narcotic Office. Thru this investigation an error was detected and the rest was history. I was arranged in the Hamilton County Municipal Court and responded contest to the charge; and was given a fourth-degree felony charge, fined, and given a two year probation which was commuted after nine months.

In October 1996, the state of Ohio suspended my medical license because of this felony incident, and a near was not granted until February of the following year, e.g. 2/14/97. As a result my license were suspended for one year with specific provisions of re-instatement.

(St. Ex. 4 at 7-8) (errors in original)

6. On January 13, 2000, the Kentucky Board issued an Order Denying Application for License regarding Dr. Kegler. The basis for denial included, among other things, Dr. Kegler's failure to disclose the felony conviction in Ohio in his application for licensure in Kentucky. (St. Ex. 5 at 3; St. Ex. 6 at 8)
7. On September 16, 2002, Dr. Kegler filed an Application for License Restoration of his Ohio certificate. (St. Ex. 2) In the "Additional License Restoration Information-Medicine or Osteopathic Medicine" section of the application, Dr. Kegler responded "No" to Question 9, which asked the following:

Have you ever, for any reason, been denied licensure or relicensure, application for licensure or relicensure, or the privilege of taking an examination, in any state (including Ohio), territory, province or county?

(St. Ex. 2 at 4) In the same application, Dr. Kegler answered "YES" to the following questions:

1. Have you ever been denied staff membership at any hospital, nursing home, clinic, health maintenance organization, or similar institution?
2. Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, or been requested to withdraw from or resign privileges at any hospital, nursing home, clinic, health

maintenance organization, or other similar institution in which you have trained, been a staff member, or held privileges, for reasons other than failure to maintain records on a timely basis, or failed to attend staff or section meetings?

3. Have you ever resigned from, withdrawn from, or terminated, or have you ever been requested to resign from, withdraw from, or otherwise been terminated from, a position with the medical partnership, professional association, corporation, health maintenance organization, or other medical practice organization, either private or public?

* * *

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

* * *

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

* * *

14. Have you ever been denied or have you ever surrendered a state or federal controlled substance or drug registration; had it revoked, terminated, or restricted in any way; or been warned, reprimanded, or fined by, or been requested to appear before, the responsible agency?

* * *

17. Have you ever been a defendant in any legal action involving professional liability * * *?

* * *

19. Have you ever been denied or relinquished participation in any third-party reimbursement program * * *?

8. On December 2, 2002, the Board advised Dr. Kegler that he had successfully passed the SPEX examination, which completed his requirements for reinstatement pursuant to the February 1996 Board Order. Accordingly, the Board restored Dr. Kegler's certificate on December 2, 2002. Since that time, Dr. Kegler has been subject to the probationary terms, conditions and limitations set forth in the Board's February 1996 Board Order. (St. Ex. 2 at 4, 17, 19; Tr. at 23-31)
9. On January 15, 2003, the Hamilton County Court of Common Pleas issued an Entry Granting Application for Expungement of Record (Felony) in *State of Ohio v. James Kegler*, Case No. B909179. (St. Ex. 6 at 20; Resp. Ex. 6)
10. On May 1, 2003, the Kentucky Board received from Dr. Kegler an Application for License to Practice Medicine/Osteopathy by Endorsement. (St. Ex. 6 at 2)
11. On July 9, 2003, the Board modified the terms, conditions and limitations set forth in its February 1996 Board Order. More specifically, the Board granted Dr. Kegler's request to apply for a Drug Enforcement Administration [DEA] certificate. In addition, the Board granted Dr. Kegler's request for authority to prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess any controlled substance subject to the maintenance of a controlled substance log. (St. Ex. 3 at 4; Resp. Ex. 5).
12. On July 24, 2003, the Kentucky Board filed an Agreed Order of Probation, noting that it had determined to issue a Kentucky Medical License to Dr. Kegler. Moreover, the Kentucky Board placed Dr. Kegler on probation for a period of five years, subject to probationary terms and conditions. (St. Ex. 6 at 21-27) Among the probationary terms and conditions, the Kentucky Board ordered that, upon issuance of a DEA certificate and the resumption of prescribing controlled substances, Dr. Kegler must maintain a controlled substance log and make that log available to the Kentucky Board upon request. (St. Ex. 6 at 24)

The Kentucky Probation Order included Stipulation of Fact No. 8, which provided as follows:

The licensee had previously submitted an Application for Licensure in the Commonwealth of Kentucky that was denied on December 16, 1999. An order denying the application for licensure was entered on January 13, 2000. At that time, his Ohio certificate to practice medicine was revoked and could not be reinstated until he passed the required SPEX examination. Additionally, the licensee had not disclosed his felony conviction for one count of Illegal Processing of Drug Documents in Ohio.

(St. Ex. 6 at 22-23)

13. On April 27, 2004, Dr. Kegler signed and submitted to the Board an application for renewal of his certificate to practice medicine and surgery in Ohio. By his signature,

Dr. Kegler certified that the information provided in his renewal application was true. (St. Ex. 3 at 2) Nevertheless, in the renewal application, Dr. Kegler responded “No” to Question 5, which asked the following:

At any time since signing your last application for licensure/renewal in Ohio * * * [h]ave you surrendered, or consented to limitation of, or to suspension, reprimand or probation concerning, a license to practice any healthcare profession or state or federal privileges to prescribe controlled substances in any jurisdiction? You may answer “NO” to this question if the only such surrender or consent was given to this board.

(St. Ex. 3 at 3)

14. Regarding his answering “No” to the question regarding prior criminal convictions in his August 1999, application to practice medicine in Kentucky, Dr. Kegler testified that the question contains two parts, as follows:

Have you ever been convicted of a felony or misdemeanor by any State, Federal or International court? Are any criminal charges presently pending against you in any of those courts?

(St. Ex. 4 at 5) Dr. Kegler explained that, in his mind, the answer to the first part of the question was, “Yes,” and to the second part of the question, “No.” Therefore, he explained, he had marked, “No,” but also had included an explanatory letter in which he acknowledged and explained the felony conviction. Upon further questioning, however, Dr. Kegler admitted that he had only submitted the explanatory letter after being asked to do so by the Kentucky Board. Therefore, Dr. Kegler acknowledged that, on this original application, his only answer to that question had been “No.” (Tr. at 43-49, 79-81)

Dr. Kegler further acknowledged that the subsequent letter of explanation he had written to the Kentucky Board is somewhat confusing. Additionally, he acknowledged that, in that letter, he had not specifically stated that he had been convicted of the felony. Finally, Dr. Kegler testified that he had assumed that the Kentucky Board was aware of his felony conviction through other investigatory avenues. (Tr. at 49-56)

15. Regarding his failure to advise the Ohio Board in his 2002 Application for License Restoration that the Kentucky Board had denied his application for licensure in that state, Dr. Kegler testified that he had failed to do so because the denial had been only a “temporary denial.” Dr. Kegler acknowledged that the documentation from the Kentucky Board does not state that the denial was temporary; nevertheless, Dr. Kegler testified that, “off the record,” staff members of the Kentucky Board had told him that the denial was temporary. Later, Dr. Kegler testified that the President of the Kentucky Board had told him that he would have the right to reapply for a Kentucky license at a later date; therefore, Dr. Kegler had concluded that the denial was not final. At the same time, in somewhat

confusing testimony, Dr. Kegler testified that his answer of “No” to the question regarding the Kentucky denial had been “an error.” In the end, Dr. Kegler acknowledged that he had not indicated anywhere in the Ohio application for restoration that the Kentucky Board had denied his application for licensure. (Tr. at 58-63, 82-83)

16. In additional confusing testimony, Dr. Kegler explained his failure to advise the Ohio Board in his 2004 application for renewal that he had been placed on probation by the Kentucky Board. Dr. Kegler stated that he had answered the question negatively because he had only agreed to the probationary conditions in order to get the license in the first place. Dr. Kegler testified that he had fully intended to go back and renegotiate those terms with the Kentucky Board, but had failed to do so. Therefore, Dr. Kegler stated that, in his mind, the probationary conditions imposed by the Kentucky Board are only temporary. Nevertheless, Dr. Kegler testified that he had agreed to the probationary conditions and that those conditions are currently in effect. (Tr. at 65-73)

Dr. Kegler also testified that he questions the validity of the Kentucky probationary conditions because, among those things, he had been ordered to an evaluation performed by the Kentucky Impaired Physicians Association. Dr. Kegler testified that he had appeared for evaluations by a psychiatrist and a forensic psychologist, but that the Kentucky Board has not yet advised him of the outcome of these evaluations. Dr. Kegler testified that he had hoped to have an opportunity to challenge the allegations of impairment, but has not been offered that opportunity. Therefore, in his mind, the probationary conditions are only temporary. Dr. Kegler acknowledged, however, that nothing in the Kentucky Board Order indicates that the probationary conditions are temporary. (Tr. at 73-74, 86-88)

Thereafter, Dr. Kegler testified that, in the extreme, the appropriate answer to the question addressing probation would have been “Yes.” Nevertheless, Dr. Kegler testified that he has not practiced in Kentucky and that he has not had a hearing to determine that these are the final conclusions of the Kentucky Board. (Tr. at 74-85)

Dr. Kegler also argued that he was not actually placed on probation because there was no justification for placing him on probation. He acknowledged that the Kentucky Board Order stated that he was on probation, but continued:

But for what? I was on no probation at the time. I mean, as I understand it -- in other words, my charges had been expunged, adjudicated in the state of Ohio, as far as I am concerned, at least I interpret that. I had gotten my license back. So this is where I am a little bit having some difficulty, is that I am still waiting for Kentucky -- they owe me the right to a hearing.

(Tr. at 76)

17. At the time of hearing, Dr. Kegler testified that he still did not understand why the answers he had provided to the Kentucky Board and the Ohio Board were incorrect. (Tr. at 97-98)

FINDINGS OF FACT

1. On October 11, 1995, the Board issued to James L. Kegler, M.D., a Notice of Immediate Suspension and Opportunity for Hearing based upon Dr. Kegler's September 15, 1995, plea of guilty in the Hamilton County Court of Common Pleas to one felony count of Illegal Processing of Drug Documents.

On February 14, 1996, the Board issued an Order by which Dr. Kegler's certificate to practice medicine and surgery was permanently revoked; the revocation was stayed and his certificate was suspended for an indefinite period of time, but not less than one year. Moreover, the February 1996 Board Order established conditions for reinstatement and provided subsequent probationary terms, conditions, and limitations for a period of at least two years. Among the probationary terms and conditions, the Board ordered that Dr. Kegler "shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio."

On January 13, 1999, the Board granted Dr. Kegler's request for restoration of his Ohio certificate, subject to his passing the SPEX.

2. On August 9, 1999, Dr. Kegler filed an application for licensure in Kentucky. On January 13, 2000, the Kentucky State Board of Medical Licensure [Kentucky Board] issued an order denying Dr. Kegler's application for license. The basis for denial included Dr. Kegler's failure to disclose in his application for licensure in Kentucky that he had been convicted in Ohio for one felony count of Illegal Processing of Drug Documents.
3. On September 16, 2002, Dr. Kegler filed an application for restoration of his Ohio certificate. In the application for restoration, despite the denial of his application for licensure in Kentucky, Dr. Kegler responded "NO" to Question 9, which asked: "Have you ever, for any reason, been denied licensure or relicensure, application for licensure or relicensure, or the privilege of taking an examination, in any state (including Ohio), territory, province or county?"

On December 2, 2002, after Dr. Kegler passed the SPEX, the Board restored his certificate, subject to the probationary terms set forth in the February 1996 Board Order. At the time of hearing, Dr. Kegler's certificate remained subject to those probationary terms.

4. On July 24, 2003, the Kentucky Board filed an Agreed Order of Probation, placing Dr. Kegler on probation for a period of five years, subject to probationary terms and conditions. The probationary terms included a restriction on Dr. Kegler's privileges to prescribe controlled substances in Kentucky.
5. On April 27, 2004, Dr. Kegler signed and submitted to the Board an application for renewal of his certificate to practice medicine and surgery in Ohio. By signing the renewal application, Dr. Kegler certified that the information provided therein was true.

Nevertheless, despite the Kentucky Agreed Order of Probation and its limitation on his privileges to prescribe controlled substances, Dr. Kegler answered “No” to Question 5, which asked the following:

At any time since signing your last application for licensure/renewal in Ohio * * * [h]ave you surrendered, or consented to limitation of, or to suspension, reprimand or probation concerning, a license to practice any healthcare profession or state or federal privileges to prescribe controlled substances in any jurisdiction? You may answer “No” to this question if the only such surrender or consent was given to this board.

CONCLUSIONS OF LAW

1. The conduct of James L. Kegler, M.D., as described in Findings of Fact 3 and 5, constitutes “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code.
2. The conduct of Dr. Kegler, as described in Findings of Fact 2, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to April 10, 2001.
3. The conduct of Dr. Kegler, as described in Findings of Fact 3 and 5, constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
4. The conduct of Dr. Kegler, as described in Findings of Fact 1 and 5, constitutes a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, to wit: Sections 4731.22(A) and 4731.22(B)(5), Ohio Revised Code.

* * * * *

In 1996, the Board permanently revoked Dr. Kegler’s certificate to practice in the State of Ohio, but stayed the permanent revocation. During the intervening years, Dr. Kegler has made repeated untruthful statements on official documents related to the practice of medicine and surgery. Moreover, despite the stayed permanent revocation and the fact that he is being monitored by two

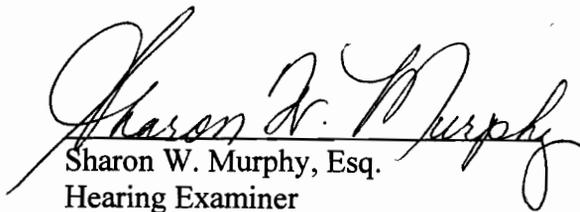
licensing agencies, Dr. Kegler loosely and unreasonably interprets the monitoring conditions imposed by those licensing boards, in direct contradiction of the obvious purpose of his probationary conditions. The series of untruths, and Dr. Kegler's unpredictable reasoning, render it extremely problematic for the Board to adequately monitor him. Accordingly, imposing the previously stayed permanent revocation of Dr. Kegler's certificate to practice medicine and surgery in this state is appropriate.

PROPOSED ORDER

It is hereby ORDERED that:

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

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


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

77 South Broad Street • Columbus, OH 43260-1007 • (614) 464-2100 • Fax: (614) 464-2101 • Website: www.smb.state.oh.us

EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 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: Binh Quoc Doan, M.D.; Adam P. Hall, D.O.; James L. Kegler, M.D.; John Michael Lonergan, M.D.; Richard Daniel Price, M.D.; Craig L. Rich, M.D.; Charles Christian Rickey, P.A.; Steven John Shor, M.D.; and Robert Martin Stang, D.O. 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.

.....
JAMES L. KEGLER, M.D.
.....

DR. EGNER MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES L. KEGLER, M.D. DR. VARYANI SECONDED THE MOTION.
.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	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

The motion carried.



State Medical Board of Ohio

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

January 12, 2005

James L. Kegler, M.D.
167 Versailles
Cincinnati, Ohio 45240

Dear Doctor Kegler:

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

- (1) On or about October 11, 1995, pursuant to R.C. 3719.121(C), the State Medical Board of Ohio (Ohio Board) issued you a Notice of Immediate Suspension and Opportunity for Hearing based upon your September 15, 1995, plea of guilty in the Hamilton County Court of Common Pleas to one felony count of Illegal processing of drug documents, in violation of R.C. 2925.23.

On or about February 14, 1996, by Order of the Ohio Board [Ohio Order], your certificate to practice medicine and surgery was permanently revoked; the revocation was stayed; your certificate was suspended for an indefinite period of time, but not less than one (1) year; and the Order established conditions for reinstatement and provided subsequent probationary terms, conditions, and limitations for a period of at least two (2) years including:

* * *

- A. Dr. Kegler shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.

* * *

A copy of the Ohio Order is attached hereto and incorporated herein.

On or about January 13, 1999, the Ohio Board granted your request for restoration of your Ohio certificate, subject to your passing the SPEX, and to the probationary terms, conditions and limitations of the Ohio Order. A copy of the pertinent Board Minutes is attached hereto and incorporated herein.

On or about December 2, 2002, in reliance upon the truthfulness of the information presented in your submission of an updated Application for License

MAILED 1-13-05

Restoration-Medicine or Osteopathic Medicine filed September 16, 2002 [Ohio Restoration Application], which you certified as true, and your passage of the SPEX, the Ohio Board notified you of the restoration of your certificate to practice medicine and surgery, subject to the probationary terms, conditions and limitations of the Ohio Order. A copy of the Board Restoration Correspondence is attached hereto and incorporated herein.

On or about July 9, 2003, the Ohio Board modified the terms, conditions and limitations of the above Ohio Order, granting your request to apply for a Drug Enforcement Administration certificate, and to prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess any controlled substance with the maintenance of a controlled substance log. A copy of the pertinent Board Minutes is attached hereto and incorporated herein.

From the date of the restoration of your Ohio Board certificate, on or about December 2, 2002, you have been subject to the probationary terms, conditions and limitations of the 1996 Ohio Order, as modified above, and remain subject thereto, as of this date.

(2) On or about January 13, 2000, the Kentucky State Board of Medical Licensure (Kentucky Board) filed an Order Denying Application for License, (Kentucky Denial Order). The basis for denial included your failure to disclose your felony conviction in Ohio for one count of Illegal drug processing in your application for Kentucky Board licensure, filed on or about August 9, 1999. A copy of the Kentucky Denial Order is attached hereto and incorporated herein.

(3) In the "Additional License Restoration Information-Medicine or Osteopathic Medicine" section of your Ohio Board Restoration Application, filed September 16, 2002, you responded "NO" to Question 9:

* * *

Have you ever, for any reason, been denied licensure or relicensure, application for licensure or relicensure, or the privilege of taking an examination, in any state (including Ohio), territory, province or county [emphasis added]?

* * *

In fact, on or about January 13, 2000, the Kentucky Board denied your application for licensure.

(4) On or about July 24, 2003, the Kentucky Board filed an Agreed Order of Probation [Kentucky Probation Order], placing you on probation for a period of five (5) years, subject to terms and conditions. The Kentucky Probation Order included Stipulation of Fact No. 8, as follows:

* * *

The licensee had previously submitted an Application for Licensure in the commonwealth of Kentucky that was denied on December 16, 1999. An Order denying the application for licensure was entered on January 13, 2000. At that time, his Ohio certificate to practice medicine was revoked and could not be reinstated until he passed the required SPEX examination.

Additionally, the licensee had not disclosed his felony conviction for one count of Illegal processing of drug documents in Ohio.

* * *

A copy of the Kentucky Board Probation Order is attached hereto and incorporated herein.

- (5) On or about April 27, 2004, you signed and submitted to the Ohio Board your application for renewal of your Ohio certificate to practice medicine and surgery [Ohio Board Renewal Application]. By signing the Ohio Board Renewal Application, you certified the information provided therein was true.

In this application for renewal, you responded "NO" to Question 5, as follows:

* * *

At any time since signing your last application for licensure/renewal in Ohio:

* * *

5.) Have you surrendered, or consented to limitation of, or to suspension, reprimand or probation concerning, a license to practice any healthcare profession or state or federal privileges to prescribe controlled substances in any jurisdiction? You may answer "NO" to this question if the only such surrender or consent was given to this board [emphasis added].

* * *

In fact, on or about July 21, 2003, you consented to the Kentucky Board Probation Order, subsequently filed July 24, 2003, as provided in paragraph three (3) above, which placed your Kentucky Board license to practice medicine on probation for a period of five (5) years, subject to probationary terms and conditions.

Further, the probationary terms and conditions of the Kentucky Probation Order specifically restricted your privileges to prescribe controlled substances in Kentucky.

Your failure to respond truthfully in your 2004 Ohio Board Renewal Application, as provided above, resulted in violations of the state laws of Ohio.

Accordingly, you have failed to comply with the probationary terms, conditions and limitations of the 1996 Ohio Order requiring you to obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.

Your acts, conduct, and/or omissions as alleged in paragraphs three (3) and five (5) above, individually and/or collectively, constitute “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in R.C. 4731.22(A).

Further, your acts, conduct, and/or omissions, as alleged in paragraph two (2) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in R.C. 4731.22(B)(5), as in effect prior to April 10, 2001.

Further, your acts, conduct, and/or omissions, as alleged in paragraphs three (3) and five (5) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in R.C. 4731.22(B)(5).

Further, your acts, conduct, and/or omissions, as alleged in paragraphs one (1), and five (5) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section R.C. 4731.22(B)(15) to wit: R.C. 4731.22(A) and R.C. 4731.22(B)(5).

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

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

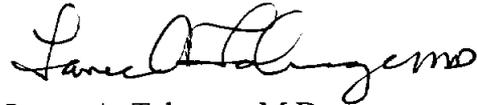
In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently

revoke, suspend, refuse to 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, R.C. 4731.22(L), provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

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

Lance A. Talmage, M.D.
Secretary

LAT/cw
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5149 5933
RETURN RECEIPT REQUESTED

9630

January 13, 1999

REINSTATEMENT REQUESTS

January 13, 1999

JAMES L. KEGLER, M.D.

Dr. Kegler's request for restoration of his license to practice medicine and surgery, which was suspended by Board Order of February 14, 1996, was presented to the Board for consideration at this time.

Ms. Sussex noted that Dr. Kegler last practiced medicine in October 1995. He has been out of active practice for more than three years.

Dr. Somani noted that Dr. Kegler is requesting that the Board restore his license without requiring him to take the SPEX.

Dr. Steinbergh commented that it has been more than three years since he has practiced medicine and passing the SPEX should be required.

DR. SOMANI MOVED TO GRANT RESTORATION OF DR. KEGLER'S CERTIFICATE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO, SUBJECT TO HIS PASSING THE SPEX, AND SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS OF THE BOARD'S ORDER OF FEBRUARY 14, 1996. DR. BHATI SECONDED THE MOTION.

Mr. Bumgarner stated that one issue he continues to raise is, if a physician were to repeatedly fail the SPEX, when should the matter come back to the Board for consideration of the need for course work or other alternatives.

Mr. Albert stated that that matter is addressed in H.B. 606.

Mr. Bumgarner stated that the only language addressing repeated failures concerns the massage exam.

Dr. Somani stated that it is the responsibility of the person who does not pass to take as many courses as he or she needs to pass.

Dr. Garg asked how many tests the Board should allow the physician to take before requiring further training.

Mr. Bumgarner stated that in the past the Board hasn't wanted to put a limitation on attempts.

Mr. Albert stated that he thought this matter was addressed in H.B. 606. If it isn't, the Board should consider getting legislation that states that after a person fails a test so many times, he or she would be required to get additional training. There have been individuals who have failed the licensure examination 15 times. After so many failures, a person should be required to get additional training.

Dr. Egner stated that the problem with that is what is meant by "additional training." There is really no program set up for people

January 13, 1999

who want to go back and formally get additional training. How can the Board require something that doesn't exist, that physicians would have to set up for themselves?

Dr. Somani stated that there are courses set up for people who want to get back into practice.

Dr. Heidt stated that the Federation of State Medical Boards has two centers open that do various examinations. Rather than require a physician to pass the SPEX for restoration, the Board could send him or her to the center for reevaluation.

Dr. Steinbergh suggested that the Board allow Dr. Kegler to sit for the SPEX, and if he fails, it can recommend that he go to one of the Federation's centers. It is Dr. Kegler's responsibility to do what he needs to do to get his license back.

Dr. Heidt stated that it is the Board's responsibility. Dr. Kegler can't refer himself to the Federation centers, the Board must refer him.

Dr. Agresta stated that the center in Colorado is the more functional of the two. The one in North Carolina is not fully funded yet.

A vote was taken on Dr. Somani's motion:

Vote:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egnor	- aye
	Mr. Browning	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Buchan	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Heidt asked what the Board wants to do about the recommendation that if Dr. Kegler fails the SPEX, he be required to go to a Federation center for evaluation.

Dr. Steinbergh stated that the Board needs to see whether or not Dr. Kegler fails the SPEX. If he does, then the Board will have to address that issue.

Dr. Heidt asked whether the matter will come back to the Board if Dr. Kegler fails.

Dr. Somani stated that it would because he wouldn't get his license.

Mr. Bumgarner stated that it will not come back to the Board until he passes.

Dr. Heidt stated that something needs to be done so that the matter comes back to the Board as a failure. Otherwise, it's lost.

Dr. Garg stated that last week he attended the Federation's Examination Committee meeting. They are developing a post-licensing assessment program. They have not really formed it, they're not quite ready for it. When Dr. Porter came to Ohio, customized programs were discussed, depending upon state requirements and specialties. That is not ready yet. Two subcommittees have been formed: one is working on the SPEX, and one is working on post-licensing assessment. Post-licensing assessment is being chaired by Dr. Porter, and it will be developed if there is enough need for it. Jim West is chairing the new SPEX Committee. The

January 13, 1999

National Board of Medical Examiners and the Federation have joined together to develop these tests. They are very disappointed about the lack of acceptance of SPEX. They were doing about 800 per year, and now are doing about 600 per year. Out of this number, 2/3 is voluntary and not done through the state boards. Very few boards require the SPEX for restoration.

Dr. Garg stated that Ms. Emrich is able to find a lot of courses and a lot of mini-residencies. He believes it would be very nice for the Board members to know, when issuing an order, what type of training is available.

Dr. Heidt stated that the Board should know if the physician fails.

Dr. Garg suggested that the Board be notified after three failures. He didn't think that the Board wanted to be notified after every failure.

Dr. Bhati stated that that would be challenged in the courts.

DR. SOMANI MOVED TO SEND THIS MATTER TO THE EDUCATION, PUBLIC RELATIONS AND RISK MANAGEMENT COMMITTEE TO EXAMINE THIS ISSUE AND COME BACK WITH RECOMMENDATIONS. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Browning	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Buchan	- aye
	Dr. Steinbergh	- aye



State Medical Board of Ohio

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

December 2, 2002

James L. Kegler, M.D.
167 Versailles
Cincinnati, OH 45240

Dear Dr. Kegler:

This letter is in regard to your request to restore your license to practice medicine and surgery in Ohio. Your application has been reviewed and found to be complete. Further, the Board has been advised that you successfully passed the SPEX in August of 2002. Therefore, pursuant to the Board's Order of February 14, 1996, and Entry of January 13, 1999, your license has been restored as of the date of this letter.

Should you have any further questions, please feel free to call me at (614)387-0794.

Sincerely,

A handwritten signature in cursive script that reads "Barbara A. Jacobs".

Barbara A. Jacobs
Public Services Administrator

Enclosure: Wallet Card

13356

July 9, 2003

JAMES L. KEGLER, M.D.

Dr. Kegler's request for a modification to the terms of the Board's Order of February 14, 1996 was

July 9, 2003

presented to the Board for consideration at this time.

DR. EGNER MOVED TO PERMIT DR. KEGLER TO APPLY FOR D.E.A. PRIVILEGES, AND TO PERMIT HIM TO PRESCRIBE, ADMINISTER, DISPENSE, ORDER, WRITE ORDERS FOR, GIVE VERBAL ORDERS FOR, OR POSSESS ANY CONTROLLED SUBSTANCES WITH THE MAINTENANCE OF A CONTROLLED SUBSTANCE LOG. DR. EGNER FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCES WITH DR. KEGLER ON JUNE 10, 2003. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. D-9906

FILED OF RECORD

JAN 13 2000

K.B.M.L.

IN RE: THE APPLICATION FOR LICENSE TO PRACTICE MEDICINE BY
ENDORSEMENT FILED BY JAMES L. KEGLER, M.D., 167 VERSAILLES,
CINCINNATI, OHIO 45240

ORDER DENYING APPLICATION FOR LICENSE

At its December 16, 1999 meeting, the Kentucky Board of Medical Licensure (hereafter "the Board") considered an Application for License to Practice Medicine by Endorsement filed by James L. Kegler (hereafter "the applicant"). The applicant answered "yes" to Questions 3, 4, 7, 8, 9 and 13, which asked, respectively:

3. Have you ever had any license, certificate, registration or other privilege to practice as a health care profession denied, revoked, suspended, or restricted by a State, Federal, or International authority, or have you ever surrendered such credential to avoid or in connection with action by such jurisdiction?
4. Has any hospital, hospital medical staff or any other health care entity ever revoked, suspended, restricted, limited, reprimanded, placed on probation or otherwise disciplined your staff privileges?
7. Has the Drug Enforcement Administration or any other state or international drug licensure/enforcement authority ever denied, revoked, suspended, restricted, limited, or otherwise disciplined a controlled substance registration certificate issued to you?
8. Have you ever voluntarily or involuntarily surrendered a medical or osteopathic license, or controlled substance registration certificate issued to you?
9. Have you ever been or are you currently under investigation by any State, Federal or international authority or any drug licensure/enforcement authority?
13. Have you ever had to pay a judgment in a malpractice action or other civil action against your medical practice or are any malpractice or other civil actions against your medical practice presently pending in any court?

In addition to the application, the Board reviewed an August 25, 1999 letter from the applicant addressing these positive answers; September 10, 1999 correspondence from

the State Medical Board of Ohio, which included a "License Profile & Status" and the approved minutes for January 13, 1999; a September 29, 1999 letter from the Residency Director, University of Cincinnati Medical Center, and, a Board Medical Malpractice Form filed by the applicant.

In reviewing these additional documents, the Board learned that the applicant had plead guilty to one felony count of Illegal Processing of Drug Documents; that the Ohio Board had suspended his Ohio license on October 11, 1995 immediately upon notification of his felony conviction; that, on February 15, 1996, the Ohio Board voted to permanently revoke the applicant's Ohio license, but stayed that revocation subject to an indefinite suspension of at least one year's duration with a probationary period of at least two years to follow; and, that the applicant's request for reinstatement of his Ohio license had been granted on the express conditions that he successfully pass the SPEX examination and that he comply with the terms of probation previously fixed. The Board further learned that the applicant had been responsible for \$25,000 of a \$50,000 out-of-court settlement in a malpractice action.

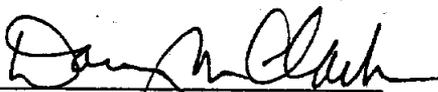
In response to appropriate notice, the applicant appeared at the Board's meeting and addressed the Board members. He confirmed his written comments that he did not believe that he should have to pass the SPEX examination because he was board-certified. When questioned, he acknowledged that he had taken the SPEX examination twice but had failed to successfully pass the examination on either attempt. The applicant also confirmed that his Ohio medical license had not been reinstated.

Having considered all of this information and being sufficiently advised, the Board FINDS that, by his conduct, the applicant has violated the provisions of KRS 311.595(4),

311.595(17), 311.595(21) and 311.595(9), as illustrated by KRS 311.597(3).

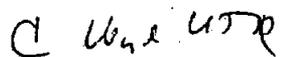
Accordingly, the Board CONCLUDES that there are legal bases for denial of the applicant's application. Having considered all of the information available to it and being sufficiently advised, the Kentucky Board of Medical Licensure hereby ORDERS that the Application for License to Practice Medicine by Endorsement filed by James L. Kegler, M.D., is DENIED.

SO ORDERED on this 13th day of January, 2000.


DANNY M. CLARK, M.D.
PRESIDENT

Certificate of Service

I certify that the original of this Order was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed via certified mail return-receipt requested to James L. Kegler, M.D., 167 Versailles, Cincinnati, Ohio 45240 on this 13th day of January, 2000.


C. Lloyd Vest II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

JUL 24 2003

K.B.M.L.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 904

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY JAMES L. KEGLER, M.D., LICENSE NO. TP789,
629 OAK STREET, SUITE 507, CINCINNATI, OHIO 45206

AGREED ORDER OF PROBATION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through the Board, and James L. Kegler, M.D., and, based upon licensee's Application for License to Practice Medicine/Osteopathy by Endorsement, hereby ENTER INTO the following AGREED ORDER OF PROBATION:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Probation:

1. On April 23, 2003, the licensee executed an Application for License to Practice Medicine/Osteopathy by Endorsement in the Commonwealth of Kentucky.
2. The Board considered the licensee's application at its June 26, 2003 meeting. After considering the relevant facts, the Board voted to issue the licensee a Kentucky Medical License under terms and conditions consistent with those provided for by the Ohio Medical Board as it relates to the licensee's Ohio certificate to practice medicine. The licensee will be issued a Kentucky Medical License upon the filing of the Agreed Order of Probation.
3. The licensee's medical specialty is Family Practice.

4. On October 11, 1995, the licensee's Ohio certificate to practice medicine was suspended based upon his plea of guilty to one (1) felony count of illegal processing of drug documents.
5. On February 14, 1996, the Ohio Medical Board entered an order against the licensee's Ohio certificate to practice medicine. The order permanently revoked his medical license but revocation was stayed subject to an indefinite suspension for at least one (1) year.
6. On December 2, 2002, the licensee's Ohio certificate to practice medicine was restored based upon the licensee having passed the SPEX examination as previously required by the Ohio Medical Board. The licensee's Ohio certificate was reinstated pursuant to the probationary terms, conditions and limitations established by the February 14, 1996 Ohio Medical Board order.
7. On July 9, 2003, the licensee was approved by the Ohio Medical Board to apply for his DEA permit. Upon issuance of a DEA permit, the Ohio Medical Board has authorized the licensee to prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as prescribed for Dr. Kegler's use by another so authorized by law) any controlled substances as defined by state or federal law, without prior Board approval. The reinstatement of the licensee's prescribing privileges is subject to the probationary terms, conditions and limitations established by the February 14, 1996 Ohio Medical Board order.
8. The licensee had previously submitted an Application for Licensure in the Commonwealth of Kentucky that was denied on December 16, 1999. An order denying the application for licensure was entered on January 13, 2000. At that time,

his Ohio certificate to practice medicine was revoked and could not be re-instated until he passed the required SPEX examination. Additionally, the licensee had not disclosed his felony conviction for one count of Illegal Processing of Drug Documents in Ohio.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Probation:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct, which violates KRS 311.595(4) and (17) and KRS 311. 595(9) as illustrated by 311.597(1) and (4). Accordingly, there are legal bases for disciplinary action against the licensee's Kentucky medical license.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve the Application for License to Practice Medicine/Osteopathy by Endorsement without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Probation.

AGREED ORDER OF PROBATION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law and, based upon licensee's Application for License to Practice Medicine/Osteopathy by Endorsement, the parties hereby ENTER INTO the following **AGREED ORDER OF PROBATION**:

1. The license to practice medicine in the Commonwealth of Kentucky held by James L. Kegler, M.D., is hereby PLACED ON PROBATION for a period of FIVE (5) YEARS, with that period of probation to commence immediately upon the filing of this Agreed Order of Probation.
2. During that period of probation, the licensee SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. Upon the issuance of a DEA permit and resuming the practice of prescribing, dispensing and utilization of controlled substances, the licensee shall maintain a "controlled substance log," for each instance in which the licensee prescribes, dispenses or otherwise professionally utilizes controlled substances. The "controlled substances log" must include date, patient name, patient complaint, medication prescribed, when it was last prescribed/dispensed/utilized and how much on the last visit. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner: 1) patient; 2) chart; and 3) log. Dispensing information should be maintained in the patient chart and the log.;
 - b. Upon request, the licensee shall make the "controlled substances log" and/or all relevant patient charts available for review, by the Board's agents and/or Board consultants;
 - c. Upon resuming the practice of prescribing, dispensing and utilization of controlled substances, the licensee shall routinely request and appropriately utilize

KASPER reports for all patients for whom he has prescribed controlled substances;

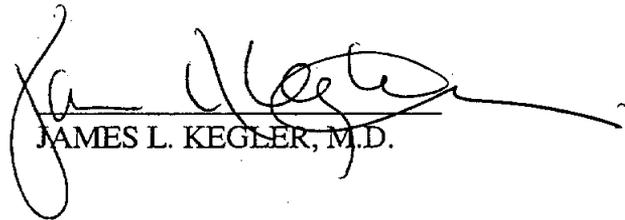
- d. Within thirty (30) days of entry of this Agreed Order, the licensee shall make the necessary arrangements with Burns Brady, M.D., Medical Director, Kentucky Physicians Health Foundation, Impaired Physicians Program (IPP) for an evaluation(s). The licensee shall take the necessary steps so that a copy(ies) of any evaluation report(s) shall be submitted to IPP and to the Board's General Counsel or Assistant General Counsel within two (2) weeks of its completion;
 - e. If, after reviewing the evaluation report(s), Dr. Brady determines that treatment is required, the licensee shall be notified of that fact and the nature of the treatment required. Once the licensee is informed treatment is necessary, he shall enter into a contractual relationship with IPP within seven (7) days of notification, outlining the treatment program;
 - f. In the event that the licensee is required to enter into a contractual relationship with IPP, he shall fully comply with all terms of that contractual relationship;
 - g. The licensee shall refrain from self-treating and from treating any family members, except in the event of a life-threatening emergency;
 - h. The licensee shall not violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that, if the licensee should violate any term or condition of this Agreed Order of Probation, the licensee's practice shall constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that, if the Board should receive information that he has violated any term or condition of this Agreed Order of Probation, the

Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term(s) or condition(s) of this Agreed Order of Probation.

4. The licensee understands and agrees that any violation of this Agreed Order of Probation may serve as the basis for additional disciplinary action, pursuant to KRS 311.595(13), including revocation of his Kentucky medical license.

SO AGREED this 21st day of JULY, 2003.

FOR THE LICENSEE:


JAMES L. KEGLER, M.D.

COUNSEL FOR DR. KEGLER
(IF APPLICABLE)

FOR THE BOARD:


DANNY M. CLARK, M.D.
PRESIDENT


L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

ENTERED: 7/24/03



State Medical Board of Ohio

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

April 8, 1998

James L. Kegler, M.D.
2916 Gilbert Avenue
Cincinnati, OH 45206

Dear Dr. Kegler:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 8, 1998, including motions amending 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 may be taken to the Franklin County Court of Common Pleas only.

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 010
RETURN RECEIPT REQUESTED

cc: Caleb Brown, Jr., Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 839 011
RETURN RECEIPT REQUESTED

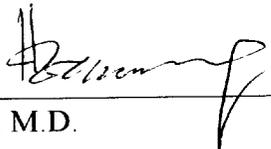
Mailed 5/11/98

CERTIFICATION

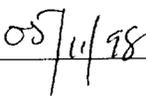
I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 8, 1998, including motions amending 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 James L. Kegler, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)



Anand G. Garg, M.D.
Secretary



Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES L. KEGLER, M.D.

*

ENTRY OF ORDER

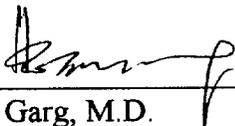
This matter came on for consideration before the State Medical Board of Ohio on April 8, 1998.

Upon the Report and Recommendation of R. Gregory Porter, 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 the allegations set forth in the Board September 10, 1997 notice of opportunity for hearing be and are hereby DISMISSED.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

Date

05/11/98

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES L. KEGLER, M.D.**

The Matter of James L. Kegler, M.D., was heard by R. Gregory Porter, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on December 9, 1997.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated September 10, 1997, the State Medical Board [Board] notified James L. Kegler, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based upon Dr. Kegler's alleged sexual misconduct toward two patients identified in a confidential Patient Key. (State's Exhibit 5)

The Board further alleged that Dr. Kegler's acts, conduct, and/or omissions, individually and/or collectively, constituted: "(a) departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code"; and/or "(t)he violation of any provision of a code of ethics * * * of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics."

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

- B. By document received by the Board on October 6, 1997, Caleb Brown Jr., Esq., requested a hearing on behalf of Dr. Kegler. (State's Exhibit 2)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Christopher E. Wasson, Assistant Attorney General.
- B. On behalf of the Respondent: Caleb Brown Jr., Esq.

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EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Patient 1
2. Victoria A. Ventre
3. Patient 2
4. Beryl M. Oser, M.D.

B. Presented by the Respondent

1. Regina Cure Rockingham
2. Robin Rockingham
3. Donna Jean Thornton
4. James L. Kegler, M.D.

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence. Note that exhibits marked with an asterisk (*) have been sealed to protect patient confidentiality.

A. Presented by the State

1. State's Exhibit 3: Copy of an October 7, 1997, letter to Caleb Brown Jr., Esq., from the Board, advising that a hearing had been set for October 20, 1997, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code; copies of certified mail receipts are attached. (2 pp.)
2. State's Exhibit 4: Copy of an October 14, 1997, letter to Attorney Brown from the Board, scheduling the hearing for December 9, 1997. (2 pp.)
- * 3. State's Exhibit 5: Copy of a November 28, 1997, State's Initial Request for Issuance of Subpoenas, and Confidential Patient Key. (4 pp.)

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- * 4. State's Exhibit 6: Copy of a written statement from Patient 1 to the Board concerning Dr. Kegler. (7 pp.)
- * 5. State's Exhibit 7: Copy of a transcript of a July 30, 1993, interview with Patient 2 conducted by a Cincinnati Police Detective and a Board Investigator. (15 pp.)
- * 6. State's Exhibit 8: Copy of Patient 2's medical records from the University of Cincinnati Medical Center. (13 pp.)
- 7. State's Exhibit 9: Curriculum vitae of Beryl M. Oser, M.D. (2 pp.)
- 8. State's Exhibit 10: Excerpts from the Code of Medical Ethics of the American Medical Association. (8 pp.)
- * 9. State's Exhibit 11: Copy of Dr. Kegler's medical records for Patient 1. (37 pp.)
- * 10. State's Exhibit 12: Copy of Dr. Kegler's medical records for Patient 2. (7 pp.)
- 11. State's Exhibit 13: Copy of Certification, Entry of Order, Report and Recommendation, and excerpt of the draft minutes of the February 14, 1995, meeting of the Board, with regard to the Board's November 20, 1995, hearing concerning Dr. Kegler. (24 pp.)
- * 12. State's Exhibit 14: Copy of transcript of deposition of Dr. Kegler in connection with a case filed in the Hamilton County Court of Common Pleas captioned *[Patient 1] v. James L. Kegler*, Case Number A9606801. (32 pp.)

B. Presented by the Respondent

- * 1. Respondent's Exhibit 1: Certified copies of a Prosecuting Attorney's Request for Issuance of Warrant Upon Indictment; and a September 12, 1995, Indictment charging Patient 1 with one count of "Theft: Welfare [Section] 2913.02(A)," filed in the Hamilton County Court of Common Pleas in the case captioned *State of Ohio v. [Patient 1]*, Case Number B9507584. (3 pp.)
- * 2. Respondent's Exhibit 2: Certified copy of a December 27, 1995, Judgment Entry, filed in *State v. [Patient 1]*, Case Number B9507584.
- * 3. Respondent's Exhibit 3: Certified copy of a November 22, 1995, Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty, filed in *State v. [Patient 1]*, Case Number B9507584.

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- * 4. Respondent's Exhibit 4: Certified copies of a Prosecuting Attorney's Request for Issuance of Warrant Upon Indictment; and a November 24, 1997, Indictment charging Patient 1 with one count of "Deception to Obtain a Dangerous Drug [Section] 2925.22(A)," filed in the Hamilton County Court of Common Pleas in the case captioned *State of Ohio v. [Patient 1]*, Case Number B9708831. (3 pp.)
- * 5. Respondent's Exhibit 5: Certified copy of the Complaint, filed on October 30, 1997, in the Hamilton County Municipal Court, which gave rise to the Indictment included in Respondent's Exhibit 4.
- 6. Respondent's Exhibit 6: Withdrawn.
- 7. Respondent's Exhibit 7: Copies of letters of support written on behalf of Dr. Kegler.

SUMMARY OF THE EVIDENCE

All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

Background Information Regarding the State's Expert Witness

Beryl M. Oser, M.D., testified as an expert on behalf of the State. Dr. Oser testified that he obtained his Doctor of Medicine degree from the Ohio State University Medical School in 1973. Dr. Oser trained in internal medicine at Ohio State University Hospitals from 1973 through 1974. Dr. Oser was certified by the American Board of Family Practice in 1977, and recertified in 1983 and 1990. Dr. Oser testified that he practices family medicine in Reynoldsburg, Ohio with one other physician. (State's Exhibit [St. Ex.] 9; Transcript at pages [Tr.] 115-116)

Evidence Regarding Patient 1

1. Patient 1, female, d.o.b. December 11, 1952, first saw Dr. Kegler on May 31, 1985. At that time she weighed 277 pounds. Dr. Kegler's diagnosis was exogenous obesity, and he prescribed Aldactazide and Ionamin. Dr. Kegler saw Patient 1 again on July 23, 1985, at which time he prescribed Fastin and Aldactazide. Patient 1 saw Dr. Kegler again on December 6, 1985, and again received Fastin and Aldactazide. (St. Ex. 11, pp. 6A-6B)

Patient 1 did not return to Dr. Kegler's office until March 2, 1994. At that time, she weighed 347 pounds. Dr. Kegler's diagnoses were morbid obesity and degenerative joint

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disease. Patient 1 saw Dr. Kegler on several other occasions during 1994. The last entry in Dr. Kegler's medical records for Patient 1 is dated December 9, 1994. At that time, Patient 1 weighed 331 pounds. (St. Ex. 11, pp. 6B-9B)

Dr. Kegler medical records did not contain any billing information for Patient 1's visits during 1985, although a patient information sheet indicated that the person responsible for her bill was "self." For her 1994 visits, however, Dr. Kegler's medical records indicated that her bills were sent to Medicaid. (St. Ex. 11, pp. 2-4, 23-30B)

2. Patient 1 testified that she had first seen Dr. Kegler in the mid-1980s. She testified that, at that time, she was on Medicaid and had gone to see Dr. Kegler a few times, then stopped when she obtained better insurance. Patient 1 further testified that she resumed seeing Dr. Kegler in 1991. She stated that she had to stop working at that time, due to her daughter's illness, and lost her health insurance. Patient 1 further noted that her daughter, whose illness had necessitated a liver transplant, was also a patient of Dr. Kegler's. (Tr. 14-16)

Patient 1 testified that, sometime in 1994, while Dr. Kegler was examining Patient 1's daughter, Dr. Kegler told his nurse who was also present in the examining room that you call Prednisone "titties." Patient 1 testified that she found that remark to be inappropriate, given her daughter's age, which was 15. In addition, Patient 1 testified that her daughter has been developmentally handicapped by her illness, which Patient 1 believed made the remark even more inappropriate. (Tr. 16-18)

3. Patient 1 testified that she had scheduled a December 9, 1994, appointment with Dr. Kegler because of her arthritis. Patient 1 testified that, during that visit, after having her blood pressure checked, temperature taken, and weight recorded, she was escorted back to the examining room by one of Dr. Kegler's assistants. Patient 1 testified that she sat down on an examining table and waited for Dr. Kegler. (Tr. 18-20)

Patient 1 testified that the examining table was placed in the room with one side up against the wall. The back of the table was up at an angle. Patient 1 testified that she sat on the table with her back against the wall. (Tr. 20-22)

Patient 1 testified that, when Dr. Kegler came into the examining room he said, "Well, well, well, look who we have here, Big Mama." Patient 1 stated that Dr. Kegler had referred to her as "Big Mama," "Fat Mama," and "fat" on previous occasions. Patient 1 further testified that, although she had believed that such comments were inappropriate, she "just laughed" and did not say anything to Dr. Kegler about them. (Tr. 22-23)

Patient 1 testified that Dr. Kegler then told her that his cousin had told him that "you have never had no good lovemaking until you've been with a big woman." Patient 1 said that Dr. Kegler then moved closer to her and began rubbing his groin on her left knee. Patient 1 testified that Dr. Kegler said to her, "This is how you do a big woman," and shifted

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Patient 1's hips halfway off the examining table, holding her legs up "like we were in a sexual position." Patient 1 noted that she laughed when Dr. Kegler did this, but said that she did so out of nervous energy. Patient 1 stated that she pushed her legs down and stood on the floor. (Tr. 23-25)

Patient testified that Dr. Kegler then took a seat on his roll-away chair and told Patient 1 to "[c]ome here." Patient 1 testified that she complied. Patient 1 further testified that, without explaining what he was going to do, Dr. Kegler pulled up her sweatshirt and asked her about a cholecystectomy scar on her abdomen. Patient 1 stated that he then instructed Patient 1 to loosen the strings on her sweatpants. Patient 1 testified that Dr. Kegler had offered no reason, but that she complied nevertheless. (Tr. 25-27)

Patient testified that Dr. Kegler then

took my pants and my panty girdle and snatched down with three jerks, and pulled my stomach up, because my stomach, by me being heavy, it goes over. And he looked and he asked me 'What was this, sweat?' I told him, 'No sir, I don't think so.' And he said 'Oh, it's powder.'

So [Dr. Kegler] took his two fingers, and he poked me in my private and asked me how did I like that and how did it feel. I jerked back, and I sat in the chair that was right by the sink, and I laughed as I done it.

(Tr. 27) Patient 1 testified that she had laughed because she was upset. (Tr. 27)

Patient 1 testified that Dr. Kegler then rolled over to her on his chair. Patient 1 said that Dr. Kegler again remarked about his cousin having told him that the best lovemaking is with a big woman. She said that he also told her that "[i]t doesn't hurt to have any fun," and that he knew that Patient 1 had been worried about her daughter. (Tr. 27-29)

Patient 1 testified that Dr. Kegler did not wear gloves during this visit. Moreover, she testified that there was no third party present in the room. In addition, she testified that Dr. Kegler did not examine her knee or back, nor did he question her about her complaints. Finally, Patient 1 testified that he wrote out two prescriptions for her. (Tr. 29-30)

Patient 1 testified that, after leaving the examining room, she saw one of Dr. Kegler's employees, Charlene, as well as another patient that Patient 1 had been conversing with in the waiting room. Patient 1 testified that she had "thought that they knew what happened because [Patient 1] felt guilty." Patient 1 testified that she had asked Charlene to give her a call at the hospital where Patient 1's daughter was staying because Patient 1 wanted to tell Charlene what had happened. Patient 1 testified that Charlene took the number down but never called. (Tr. 30-31)

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4. Patient 1 testified that, after she left Dr. Kegler's office, which was located in the medical office building at Bethesda Hospital, she went downstairs to the emergency room area. She stated that she called her daughter and told her what happened, and her daughter had indicated that she was going to come and get her. Patient 1 testified that she then called a cab. Patient 1 testified that she felt very distraught at this time, and decided to go see her psychiatrist, whose office was in the same building as Dr. Kegler's. (Tr. 31-33)

Patient 1 testified that she then went to her psychiatrist's office, but was told by Robin and Vickie, employees at that office, that neither the psychiatrist, Dr. Guresko, or the psychologist, Ms. Bridges, were in. Patient 1 testified that she then told Robin and Vickie what had happened at Dr. Kegler's office. Patient 1 said that Robin and Vickie tried to contact Dr. Guresko or Ms. Bridges, but were unsuccessful. Patient 1 stated that Robin and Vickie asked Patient 1 if she wanted to call security, but that she declined. Patient 1 testified that they then looked up the Board's telephone number and called. Patient 1 further testified that she talked to someone at the Board and explained what had happened with Dr. Kegler, and was told to put everything down in writing and send it to the Board. Patient 1 identified St. Ex. 6 as the statement that she subsequently wrote and sent to the Board. (Tr. 33-37)

5. Patient 1 acknowledged that she has a sexual harassment suit pending against Dr. Kegler in the Hamilton County Common Pleas Court. (Tr. 46)
6. Patient 1 testified on cross-examination that her daughter had died when infected with herpes by a nurse. She stated that, at that time, her daughter had been in an immunosuppressed state following a liver transplant. Patient 1 stated that, after contracting herpes, "my daughter had grand mal seizures. They had to intubate and bag her. My daughter died * * * because of nurse carelessness. My daughter died." In subsequent testimony, however, Patient 1 clarified that "[t]hey had to resuscitate her. They had to intubate her and bag her. * * * They had to bring her back to life." (Tr. 48, 51-52, 54-55)
7. On or about December 27, 1995, in the Hamilton County Court of Common Pleas, Patient 1 pleaded guilty to and was convicted of Theft, a violation of Section 2913.02(A), Ohio Revised Code, a felony of the fourth degree. The property involved was welfare services. Patient 1 was sentenced to 1½ years incarceration, which was suspended on the condition that Patient 1 comply with certain terms and conditions of probation for a period of five years, which included restitution in the amount of \$3,079.00. (Respondent's Exhibits [Resp. Exs.] 1 through 3)

Patient 1 testified that this charge arose from Patient 1 having worked while also receiving welfare payments. She further testified that she "didn't understand it; so [she] pleaded guilty to it." Patient 1 acknowledged that she is currently on probation for this offense. (Tr. 18)

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In addition, Patient 1 acknowledged that she had been convicted of another welfare falsification offense in approximately 1986. Patient 1 stated that this conviction occurred because, although she had lived with her sister and had received her assistance checks at her sister's address, her sister had told the authorities that Patient 1 did not live there. (Tr. 50, 53)

Further, on or about November 24, 1997, an indictment against Patient 1 for violation of Section 2925.22(A), Ohio Revised Code, Deception to Obtain a Dangerous Drug, was filed in the Hamilton County Common Pleas Court. Patient 1 testified that she had tried to obtain multiple prescriptions of Adderall in order to kill herself. She also testified that her daughter "takes the same medication as well. She's an ADD patient." Patient 1 denied that she had used her daughter's name to obtain the prescriptions, however. She also denied that she forged the prescriptions: "I didn't forge it. I went to different doctors. I wanted the doctors to kill me, but I was too cowardly to do it myself. I was taking five to six pills a day, and I just wouldn't die." (Resp. Ex. 4; Tr. 50-51)

8. Victoria A. Ventre testified that in December 1994 she was employed by Michael A. Guresko, M.D., as Dr. Guresko's office manager. Ms. Ventre testified that Dr. Guresko is a psychiatrist who operated a solo practice with several social workers in his employ. Ms. Ventre noted that Jane Bridges was one of Dr. Guresko's social workers. (Tr. 58-60)

Ms. Ventre testified that Patient 1 was a patient of Dr. Guresko and Ms. Bridges. Ms. Ventre further testified that on December 9, 1994, Patient 1 came into Dr. Guresko's office "crying hysterically." Ms. Ventre further testified that when she had asked Patient 1 what was wrong, Patient 1 told her that she had just been sexually abused by her physician. Ms. Ventre said that Patient 1 then asked to see Ms. Bridges, but Ms. Bridges was not in the office at that time. Ms. Ventre testified that another office worker tried to contact Ms. Bridges, unsuccessfully, while Ms. Ventre tried to comfort Patient 1. Ms. Ventre further testified that she told Patient 1 that she should contact the Board and report her physician. Ms. Ventre testified that she had never before seen Patient 1 so upset. (Tr. 61-62)

Ms. Ventre testified that she then took Patient 1 into a private office and dialed the Board's number, and told the person who answered that she had a patient in her office who had just been sexually abused by her physician. Patient 1 then got on the phone and reported the incident. (Tr. 62-63)

9. Regina C. Rockingham testified on behalf of Dr. Kegler. Ms. Rockingham testified that she is Patient 1's sister. Ms. Rockingham further testified that she is the oldest of eight sibling, and Patient 1 is the youngest. (Tr. 86-87)

Ms. Rockingham testified vehemently that Patient 1's reputation for truth and veracity is "[h]orrible, deploring, [and] ungodly[.]" (Tr. 87)

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Ms. Rockingham testified that when Patient 1 told her that Dr. Kegler had attacked her, Ms. Rockingham did not believe her. Ms. Rockingham further testified that Patient 1 has lied to her many times, and that she does not trust her. Ms. Rockingham acknowledged that her relationship with Patient 1 is strained. (Tr. 104-108)

Ms. Rockingham testified that she knows Dr. Kegler, and has known him since he was an intern. She stated that she had been a patient of Dr. Kegler's. Ms. Rockingham testified that Dr. Kegler's medical skill had saved the lives of her brother and her husband. (Tr. 103-104)

10. Robin Rockingham, daughter of Regina Rockingham, also testified on behalf of the Respondent. Robin Rockingham testified that Patient 1 is her aunt. Robin Rockingham further testified that she does not believe that Patient 1 is a trustworthy person. She stated that one basis for this belief is that she believes Patient 1 to be a troublemaker who is argumentative and likes to start fights. Further, Robin Rockingham testified that she was present at a hearing before a panel of arbitrators at which Patient 1 gave false testimony—that Patient 1 had testified that her family was dysfunctional because female siblings had been molested by their father and a brother, which Robin Rockingham does not believe to be true. Robin Rockingham also stated that Patient 1 had testified that she is a good mother and hadn't given up her children, but that Patient 1's two eldest children had been raised by other relatives. (Tr. 149-158)

Robin Rockingham testified that she had been a patient of Dr. Kegler's, and has known him for approximately 5 years. (Tr. 154)

11. Dr. Oser testified that it would be below the minimal standard of care for a physician to address an obese patient as "Big Mama," to ask that patient about a statement that "making love with a big woman is best," and to rub his groin against the patient's leg. Dr. Oser further testified that such conduct would violate Principles I, II, and IV of the American Medical Association Principles of Medical Ethics. (Tr. 124-127)

Dr. Oser testified that it would be appropriate for a physician to insert his fingers into a patient's genital region only in the context of a pelvic examination: with the patient in stirrups, draped, and with the physician's hands gloved. Dr. Oser also testified that to do otherwise would be below the minimal standard of care. (Tr. 127-130)

12. Dr. Kegler testified that he first saw Patient 1 in May 1985. He stated that, in the early years of his career, he practiced diet control medicine because he had special training in that area. (Tr. 173)

Dr. Kegler disagreed with Patient 1's testimony that she had ceased coming to Dr. Kegler because her insurance had changed. He testified that he first saw her in May 1985, at a time when Schedule II amphetamines were allowed to be prescribed for weight loss. Dr. Kegler further testified that, later on, such prescribing became taboo. Dr. Kegler testified that

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Patient 1 stopped coming to him because he would no longer prescribe Scheduled II amphetamines for Patient 1. He further testified that he had heard, in strict confidence from other patients, that Patient 1 was using her prescriptions for illicit purposes, and that had prompted him to stop prescribing them for her. (Tr. 173-174) [It should be noted, however, that Dr. Kegler's assertions that Patient 1 had stopped coming to him because he had refused to prescribe controlled substances for her, and that had she misused controlled substances, are not recorded in or supported by the medical records. (St. Ex. 11)]

Dr. Kegler testified that when Patient 1 returned to his practice, he reluctantly took her back as a patient at the request of her sister Regina, who was also a patient. Dr. Kegler stated that at that time Patient 1's problems were obesity, degenerative arthritis, vertigo, and breathing problems. Dr. Kegler testified that the medical records indicate that Patient 1 had a significant decline in her weight during the time that she saw him. (Tr. 174-175) [It should be noted, however, that Patient 1's weight declined from 347 pounds on March 2, 1994, to 331 pounds on December 9, 1994. (St. Ex. 11)]

Dr. Kegler testified that at the time Patient 1 made her allegations against him, "she had been trying to manipulate [Dr. Kegler's] office workers to have [Dr. Kegler] give her controlled substances." Dr. Kegler testified that he did not give them to her. (Tr. 175) [It should be noted, however, that no drug seeking behavior on the part of Patient 1 was documented in her medical records. (St. Ex. 11)]

Dr. Kegler testified that he did not touch Patient 1 with his genitals, and that he did not touch her genitals. He further testified that he "had been privileged with further information that [Patient 1] was going to use [him] as a vehicle to get out of her conviction, her two convictions from the State welfare." Dr. Kegler testified that he heard about this from more than one source. (Tr. 176) [It should be noted however, that there was no such information recorded in Patient 1's medical records. (St. Ex. 11)]

Dr. Kegler testified that when Patient 1 came in on December 9, 1994, it was for a routine checkup. Dr. Kegler's nurse took Patient 1's weight and blood pressure. Patient 1 asked Dr. Kegler for a referral to New Directions, a weight loss program. Dr. Kegler recalled examining Patient 1's heart and lungs, and noting that she was not having any cardiovascular problems that can result from losing weight too fast. Dr. Kegler further recalled performing a "flexion test" on Patient 1's back, whereby he placed his hands on her abdomen and on her back as she bent forward. He denied touching her genitalia at any time during this examination. Dr. Kegler also denied that he ever referred to Patient 1 as "Big Mama," and further denied that he ever said anything to her concerning the lovemaking prowess of larger women. (Tr. 176-177, 196)

Dr. Kegler acknowledged that the flexion test was not recorded in the medical records. Dr. Kegler testified, however, that he believes this test was done because he had certain protocols for patients with certain condition, and stated that a physician may do more than

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is actually recorded in the record during short, episodic visits. Nevertheless, Dr. Kegler testified that he could not specifically recall performing this test on Patient 1 at that time. (Tr. 194-195)

Dr. Kegler acknowledged that he did not wear gloves during Patient 1's visit, but that it was not his practice to wear gloves every time he saw a patient. He further testified that he had a sink in each of his examining rooms and washed his hands between patients. (Tr. 177-178)

Evidence Regarding Patient 2

1. Patient 2, female, d.o.b. November 14, 1975, first saw Dr. Kegler on September 25, 1992. Subsequently, Patient 2 saw Dr. Kegler on only one other occasion, July 12, 1993. (St. Ex. 12)
2. Patient 2 testified that she had gone to see Dr. Kegler on July 12, 1993, concerning a skin condition that she had thought was ringworm. She was 17 years old at that time. She stated that she had spots on her arms, on her back, on her calf, and on her legs just above the knee. She further stated that, prior to seeing Dr. Kegler, she had visited an urgent care center and received medicine that had not been effective. (Tr. 67-69, 79)

Patient 2 testified that, on July 12, 1993, she was accompanied by her three-year-old daughter. Patient 2 stated that she wore a tank-top and loose-fitting shorts that covered her legs to just above the knee. She said that after she arrived at Dr. Kegler's office, a nurse took her blood pressure, weight, and height, and Patient 2 gave a urine sample. (Tr. 69-70)

Patient 2 testified that when Dr. Kegler came into the examination room he asked her what she had gotten into, and Patient 2 replied that she thought she had ringworm. Patient 2 further testified that she showed Dr. Kegler the spots on her skin. She stated that she lifted the hem of her shorts "[m]aybe two inches above [her] knee" to show Dr. Kegler the spots on her leg. Patient 2 further testified that Dr. Kegler asked her if she had the spots anywhere else, to which she replied that she did not. Patient 2 stated that Dr. Kegler then asked her if she had them on her genital area, to which she replied, "No." (Tr. 70)

Patient 2 testified that Dr. Kegler then had her lay on her side. Patient 2 stated that Dr. Kegler then lifted up her shorts, put his hand under her shorts, and touched her vagina with "the very tip of his finger[.]" Patient 2 then "scooted back," away from Dr. Kegler. Patient 2 testified that Dr. Kegler then left the room to get a special light. Patient 2 stated that he shined the light over Patient 2's leg and back, and told Patient 2 that she had poison ivy rather than ringworm. Patient 2 testified that Dr. Kegler put ointment on the spots using a tongue depressor, and told her that he was going to give her prescriptions for two medications. (Tr. 70-76)

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Patient 2 testified that Dr. Kegler then went to a small desk in the room and began writing the prescriptions. Patient 2 stated that she got up from the exam table and stood next to him. Patient 2 testified that, while she stood next to Dr. Kegler, he reached up and put his hand under her shorts, under her underwear, and touched her bottom. Patient 2 testified that she then moved away from Dr. Kegler, and he told her that she "sure looked nice today" and that he would "have to take [Patient 2] out to lunch sometime." Patient 2 further testified that Dr. Kegler told her that they would keep that matter between themselves. Patient 2 testified that she then took her daughter and left. (Tr. 72-77)

Patient 2 testified that Dr. Kegler did not wear gloves during this visit. Patient 2 further testified that her daughter was present in the room during the entire period. (Tr. 76)

3. Patient 2 testified that she went home after seeing Dr. Kegler and told her father what Dr. Kegler had done. She stated that her father became very angry, and drove her to the police station. Patient 2 testified that she gave the police a statement and, on the advice of the police, went to the hospital to be examined for evidence of a physical assault. (Tr. 77-78)
4. Dr. Oser testified that it would be inappropriate for a physician to ask a patient, whose chief complaint is possible ringworm, to lie on her side, and for the physician to place his hands up the patient's shorts and partially insert a finger or fingers into the patient's vagina. Dr. Oser stated that such conduct would be below the minimal standard of care and would violate the American Medical Association Principles of Medical Ethics. Dr. Oser testified further that if the physician felt there was a need to perform a pelvic examination on the patient then the procedure should have been performed in the appropriate way, with the patient properly positioned and draped, and with the procedure explained to the patient. (Tr. 130-132)

Dr. Oser testified that it would be below the minimal standard of care and violative of the American Medical Association Principles of Medical Ethics for a physician to place his hands under a patient's shorts and touch her bottom, and to tell that patient that she looks good today and that they should go to lunch sometime. (Tr. 132-133)

5. Dr. Kegler testified that he has no recollection of Patient 2 other than what he had recorded in his chart. Dr. Kegler testified that when he saw Patient 2 on July 12, 1993, he had been informed by his nurse that Patient 2 was complaining of ring worms all over. Dr. Kegler testified that he noted "questionable poison ivy-like lesions." Dr. Kegler further testified that he noted that the lesions did not appear iridescent under ultraviolet light, which a skin fungus such as ringworm normally would. Moreover, Dr. Kegler testified that Patient 2's lesions on her thigh were three or four inches above her knees. Dr. Kegler further testified that he diagnosed Patient 2's condition as poison ivy. (St. Ex. 12; Tr. 178-181)

Dr. Kegler denied that he had touched Patient 2's genital area. He also denied that he had told her that she looked nice, and further denied that he had indicated to her that they

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should have lunch together sometime. Dr. Kegler testified that he has a daughter who is roughly Patient 2's age and would not want a physician saying such things to his daughter. (Tr. 200)

Dr. Kegler testified that he is very allergic to poison ivy. Dr. Kegler testified,

I contracted a case this summer when I was fishing, which I can show you residual scars all the way up my arm from poison ivy while going fishing. So I'm not going to take a known knowledge of a patient, she's got a potentially contagious process and spread it on my hands or put it up her vagina. That's preposterous. It just doesn't follow. I don't know where the young lady got it from, and that's all I can say.

(Tr. 182)

General Information

1. On or about February 14, 1996, the Board permanently revoked the certificate of Dr. Kegler. The revocation was stayed, and Dr. Kegler's certificate was suspended indefinitely, but for a period not less than one year. Among the conditions for reinstatement was a requirement that Dr. Kegler "take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual["] Following reinstatement, Dr. Kegler's certificate would be subject to probationary terms and conditions for at least two years. (St. Ex. 13)

The Board's February 14, 1996, Entry of Order had been based on the Board's conclusions that Dr. Kegler had violated Sections 4731.22(B)(3) and (9), Ohio Revised Code. These conclusions were based on the Board's finding, following a hearing, that, "[o]n September 15, 1995, James L. Kegler, M.D., pleaded guilty to one count of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code. The basis of the plea was a prescription for 60 tablets of Valium which Dr. Kegler wrote for himself in the name of his daughter[.]" (St. Ex. 13)

Dr. Kegler testified that he had been offered treatment in lieu of conviction, but that he had refused that offer because he was not drug dependent. (Tr. 172)

Dr. Kegler testified that he had written the Valium prescription for himself after discussing some issues with his own physician. Dr. Kegler stated that he called the prescription in to the pharmacy in his daughter's name only because she had an account there, and that he had not meant to be deceptive. After picking up the prescription, he inadvertently left it sitting on his desk. When he returned to his office from an out-of-town trip, the prescription was gone. He was concerned that someone with access to his office may have stolen the prescription, and was also concerned that he had not documented the prescription "in her chart." He

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reported the incident to hospital security, which eventually led to criminal charges being filed against him. (Tr. 201-203)

Evidence presented at the Board's November 20, 1995, hearing concerning Dr. Kegler's criminal conviction indicated that Dr. Kegler did not keep medical records for his daughter. (St. Ex. 13, Report and Recommendation p. 4)

2. Dr. Kegler testified that his certificate is still under the Board-ordered suspension. Dr. Kegler testified that he has appeared before the Board on many occasions during his suspension, and has applied for reinstatement. Dr. Kegler said that he assumed that the present charges involving Patients 1 and 2 were holding up his reinstatement. Dr. Kegler further testified that the matters involving Patients 1 and 2 had been investigated prior to the time that he was suspended, but that they were never further discussed. (Tr. 170-172)

Dr. Kegler testified that he last took the test concerning the DEA Physician's Manual in September 1997. Dr. Kegler further testified that he was never informed of the results, and has not heard anything from the Board concerning that test since receiving the Board's September 10, 1997, notice letter. Dr. Kegler testified that, to the best of his knowledge, he passed the test. (Tr. 182-185)

3. Donna Jean Thornton testified on behalf of Dr. Kegler. Ms. Thornton testified that she had been an employee of Dr. Kegler's since 1979. She further testified that she started as a clerk and eventually became Dr. Kegler's office manager. (Tr. 162-163)

Ms. Thornton testified that, during the time that she worked for Dr. Kegler, he saw between 15,000 and 17,000 female patients. She further testified that, other than Patients 1 and 2, she cannot recall any complaints from patients that Dr. Kegler's behavior had been inappropriate. (Tr. 163)

4. Dr. Kegler presented several of letters of support from colleagues and patients. These letters uniformly characterize Dr. Kegler as a competent and dedicated physician. (Please note, however, that the State did not have an opportunity to cross-examine the authors of these letters.) (Resp. Ex. 7)
5. The American Medical Association Principles of Medical Ethics state as follows:
 - I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.
 - II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.

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* * *

- IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.

(St. Ex. 10)

ANALYSIS

Because of the conflicting testimony adduced in this matter, it is necessary to evaluate the credibility of the fact witnesses presented.

Patient 1

The testimony that Patient 1 offered concerning her December 9, 1994, visit to Dr. Kegler's office was convincing. Her account of the events was detailed. Moreover, her demeanor was appropriate, and her emotions appeared to be genuine. In addition, everything that she stated had happened *could* have happened—the Hearing Examiner does not believe, as Respondent's counsel had argued, that it would have been physically impossible for Dr. Kegler to move a 331 pound woman on the examining table. The evidence indicated that she was wearing sweatpants at the time, which could have made it possible for Dr. Kegler to slide her partially off of the examining table as she testified he did. Further, Patient 1 testified that she had tried to see her psychiatrist immediately after the alleged event, which was corroborated by the testimony of a former employee of that psychiatrist. This witness also testified that Patient 1 had seemed at that time to be very upset.

Nevertheless, it was undisputed that Patient 1 has been convicted of crimes that involved dishonesty or false statements. She has twice been convicted of deceiving the state welfare system in order to obtain benefits to which she was not legally entitled. Further evidence was presented that she is currently charged with a felony count of Deception to Obtain a Dangerous Drug.

In addition to the criminal convictions and charges, Patient 1 offered some questionable testimony that affects her credibility. First, Patient 1 testified during cross-examination that her daughter had died as a result of having been infected with herpes by a nurse. The Hearing Examiner will note that Patient 1 was quite emotional when she offered this testimony. Subsequently, however, during re-direct testimony, it became apparent that her daughter had had a medical crisis that required resuscitation, but that she is still alive. Second, Patient 1 testified that she had visited several physicians in order to obtain Adderall, and did so in order to commit suicide. She added, however, that she "was taking five to six pills a day, and [she] just wouldn't die." This testimony was unconvincing, as five or six pills a day would not seem to be a suicidal dose.

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It was deceptive for Patient 1 to testify that her daughter had died, without further explanation. Based upon that statement, and her demeanor in making that statement, one could reasonably have believed that her daughter was currently deceased. Patient 1 should have immediately clarified this statement to reflect the fact that her daughter had had a medical crisis, but that resuscitation was successful. The fact that Patient 1 did not volunteer such clarification revealed a willingness on her part to deceive others for the sake of dramatic effect. Accordingly, the Hearing Examiner finds that Patient 1 is not a credible witness.

The Respondent presented the testimony of a sister and a niece of Patient 1 who testified that they do not believe Patient 1 to be an honest or trustworthy person. However, it should be noted that those beliefs were based primarily on family problems and disagreements. In addition, both of these witnesses know and support Dr. Kegler. Consequently, the character evidence offered by these two witnesses should be given, at most, limited weight.

Dr. Kegler

During Dr. Kegler's testimony and throughout the hearing, Dr. Kegler's demeanor was appropriate. There was nothing in Dr. Kegler's appearance or behavior that would cause the Hearing Examiner to disbelieve his testimony.

Nevertheless, the evidence indicated that Dr. Kegler has been convicted of a crime that involved dishonesty or false statements. In September 1995, Dr. Kegler pleaded guilty to one count of Illegal Processing of Drug Documents. The conviction occurred because Dr. Kegler had issued a prescription for Valium in his daughter's name, but for his own use.

Further, concerning the events that lead up to his criminal conviction, Dr. Kegler testified that he had contacted authorities when he discovered that the Valium that he had prescribed for himself in his daughter's name was missing. Dr. Kegler also testified that he had been concerned because, among other things, he had not recorded the prescription in his daughter's chart. However, there would have been no reason for Dr. Kegler to record a prescription in his daughter's chart if the prescription had not been intended for his daughter. Moreover, evidence adduced at the Board's November 20, 1995, hearing indicated that Dr. Kegler did not keep any medical records of the care that he provided his daughter. Consequently, there was no chart in which the prescription could have been recorded.

Moreover, Dr. Kegler's testimony regarding Patient 1 is not supported by his records. Dr. Kegler testified that Patient 1 first stopped coming to him because he had refused to prescribe controlled substance anorectics for her. He further testified that, at the time Patient 1 accused him of sexual misconduct, Patient 1 had been trying to manipulate Dr. Kegler's employees to get Dr. Kegler to prescribe controlled substances for her. However, neither of these assertions is supported in Dr. Kegler's medical records for Patient 1—there was nothing documented that indicated that Patient 1 had exhibited drug-seeking behavior, or that Dr. Kegler had ever refused to write any prescriptions for her. His accusations are self-serving and not credible.

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Accordingly, the Hearing Examiner finds that Dr. Kegler is not a credible witness.

Patient 2

The testimony that Patient 2 offered concerning her July 12, 1993, visit to Dr. Kegler's office was detailed and her demeanor at hearing was appropriate. The Hearing Examiner finds Patient 2 to be a credible witness.

FINDINGS OF FACT

1. As discussed in the Analysis, above, Patient 1 is found to not be a credible witness. Accordingly, there is insufficient reliable evidence to support a finding in favor of the Board's allegations, contained in its September 10, 1997, notice of opportunity for hearing, concerning the conduct of James L. Kegler, M.D., toward Patient 1. Nevertheless, it is found that the Board was substantially justified in bringing this action based upon Patient 1's complaint.
2. The evidence presented is sufficient to support a Finding that, on or about July 12, 1993, Patient 2, a 17-year-old female, visited Dr. Kegler's office concerning what she had thought was ringworm on her arms, back and legs. Dr. Kegler visually examined the spots and asked Patient 2 if she had them anywhere else. Patient 2 replied that she did not. Dr. Kegler then asked Patient 2 if she had these spots on her genital area, and she replied that she did not. Dr. Kegler had Patient 2 lay on her side on the examining table. Then, lifting up the loose-fitting shorts that Patient 2 was wearing, Dr. Kegler placed his hand underneath her shorts, touched her genital area, and touched her vagina with the tip of a finger.

After further examination using an ultraviolet light, Dr. Kegler diagnosed Patient 2 as suffering from poison ivy rather than ringworm. He applied medication to Patient 2's lesions, then sat at a desk to write two prescriptions for Patient 2. Patient 2 got up from the exam table and stood next to him. While Patient 2 was standing next to Dr. Kegler, Dr. Kegler reached up and put his hand under Patient 2's shorts, and under her underwear. Dr. Kegler told Patient 2 that she "sure looked nice today" and that he would "have to take [Patient 2] out to lunch sometime." Dr. Kegler told her that they would keep that matter between themselves. Dr. Kegler did not wear gloves during this time, nor was there a nurse present in the room.

CONCLUSIONS OF LAW

1. As set forth in Findings of Fact 2, above, the acts, conduct, and/or omissions of James L. Kegler, M.D., individually and/or collectively, constituted "[a] departure from, or the failure

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to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

2. As set forth in Findings of Fact 2, above, the acts, conduct, and/or omissions of Dr. Kegler, individually and/or collectively, constituted "[t]he violation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics.

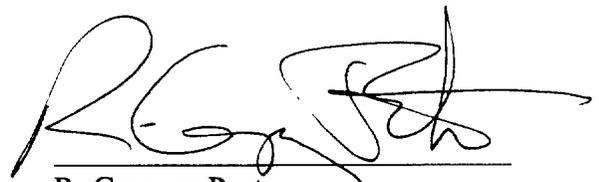
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Physicians who behave in the manner of Dr. Kegler undermine the public's perception of the medical profession. Trust is essential in physician/patient relationships. Physicians who violate this trust merit the severest sanction.

PROPOSED ORDER

It is hereby **ORDERED** that the certificate of James L. Kegler, M.D., to practice medicine and surgery in the State of Ohio shall be **PERMANENTLY REVOKED**.

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



R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

EXCERPT FROM THE DRAFT MINUTES OF APRIL 8, 1998

REPORTS AND RECOMMENDATIONS

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

Dr. Buchan asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Tonya N. Croak; Hans Zwart, M.D. & Associates, Inc.; Carl Elgin Grinstead, II, M.D.; Sam Hill, D.O.; James L. Kegler, M.D.; Jeffrey E. Burwell, P.A.; and James C. Dickens, P.A. A roll call was taken:

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

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

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

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of

the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

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

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

.....

JAMES L. KEGLER, M.D.

Dr. Buchan directed the Board's attention to the matter of James L. Kegler, M.D. He advised that objections to Hearing Examiner Porter's Report and Recommendation were filed and previously distributed to Board members.

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

Mr. Brown stated that he appreciates the opportunity to appear before the Board to address his objections to the Report and Recommendation. Mr. Brown stated that, basically he and Dr. Kegler object to the Findings of Fact. This was a credibility issue all along. Concerning Patient 1, Mr. Porter found Dr. Kegler to be credible, but in his report concerning Patient 2 he doesn't mention Dr. Kegler's credibility at all. The real issue is that this young lady accused Dr. Kegler of touching her after discovering that she had poison ivy. Mr. Brown stated that he thinks that the record is quite clear. If he had done what she indicated with his bare hands, she would have developed poison ivy in the areas she alleges he touched, which were her genital areas. Dr. Kegler specifically denied that he had done so. In fact, his procedure was that he used a light to discover that it was poison ivy. He took a wooden tongue depressor and applied ointment. It doesn't make sense that a physician of his standing would do what he had been accused of doing.

Mr. Brown stated that the Hearing Examiner stated in his Findings of Fact that Dr. Kegler didn't wear gloves, but Dr. Kegler testified that back in 1993 there was no requirement that a physician wear gloves every time he saw a patient. Dr. Kegler testified that after it became a requirement, he did wear them.

Mr. Brown stated that the other objection is one they raised at the beginning. The first complaint from Patient 2 occurred in July 1993. Patient 1's complaint was filed December 1994. As the record indicated, this Board suspended Dr. Kegler from practice for a felony offense to which he admitted in the Common Pleas Court of Hamilton County. These matters were investigated but sat until approximately September 1997 with nothing done. Meanwhile, Dr. Kegler cooperated with the Board's requirements in order to get

reestablished. After over two and a half years, all of a sudden, he's faced with these charges. Mr. Brown stated that, while he knows that this is not a criminal case or a civil case in the sense of a statute of limitations, the Board must be fair. If this information was before the Board when it suspended Dr. Kegler from practice in 1995, why was it not brought up then so that all these issues could have been dealt with and whatever actions taken, would have been taken at that point in time? If they were adverse to him, he could have gotten on with his life. If it had not been adverse to him, he still could have gotten on with his life. But, over two and a half years later, when he's thinking that he's doing what the Board asked of him, he has to come and defend against some old charges.

Mr. Brown stated that the greatest objection is the recommendation that Dr. Kegler's license be permanently revoked. Even if the Board would accept the Findings of Fact, Dr. Kegler does not believe that this is an appropriate recommendation for a man who saw from 15,000 to 17,000 female patients with only two complaints to this Board. This recommendation does not make sense.

Mr. Brown concluded that they do not believe that there was enough credible evidence as to Patient 2, to establish a basis for the Hearing Examiner's recommendation of permanent revocation. The patient had a communicable disease and alleges that the doctor used his hands to go up a patient's shorts and touch her vaginal area. This doesn't make sense.

Dr. Kegler stated that Attorney Brown has appropriately presented their opinion of this case. He commented that several members of the Board met 18 months ago on a case that resulted from a bad mistake on his part. As a result, he has closed his practice and is following the guidelines of the Board, taking appropriate courses. This case came up without his ever hearing anything from the Board in the interim. Dr. Kegler stated that he finds that a little bit disconcerting. Dr. Kegler stated that he was never asked whether he did what was alleged. He finds that very difficult to understand. A young lady, 18 years of age, presented herself to his office with her two-year-old toddler, and accused Dr. Kegler of doing something inappropriate with an office full of folks. The first case, involving the 331 pound lady who has two court cases against her and needs money to pay off two welfare fraud cases, he can understand. He can't understand why an 18-year-old, approximately the same age as his daughter, who comes to his office with a child would make these accusations. This was a person who came to his office who is not a member of his practice. He doesn't know this patient. Dr. Kegler stated that he finds it difficult to understand. He asked for the Board's consideration, adding that he would be happy to answer any questions the Board members might have.

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

Mr. Wasson stated that he believes Mr. Brown and Dr. Kegler are correct in focusing on the credibility of the individuals involved here. There are no video cameras in the examining room. The Board doesn't have evidence like that. The Board needs to listen to the parties involved. He believes that for the most part the Hearing Examiner did a fine job of summarizing some difficult testimony given by people under a great deal of emotional stress and strain.

Mr. Wasson stated that he would like to address a couple of points concerning Patient 1. Ultimately, the Hearing Examiner found that Patient 1 was not credible on the basis of some prior convictions, and some confusion regarding her testimony. In particular, the Hearing Examiner made much of the issue that Patient 1 at one point testified that her daughter had died but later testified that her daughter had been resuscitated. Mr. Wasson noted that, as a lay person, that would be an easy way to explain the situation. He believes more was made of that discrepancy than should have been made in the context of the report. Additionally, the Hearing Examiner found that Patient 1's testimony was not as credible as it could have been because of the discussion of her attempt to commit suicide. The Hearing Examiner commented in his report that this wasn't a real serious attempt, with the patient only taking five pills per day. Mr. Wasson stated that he believes more was made of that than should have been made. As far as credibility of this particular patient, that is a call that the Hearing Examiner is suited to make since he was there; but he believes that Patient 1 is perhaps more credible than she appeared to be in the context of the Report and Recommendation. Her testimony was convincing. The account of events were detailed. Her demeanor was appropriate, and her emotions appeared genuine, as noted by the Hearing Examiner in his Report.

Mr. Wasson continued that, regarding Patient 2, the Hearing Examiner found that this patient was credible. Her testimony was detailed, her demeanor was appropriate at the hearing. He found her to be a credible witness. There was nothing in Patient 2's past history that would give any kind of hesitation as to why she would have been doing this.

Mr. Wasson stated that in looking at Dr. Kegler it can be found that Dr. Kegler himself has a criminal history. He was previously convicted of illegal processing of drug documents, prescribing Valium in his daughter's name for himself. That was why the Board sanctioned him previously. He has a credibility issue on that basis alone. Additionally, the Hearing Examiner found that Dr. Kegler's testimony regarding Patient 1 was not supported by the records. The Hearing Examiner found that Dr. Kegler's accusations were self-serving and not credible.

Mr. Wasson concluded that the Hearing Examiner made some tough calls as far as credibility of patients and Dr. Kegler. There was not hard evidence to look at to allow this Board to have something that will convince its members beyond a reasonable doubt. The fact is that there are two patients, Patient 1 who was sexually assaulted by Dr. Kegler in December 1994, and Patient 2 who was sexually assaulted in July 1993. These are two patients who had no knowledge of one another. They were patients who reported these incidents to the Board individually. It is not like they were friends who collaborated. Additionally, the behavior reported by these two women is similar in many respects. It doesn't strain the imagination to see that this could have possibly been a pattern of behavior. Ultimately, these victims did demonstrate a lot of courage, whether the Hearing Examiner found them credible or not in coming forward. This would have been something that would not have been very easy for these folks, folks who would have been considered victims by many people, an obese woman who had a dysfunctional family and some criminal history, and a teenage mother with a daughter. These are victims. That's probably why they were chosen by Dr. Kegler as targets. Probably these people wouldn't come forward. Well, these people showed him wrong. They

came forward. It was very difficult to do, especially considering the time that had passed, but they both did an excellent job under the circumstances.

Mr. Wasson urged adoption of the Hearing Examiner's Recommendation and asked the Board to permanently revoke Dr. Kegler's license.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES L. KEGLER, M.D. DR. HEIDT SECONDED THE MOTION.

Dr. Buchan stated that he would now entertain discussion in the above matter.

Dr. Bhati stated that he found this case to be very troubling. He expressed concern over what would happen should the Board let this go, and another similar problem occurs in the future. This could be the tip of the iceberg. He's not sure it is. If it didn't happen, and the Board takes Dr. Kegler's license away, it would be a highly unjustifiable situation. Dr. Bhati stated that the Hearing Examiner did a wonderful job in trying to dissect and analyze, and put the facts in a very articulate way. Dr. Bhati stated, however, that he finds it very troublesome that Patient 1 weighs about 331 pounds and had a significant amount of legal problems in the past. Her coming out in such a detailed way, and then turning around and saying that her daughter died -- Dr. Bhati stated that he would say that she is a wonderful actress, and he seriously questions her accusations. He has a significant problem in believing her.

Dr. Bhati continued that he is not sure about Patient 2. That patient came to the doctor's office with a three-year-old little girl. If Dr. Kegler touched her private parts, why would she get up and stand next to him and let him do it a second time. If he had been that person, he would have run out of the room. He has some serious doubts about the second case. He's not sure, and he has spent a lot of time and energy thinking about this case. He doesn't think that there is definite, credible evidence in this case to support taking away Dr. Kegler's license.

Dr. Heidt stated that he is not convinced at all that what he sees in this case would indicate revocation. Two patients do not add up to a believable situation, especially Patient 1. Also, concerning the prescription, Dr. Kegler actually called the police about the lost prescription. It would not have been a real problem if he had not called the police.

**DR. HEIDT MOVED TO AMEND THE PROPOSED ORDER TO DISMISS THE CASE.
DR. BHATI SECONDED THE MOTION.**

Dr. Buchan asked for further discussion.

Dr. Steinbergh stated that she is absolutely opposed to dropping this case. This is probably the second time in recent history that the Board has been faced with this particular problem where there are a couple of

witnesses, one of whom may raise questions of reliability. She believes that what Patient 2 alleges happened did happen. There are only two people who know for certain, and that would be Dr. Kegler and Patient 2. As far as Patient 1 is concerned, she will accept Mr. Porter's judgment concerning credibility since she was not sitting there to judge for herself. She does believe that what is alleged to have happened to Patient 2 is very possible. She does not understand why Dr. Bhati can't understand that a young lady could be there, that a physician in his power could inappropriately touch a patient, and that the patient could be possibly overwhelmed at the time and come to the desk. She can see that this could happen, and she believes that it did happen, and she would support the Report and Recommendation. This is the second time that Dr. Kegler has been before this Board, and she finds the Proposed Order to be appropriate. She would absolutely not vote to dismiss this case.

Dr. Stienecker stated that he felt that Patient 1 was not credible. He didn't feel that Patient 2 was that convincing because of the circumstances involved. He also questioned why, had anything at all occurred that was subject to misinterpretation, would the patient then get up, walk over and stand next to someone. He can't put that into a past experience. Dr. Stienecker stated that he is not sure that just dismissing this case is the best thing. His inclination would be to stay the revocation, pending Dr. Kegler's successfully completing his reinstatement requirements and fulfilling his probationary terms, and attaching this case to the completion of his requirements for the first.

Ms. Noble stated that she doesn't support an Order of revocation because she doesn't think the Board has enough solid evidence to support that. It's quite obvious that Patient 1 was not credible at all, especially when a relative testified that she wasn't credible. Patient 2 was 17 at the time and quite capable of making a pretty good choice as to whether or not she should be near the man. Ms. Noble stated that it is very hard for her to see or to believe that her interpretation of what actually happened occurred. She's not saying that it didn't, but what is before her doesn't substantiate that enough in her mind for revocation.

Mr. Bumgarner stated that it is very important that the Board members focus on the issue of whether or not they believe the incidents occurred. They must make that decision before they can make any further decision about what penalty to put into place. It's important for the Board to keep in mind that the penalty follows a finding that something was done in violation. If the Board doesn't believe that was met, no penalty would be appropriate.

Dr. Somani stated that the real issue in this case is the credibility of Dr. Kegler versus the two patients who accused him. Obviously, judging from the family members and judging from the rest of the history, Patient 1 does not portray herself as a credible witness. The second patient also raises some doubts in his mind. Therefore, the question is whether these witnesses are more credible than Dr. Kegler himself. Just the fact that Dr. Kegler has been in practice for 18 years does not by itself rule out the possibility that he may have engaged in something at this time, even though he hadn't in the past. Referring to his prescription problem, he may have appropriately prescribed hundreds of times, but this was the first case. Therefore, it becomes very difficult to judge who is more credible. Dr. Somani stated that he does support Dr. Heidt's proposed amendment. The evidence is not as clear cut to allow the Board to trust these patients.

Mr. Sinnott stated that this is a very difficult case, one of the most difficult cases the Board has been called upon to judge in the five years he has been on the Board. He believes that there is substantial reason to doubt the intrinsic credibility of Patient 1. He believes all Board members are comfortable with the problems the Hearing Examiner identified in that case. It is quite possible that Patient 2 is telling the absolute truth. It may have happened that way. On the other hand, it is quite possible that Dr. Kegler is telling the truth about what happened with Patient 2. It is difficult to prove a case of sexual misbehavior between a physician and a patient when they are the only two in the room. There is no question about that. Because it is difficult to prove sexual impropriety in that setting, that doesn't mean that the Board should lessen its standards for proof in these cases. The Board can't assume that it is taking place because it is difficult to prove. When talking about the scales of justice, in his mind, this record produces a scale that is completely evenly balanced. He can't say for sure who is telling the truth, sitting as a member of the Board and as a judge in this case, unless the State can tip that scale in favor of finding a violation, he needs to vote to dismiss. That is his final conclusion on this case. The scales are evenly weighted. He must vote to dismiss.

Dr. Agresta agreed with Mr. Sinnott about the difficulty in making determinations in cases such as this. Fortunately the Board doesn't see these types of cases very often, but each time one comes up, it is always a one-on-one situation, which makes it almost impossible, unless you have other overwhelming evidence that makes you feel one way or another that a person is credible and the other person isn't. He believes that it is a reasonable conclusion that Patient 1 was not credible. Concerning Patient 2, the question of who to believe is at issue. Dr. Agresta stated that he is not willing to revoke someone's license based on that kind of feeling. He needs more. It possibly could have happened. Could the actions have been misinterpreted? The only two people who know that are the patient and Dr. Kegler. What is done during an examination can, sometimes, be misconstrued by the patient. For that reason, although he doesn't want to minimize the seriousness of the allegations, he will have to vote for dismissal. Unless the Board can prove the issue one way or another, he doesn't feel willing to vote for anything other than dismissal. He doesn't have enough to say "revoke the license."

Dr. Buchan stated that his read was similar. Although he does believe this was on balance, he did tip the scale toward believing the witnesses. Dr. Buchan stated that bad things sometime happen to people who may not be credible or who have a bad history. That doesn't mean that something bad didn't happen to this woman. Although he believes that this may have been on balance, he does tip the scale in the other direction and would vote to revoke.

Mr. Sinnott stated that this doesn't seem to be a case where the Board can compromise. If Dr. Kegler imposed himself on both or one of these women, revocation would be an appropriate penalty. On the other hand, if the Board is not convinced of that, dismissal would seem to be the only option.

Dr. Buchan stated that before there is a vote, Dr. Heidt may wish to table this matter so that he can work on the language concerning the Findings of Fact and Conclusions, as well as the Order, and bring it back to the

Board for vote.

DR. HEIDT MOVED TO TABLE THE MATTER OF JAMES L. KEGLER, M.D. DR. BHATI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

.....
DR. HEIDT MOVED TO REMOVE THE MATTER OF JAMES L. KEGLER, M.D., FROM THE TABLE. DR. BHATI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. HEIDT MOVED THAT THE FINDINGS OF FACT IN THE MATTER OF JAMES L. KEGLER, M.D., BE AMENDED AS FOLLOWS:

BY SUBSTITUTING THE FOLLOWING FOR FINDING OF FACT #2:

The Board recognizes that Patient 2's testimony might accurately reflect what happened in Dr. Kegler's office. However, there is not sufficient evidence to conclude that Dr. Kegler actually committed the acts Patient 2 alleged. Nevertheless, there was substantial justification for issuance of the Board's September 10, 1997 notice of opportunity for hearing in this matter.

DR. HEIDT FURTHER MOVED THAT THE CONCLUSIONS IN THE MATTER OF JAMES L. KEGLER, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

1. As set forth in Findings of Fact 1 and 2, above, the evidence presented at hearing did not rise to the level necessary to support a conclusion that Dr. Kegler's conduct constituted "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.
2. As set forth in Findings of Fact 1 and 2, above, the evidence presented at hearing did not rise to the level necessary to support a conclusion that Dr. Kegler's conduct constituted "[t]he violation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics.

DR. HEIDT FURTHER MOVED THAT THE PARAGRAPH FOLLOWING THE FIVE STARS ON PAGE 18 OF THE REPORT AND RECOMMENDATION BE DELETED.

HE FURTHER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF JAMES L. KEGLER, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that the allegations set forth in the Board September 10, 1997 notice of opportunity for hearing be and are hereby DISMISSED.

DR. BHATI SECONDED THE MOTION.

Dr. Buchan stated that he would entertain further discussion in the above matter.

Dr. Buchan stated that he continues to say on the record that he does believe that bad things happen to people who have done bad things. Although Patient 1 was not credible, he believes that a bad thing happened to her that day. That carries over to Patient 2. He will stand by his favoring revocation in this case.

Dr. Steinbergh agreed with Dr. Buchan, and stated that she will vote against the amendment.

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

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

The motion carried.

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

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

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

September 10, 1997

James L. Kegler, M.D.
2916 Gilbert Avenue
Cincinnati, Ohio 45206

Dear Doctor Kegler:

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

1. On or about December 9, 1994, Patient 1, a 41 year-old female identified on the attached Patient Key (Key confidential--to be withheld from public disclosure), presented to your office with complaints of knee and back problems.

During this visit, you called Patient 1 "Big Mama", and stated that your cousin said that you haven't made love until you have had a big woman. You then approached Patient 1, who was seated on the examining table with her back up against a wall and her legs hanging over the side of the examining table, and began rubbing your groin area against her left knee, saying "You can touch it, go on, you can touch it." You then rubbed your hands over Patient 1's thighs and down her legs, grabbed onto her legs forcing them into the air and pulling her away from the wall, and said "This is how you do it to a big woman" as you rubbed your groin area against her buttock and genital regions. You continued rubbing yourself against Patient 1 as you held her legs up in the air with your hands positioned under her thighs.

As this was occurring, Patient 1 told you that you were hurting her. She also put her hand out toward your chest in an attempt to keep you back, and several times told you to stop. Patient 1 also told you that she felt that she was going to fall off the table, and you told her not to worry and said "I've got you." Additionally, Patient 1 pushed down with her legs, trying to get you to drop her legs.

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Also during this visit, while you were seated in a chair and with Patient 1 standing, you began tugging on the string at the top of Patient 1's sweat pants, and told her to "take it loose." After Patient 1 untied the string, you pulled down her pants and panty girdle with several jerking motions. While Patient 1's pants were pulled down, you inserted two ungloved fingers into her genital region and touched her clitoris. Patient 1 then jerked backward out of your reach, pulling up her pants and dropping into a chair. Although Patient 1 spoke about her concerns for her health and the health of her daughter, who had had a liver transplant, you again began saying that your cousin said that you have never made good loving until you have had a big woman. You also said that you were trying to find a big woman so you could see what your cousin was talking about and asked Patient 1 if she knew where you could find one.

After writing prescriptions for Patient 1, you asked her if she had a man. She replied that she did not. You then told her that the reason that you had acted as you had was because you were trying to take her mind off, or make her feel better about, what her daughter was going through.

You did not wear gloves during this visit, nor was a nurse present in the examining room.

2. On or about July 12, 1993, Patient 2, a 17 year-old female, identified on the attached Patient Key (Key confidential--to be withheld from public disclosure), presented to your office for evaluation and treatment of what she believed to be ring worm on her arms, legs, and back. After discussing Patient 2's presenting complaint with her, you examined the "marks" which appeared on her arms and legs and informed her that you believed that she had poison ivy, not ring worm.

During this visit, you asked Patient 2 more than once whether she had any of these "marks" in her genital area. Though she informed you that she did not, you said that you would check her genital area anyway. You then lifted up her shorts and pulled her underwear to one side and began to insert your ungloved finger into her vagina. When your finger was partially inserted into her vagina, Patient 2 scooted back and said that she

had told you that she only had the "marks" on her legs and arms, and that she had one "mark" on her back.

Also during this visit, while Patient 2 was standing and while you were seated in a chair, you slid your hand up the side of her leg and into her shorts, placed your hand under her underwear, and inserted your ungloved fingers into her vagina.

Additionally, as Patient 2 stood next to you with you moving your hand on her body, you told her that she looked real nice and that you were going to have to take her out to lunch, noting that this was just between the two of you. Patient 2 replied that she was going to have to take you up on that offer, asked if she could have her prescription so she could go, and noted that she had to get home.

You did not wear gloves during this visit, nor was a nurse present in the examining room.

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

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "(t)he violation of any provision of a code of ethics . . . of a national professional organization," as that clause is used in Section 4731.22(B)(18)(a), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics.

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

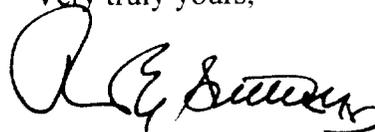
You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this

agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/caf
Enclosures

CERTIFIED MAIL #P 152 984 482
RETURN RECEIPT REQUESTED

cc: John Burlew, Esq.
1300 American Building
30 East Central Parkway
Cincinnati, Oh 45202

CERTIFIED MAIL #P 152 984 483
RETURN RECEIPT REQUESTED

American Medical Association

Principles Of Medical Ethics

Preamble:

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

- I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.
- II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.
- V. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services.
- VII. A physician shall recognize a responsibility to participate in activities contributing to an improved community.



STATE MEDICAL BOARD OF OHIO

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

February 16, 1996

James L. Kegler, M.D.
629 Oak Street, Suite 104
Cincinnati, OH 45206

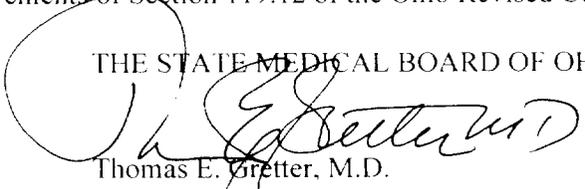
Dear Doctor Kegler:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 14, 1996, including Motions approving and confirming the Findings of Fact, amending the Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO


Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 348 887 346
RETURN RECEIPT REQUESTED

cc: John H. Burlew, Esq.

CERTIFIED MAIL RECEIPT NO. P 348 887 347
RETURN RECEIPT REQUESTED

Mailed 3-4-96



STATE MEDICAL BOARD OF OHIO

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

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Sharon W. Murphy, Esq., Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 14, 1996, including Motions approving and confirming the Findings of Fact, amending the Conclusions of Law of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of James L. Kegler, 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.

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

Thomas E. Greter, M.D.
Secretary

(SEAL)

2/24/96

Date



STATE MEDICAL BOARD OF OHIO

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES L. KEGLER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 14th day of February, 1996.

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

It is hereby ORDERED that:

1. The certificate of James L. Kegler, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and the certificate of James L. Kegler, M.D., is hereby SUSPENDED for an indefinite period of time, but not less than one year.
2. The State Medical Board shall not consider reinstatement of Dr. Kegler's certificate to practice unless and until all of the following minimum requirements are met:
 - A. Dr. Kegler shall submit an application for reinstatement, accompanied by appropriate fees.
 - B. Dr. Kegler shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances, such course to be approved in advance by the Board or its designee.
 - C. Dr. Kegler shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Kegler fails this examination, Dr. Kegler must wait one (1) month between re-examinations.

- D. In the event that Dr. Kegler has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kegler's fitness to resume practice.
3. Upon reinstatement, Dr. Kegler's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two (2) years:
- A. Dr. Kegler shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- B. Dr. Kegler shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether or not there has been compliance with all the provisions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which Dr. Kegler is reinstated, provided that if the effective date of reinstatement is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- C. Dr. Kegler shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise directed 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. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness, he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the Board will normally give Dr. Kegler written notification of scheduled appearances, it is Dr. Kegler's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Kegler shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- D. In the event that Dr. Kegler should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Kegler must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

- E. In the event that Dr. Kegler is found by the Secretary of the Board to have failed to comply with any provision of this probation, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- F. Dr. Kegler shall immediately surrender his United States Drug Enforcement Administration certificate. He shall be ineligible to hold, and shall not apply for, registration with the D.E.A. to prescribe, dispense or administer controlled substances without prior Board approval.
- G. Dr. Kegler shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as prescribed for Dr. Kegler's use by another so authorized by law) any controlled substances as defined by state or federal law, without prior Board approval.
- H. Upon reinstatement of Dr. Kegler's controlled substance privileges pursuant to Board approval, Dr. Kegler shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board at the same time as the quarterly declarations of compliance required by paragraph 3B, above. Further, Dr. Kegler shall make his patient records with regard to such prescribing available for review by an agent of the State Medical Board upon request.
- I. Dr. Kegler shall refrain from self-treating and from treating any family members, except in the event of life-threatening emergency.
- J. Within thirty (30) days of the effective date of this Order, Dr. Kegler 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 a license to practice. Further, Dr. Kegler shall provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for licensure or reinstatement of licensure. Further, Dr. Kegler shall provide this Board with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
- K. Within thirty (30) days of the effective date of this Order, Dr. Kegler shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Kegler shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

Report and Recommendation
In the Matter of James L. Kegler, M.D.
Page 4

4. If Dr. Kegler violates probation in any respect, the Board, after giving Dr. Kegler notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Kegler 's certificate.
5. Upon successful completion of probation, Dr. Kegler 's certificate will be fully restored.

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



Thomas E. Gretter, M.D.
Secretary

(SEAL)

2/22/96

Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES L. KEGLER, M.D.**

The Matter of James L. Kegler, M.D., was heard by Sharon W. Murphy, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on November 20, 1995.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated October 11, 1995, the State Medical Board of Ohio [Board] notified James L. Kegler, M.D., that pursuant to Sections 2929.17 and/or 3719.12(B), Ohio Revised Code, a Hamilton County Prosecutor had informed the Board that Dr. Kegler had pleaded guilty to one count of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code. Accordingly, pursuant to Section 3719.121(C), Ohio Revised Code, the Board notified Dr. Kegler that his license to practice medicine had been immediately suspended and that continued practice would be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code. In addition, the Board notified Dr. Kegler that it proposed to take disciplinary action against his certificate to practice medicine in Ohio based on the guilty plea.

The Board further alleged that Dr. Kegler's guilty plea constituted "[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilty of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code [and] '[a] plea of guilty to, or a judicial finding of guilty of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."

In addition, the Board advised Dr. Kegler of his right to request a hearing in this Matter. (State's Exhibit 1).

- B. On October 17, 1995, John H. Burlew, Esq., filed a written hearing request on behalf of Dr. Kegler. (State's Exhibit 2).

II. Appearances

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

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

George Rudemiller, Cincinnati Police Department, Pharmaceutical Diversion Unit.

B. Presented by Respondent

Respondent presented no witnesses.

II. Exhibits Examined

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

A. Presented by the State

1. State's Exhibit 3: Copy of an October 23, 1995, letter to Mr. Burlew from the Board advising that a hearing had been scheduled for November 3, 1995, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: Copy of an October 25, 1995, letter to Mr. Burlew from the Board advising that a hearing had been scheduled for November 20, 1995. (3 pp.)
3. State's Exhibit 5: Copies of eleven prescriptions written by Dr. Kegler in the name of Collette Kegler. (4 pp.)
4. State's Exhibit 5a: Copy of a prescription written by Dr. Kegler on February 7, 1994, in the name of Collette Kegler, for sixty tablets of Percocet and sixty 5 mg. tablets of Valium. (4 pp.)
5. State's Exhibit 6: Not admitted into evidence.
6. State's Exhibit 7: Entry Ordering Probation Investigation and Report in *The State of Ohio v. James Kegler*, Hamilton County Court of Common Pleas, Case No. B949179, filed September 15, 1995.

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7. State's Exhibit 8: Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty to Drug Offense in *The State of Ohio v. James Kegler*, Hamilton County Court of Common Pleas, Case No. B949179, filed September 15, 1995.
8. State's Exhibit 9: Judgment Entry: Sentence Suspended: Probation in *The State of Ohio v. James Kegler*, Hamilton County Court of Common Pleas, Case No. B949179, filed September 29, 1995.

B. Presented by Respondent

1. Respondent's Exhibit A: A collection of letters from colleagues and patients demonstrating support for Dr. Kegler. (15 pp.)

III. Post-Hearing Admission to the Record

Upon motion the Hearing Examiner's own motion, the following exhibits are hereby admitted into evidence:

1. Board Exhibit A: Excerpts from the 1993 Physicians' Desk Reference pertaining to Valium, Percocet, and Tylox. (5 pp.)
2. Board Exhibit B: November 20, 1995, Entry documenting the parties' stipulation that State's Exhibit 8 correctly sets forth the statutory section to which Dr. Kegler pled guilty.

PROCEDURAL MATTERS

At hearing in this Matter, the State submitted documents pertaining to Dr. Kegler's criminal conviction. State's Exhibit 7, *Entry Ordering Probation Investigation and Report*, and State's Exhibit 9, *Judgment Entry : Sentence Suspended : Probation*, however, both incorrectly identify the statutory section of the offense to which Dr. Kegler pled guilty. Both documents refer to Section 2925.21, rather than Section 2925.23, Ohio Revised Code. Nevertheless, State's Exhibit 8, *Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty to Drug Offense*, correctly states that Dr. Kegler pled guilty to a violation of Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents. In light of the inconsistencies among the documents, on November 20, 1995, the Hearing Examiner initiated a teleconference between counsel for the parties. Both parties agreed to stipulate that State's Exhibit 8 correctly sets forth the statutory section to which Dr. Kegler pled guilty.

SUMMARY OF THE EVIDENCE

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

1. On December 13, 1994, James L. Kegler, M.D., contacted George Rudemiller of the Pharmaceutical Diversion Unit, Cincinnati Police Department, to report that a bottle of prescription pills had been removed from his desk. The bottle contained 40 tablets of Percocet, a schedule II controlled substance. Dr. Kegler informed Det. Rudemiller that the medication belonged to his daughter, Collette Kegler. Dr. Kegler further informed Det. Rudemiller that he had written "about one or two" other prescriptions for his daughter over the years. (Transcript [Tr.] at 11-13).

Det. Rudemiller initiated an investigation. He contacted a number of local pharmacies. At the Oak Apothecary, he discovered that Dr. Kegler had written twelve prescriptions for his daughter during the period from December 29, 1992, through November 4, 1994. The prescriptions were for Percocet, Tylox or Valium, all controlled substances. When Det. Rudemiller informed Dr. Kegler of the results of the investigation, Dr. Kegler stated that he had "lost track of the prescriptions he had written for his daughter." Dr. Kegler further stated that while the Percocet and Tylox was for his daughter, he kept the Valium for himself. He explained to Det. Rudemiller that he had difficulty sleeping and used the Valium while on long distance trips. (Tr. at 13-16, 19, 21; State's Exhibits [St. Exs.] 5 and 5a; Board Exhibit A).

Det. Rudemiller further testified that he had contacted both Collette Kegler and Dr. Kegler's wife. Collette Kegler denied receiving any recent medications from her father. Mrs. Kegler explained that Collette had had a surgical procedure related to pancreatitis in 1992, and Dr. Kegler had provided her Percocet at that time. Mrs. Kegler denied, however, that Dr. Kegler had provided Collette any pain medications since that time. Dr. Kegler did not keep medical records of the care provided to his daughter. (Tr. at 13-15, 22-25).

On cross-examination, Det. Rudemiller testified that he was aware that Dr. Kegler had separated from this wife and that a divorce was pending. He also stated that Collette Kegler is developmentally handicapped, but that she is able to hold down a job. He did not know whether she suffers from any short or long term memory loss. (Tr. at 30-31).

2. Det. Rudemiller presented the results of his investigation to a grand jury. The grand jury returned an eleven count indictment. Pursuant to a plea bargain agreement, Dr. Kegler pleaded guilty to one count of Illegal Processing of Drug

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Documents, a fourth degree felony, in violation of Section 2925.23, Ohio Revised Code. The remaining counts were dismissed. (Tr. at 22, 27-28; St. Exs. 7-9).

The Hamilton County Court of Common Pleas sentenced Dr. Kegler to a definite term of imprisonment for one and one half years. The court suspended execution of the sentence and placed Dr. Kegler on probation for two years. Moreover, the Court suspended Dr. Kegler's driver's license for six months, and ordered him to pay \$1,500.00 fine and court costs. (St. Exs. 7-9).

Det. Rudemiller testified at hearing that Dr. Kegler refused the Court's offer of treatment in lieu of conviction. (Tr. at 32).

3. Dr. Kegler did not testify at hearing; nor did he submit a curriculum vitae as an exhibit. The only information provided by Dr. Kegler is contained in letters from colleagues and patients. The letters indicate that Dr. Kegler practices family medicine in the Cincinnati area. The letters otherwise attest to Dr. Kegler's integrity and to the quality of care he provides his patients. It is significant, however, that the State did not have an opportunity to cross-examine the authors of the letters.

FINDINGS OF FACT

1. On September 15, 1995, James L. Kegler, M.D., pleaded guilty to one count of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code. The basis of the plea was a prescription for 60 tablets of Valium which Dr. Kegler wrote for himself in the name of his daughter, Collette Kegler.

CONCLUSIONS OF LAW

1. Dr. Kegler's guilty plea constitutes "[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes" as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.
2. Dr. Kegler's guilty plea also constitutes "a plea of guilty to, or a judicial finding of guilty of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.
3. Finally, Dr. Kegler's guilty plea constitutes "[a] plea of guilty to, or a judicial finding of guilty of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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The evidence presented supports the conclusion that Dr. Kegler committed a drug related felony. Although Respondent asked that the Board consider mitigating circumstances, Respondent failed to present any mitigating evidence. In fact, the evidence presented raised significant questions as to whether Dr. Kegler is competent to practice medicine.

Initially, the question of whether Dr. Kegler suffers from chemical impairment remains unanswered. Dr. Kegler illegally prescribed a schedule IV controlled substance, Valium, for his own use. He also wrote prescriptions for Schedule II controlled substances, Percocet and Tylox, in his daughter's name. However, both his daughter and his wife deny that his daughter ever received these medications. Respondent argued that the fact that Dr. Kegler refused the Court's offer of treatment in lieu of conviction is a mitigating circumstance supporting a conclusion that Dr. Kegler himself is not drug dependent. However, Dr. Kegler may have refused the Court's offer of treatment in lieu of conviction for a variety of reasons. Nevertheless, Dr. Kegler presented no evidence of his reasoning at the hearing. Accordingly, Dr. Kegler's refusal to accept treatment in lieu of conviction does not constitute a mitigating circumstance.

On the other hand, Dr. Kegler told Det. Rudemiller that he prescribed the Percocet and Tylox for his daughter. Even if this claim had been proven, the fact that a physician prescribed Schedule II controlled substances to a family member over an extended period of time, without keeping medical records, does not constitute a mitigating circumstance.

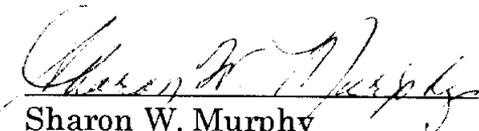
Therefore, the record supports only one conclusion; Dr. Kegler entered a plea of guilty to one count of Illegal Processing of Drug Documents, a violation of both Sections 4731.22(B)(3) and (B)(9), Ohio Revised Code. Such conduct, in itself, warrants the severest sanction.

PROPOSED ORDER

It is hereby ORDERED that:

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

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


Sharon W. Murphy
Attorney Hearing Examiner



STATE BOARD OF DENTISTRY

EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 14, 1995

REPORTS AND RECOMMENDATIONS

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

Dr. Stienecker asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: William H. Allen, Jr., M.D.; Carolyn T. Beyer, D.O.; John B. Gardiner, D.O.; Stephen W. Gilreath, M.D.; Alexander D. Hassard, M.D.; Neal E. Holleran, M.D.; Peter M. Ilievski, M.D.; James L. Kegler, M.D.; Albert S. Miller, M.D.; Venus Navarro-Julian, M.D.; Moorthy S. Ram, M.D.; Ronald J. Richter, M.D.; Arvind M. Talati, M.D.; and Stephen J. Weiss, M.D.

A roll call was taken:

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

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

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

Mr. Sinnott - aye
Dr. Garg - aye
Dr. Steinbergh - aye
Dr. Stienecker - aye

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

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

.....
REPORT AND RECOMMENDATION IN THE MATTER OF JAMES L. KEGLER, M.D.

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

Dr. Stienecker noted that there has not been a request to address the Board in this case.

Mr. Burlew stated that a request was filed.

Dr. Kegler indicated that he understood from Ms. Burbow that his request filed for the January meeting would be carried over to the February meeting.

DR. BHATI MOVED TO ALLOW DR. KEGLER TO ADDRESS THE BOARD. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert - abstain
Dr. Bhati - aye
Dr. Gretter - abstain
Dr. Egner - aye
Dr. Agresta - aye
Dr. Buchan - aye
Ms. Noble - aye
Mr. Sinnott - aye
Dr. Garg - aye
Dr. Steinbergh - aye

The motion carried.

Dr. Stienecker advised Mr. Burlew that he would be allowed five minutes for his presentation. He reminded Mr. Burlew that there is not a court reporter present, and that the Board's minutes are the official record.

Mr. Burlew stated that he believes that Dr. Kegler's objections to the Proposed Order are specific in this case. This case is unusual for a number of reasons. Dr. Kegler initiated the investigation in this case when a prescription was missing from his office. He called the local drug agencies to come in and investigate. In retrospect, they went through all of the prescriptions that he had written over a long period of time, and focused upon 14 of them. Dr. Kegler had one child who is mentally challenged and one at Harvard, pre-med. He had treated his children, probably inappropriately, their entire lives. As the report will reflect, the mentally challenged child had pancreatitis, which turned into some other serious problems. There was a series of 13 prescriptions that were written for that child who was estranged from Dr. Kegler pursuant to a divorce, which is pending. In the report itself, the Hearing Officer found, through the police officer who testified, that the wife said that she didn't think the child received that many prescriptions for the Percocet. Dr. Kegler always indicated that those had been prescribed for his child. He was indicted upon those prescriptions and all those matters were dismissed, not plea bargained.

One other script which the agent found to be inappropriate was a prescription for 60 10-mg. Valium, which Dr. Kegler readily acknowledged that he inappropriately wrote for himself. He did it having gone through a divorce, and having had problems with his children, and other things. There was no indication that the public, Dr. Kegler's patients, or anyone was ever threatened. There was no indication that there was anything done for profit. The question was asked of the officer who investigated extensively whether or not there were any occasions to make him think that Dr. Kegler's practice was not above board in any way. Everything was consistent, and there is a series of a letters that is part of this record indicating that Dr. Kegler enjoys a very fine reputation in the city. Dr. Kegler was absolutely wrong for what had happened. He had talked to one of his colleagues about some of the sleep disorders and things he was going through. But rather than having that colleague write a prescription, he took a shortcut. Mr. Burlew stated that this was an exercise in poor judgment. Dr. Kegler did keep charts, although he acknowledged that the charts for his daughter may not have been up to standard. The record clearly indicates that this was a one-time slip, and that Dr. Kegler can be rehabilitated.

Mr. Burlew continued that Dr. Kegler could have avoided criminal conviction. At his trial he was offered treatment in lieu of conviction if he was a drug abuser. The only allegation was that this Valium he had prescribed he had taken. He was not an addict. When imposing sentence, the Court could have subjected Dr. Kegler to blood tests, random drug sampling, drug rehabilitation, anything that was appropriate. They found in his case that none of these were appropriate.

Mr. Burlew stated that it is their position that all of this was self-initiated for the right motivation. Dr. Kegler tried to account for a script that was missing from his office. A microscopic examination

rightfully showed errors that he made. They believe that his entire practice and reputation would indicate that this mistake was one of neglect and poor judgment, and certainly all the facts that would indicate that a person could be rehabilitated are present. Mr. Burlew asked the Board to consider modifying the sanction. They believe there are safeguards that could be imposed with C.M.E., ethics education, and monitoring that could assure that this would never happen again. There has been no suggestion that the public was ever threatened.

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

Ms. Crawford stated that it should be noted that, although Dr. Kegler was present at his hearing, he chose not to testify. Mr. Burlew has testified today on information that was not presented at hearing, is not part of the hearing record, and should not be considered by the Board at this time. The evidence provided by the police officer who investigated Dr. Kegler indicated that Dr. Kegler admitted that he wrote one or two prescriptions for his daughter. The investigation uncovered at least twelve prescriptions. When confronted with that evidence, Dr. Kegler indicated that he must have lost track of what he prescribed for her. There were, in fact, no patient records, and that is indicated in the transcript and the findings of fact. Dr. Kegler did admit to keeping the Valium for himself. There was direct testimony that there was an eleven-count indictment. Dr. Kegler did plead to a fourth degree felony. The minimum guidelines for the Board for such an offense is revocation. The only "mitigating" evidence presented were the letters to which Mr. Burlew referred. These letters said that Dr. Kegler did a good job. The Board has seen many of these letters, and they are not the issue. The issue here is that Dr. Kegler did plead to a felony that involved his practice.

Ms. Crawford continued that the other issue of importance is the fact that the Board doesn't know why Dr. Kegler chose to reject treatment in lieu of conviction, since he did not testify at the hearing.

MR. SINNOTT MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES L. KEGLER, M.D. DR. STEINBERGH SECONDED THE MOTION.

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

Dr. Buchan asked Dr. Kegler why he chose not to testify at hearing.

Dr. Kegler stated that it was at counsel's discretion, and they felt the facts were so stated in the information presented to the Board.

Mr. Burlew stated that it was true that Dr. Kegler pled guilty to a fourth degree felony. What is he to say at the hearing? That is a fact, and he acknowledged that. What the Hearing Officer says is that all the evidence presented was through a police officer. That officer not only, as pointed out in the objections,

indicated what Dr. Kegler's wife said, but he indicated what Dr. Kegler said. Those facts are before the Board.

Dr. Steinbergh stated that she does wish to make an alternative proposal in this matter, but it's not ready for consideration at this time.

DR. STEINBERGH MOVED TO TABLE THE MATTER OF JAMES L. KEGLER, M.D. DR. GARG SECONDED THE MOTION. A vote was taken:

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

The motion carried.

.....

DR. STEINBERGH MOVED TO REMOVE THE MATTER OF JAMES L. KEGLER, M.D., FROM THE TABLE. DR. BHATI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Mr. Albert left the meeting at this time.

DR. STEINBERGH MOVED THAT THE CONCLUSIONS IN THE MATTER OF JAMES L. KEGLER, M.D., BE AMENDED BY DELETING THE FOLLOWING LANGUAGE ON PAGE SIX OF THE REPORT AND RECOMMENDATION:

The last sentence in the first unnumbered paragraph, beginning with the words "In fact."

The last sentence in the second unnumbered paragraph, beginning with the word "accordingly."

The third unnumbered paragraph, in its entirety.

In the fourth unnumbered paragraph, the following: "Therefore, the record supports only one conclusion"; ", in itself,"; and "the severest."

DR. STEINBERGH FURTHER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF JAMES L. KEGLER, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

1. The certificate of James L. Kegler, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and the certificate of James L. Kegler, M.D., is hereby SUSPENDED for an indefinite period of time, but not less than one year.
2. The State Medical Board shall not consider reinstatement of Dr. Kegler's certificate to practice unless and until all of the following minimum requirements are met:
 - A. Dr. Kegler shall submit an application for reinstatement, accompanied by appropriate fees.
 - B. Dr. Kegler shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances, such course to be approved in advance by the Board or its designee.
 - C. Dr. Kegler shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Kegler fails this examination, Dr. Kegler must wait one (1) month between re-examinations.
 - D. In the event that Dr. Kegler has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Kegler's fitness to resume practice.

3. Upon reinstatement, Dr. Kegler 's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two (2) years:
 - A. Dr. Kegler shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - B. Dr. Kegler shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether or not there has been compliance with all the provisions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which Dr. Kegler is reinstated, provided that if the effective date of reinstatement is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - C. Dr. Kegler shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise directed 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. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness, he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the Board will normally give Dr. Kegler written notification of scheduled appearances, it is Dr. Kegler's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Kegler shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- D. In the event that Dr. Kegler should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Kegler must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- E. In the event that Dr. Kegler is found by the Secretary of the Board to have failed to comply with any provision of this probation, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

- F. Dr. Kegler shall immediately surrender his United States Drug Enforcement Administration certificate. He shall be ineligible to hold, and shall not apply for, registration with the D.E.A. to prescribe, dispense or administer controlled substances without prior Board approval.
 - G. Dr. Kegler shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as prescribed for Dr. Kegler's use by another so authorized by law) any controlled substances as defined by state or federal law, without prior Board approval.
 - H. Upon reinstatement of Dr. Kegler's controlled substance privileges pursuant to Board approval, Dr. Kegler shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board at the same time as the quarterly declarations of compliance required by paragraph 3B, above. Further, Dr. Kegler shall make his patient records with regard to such prescribing available for review by an agent of the State Medical Board upon request.
 - I. Dr. Kegler shall refrain from self-treating and from treating any family members, except in the event of life-threatening emergency.
 - J. Within thirty (30) days of the effective date of this Order, Dr. Kegler 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 a license to practice. Further, Dr. Kegler shall provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for licensure or reinstatement of licensure. Further, Dr. Kegler shall provide this Board with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
 - K. Within thirty (30) days of the effective date of this Order, Dr. Kegler shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Kegler shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
4. If Dr. Kegler violates probation in any respect, the Board, after giving Dr. Kegler notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Kegler's certificate.

5. Upon successful completion of probation, Dr. Kegler 's certificate will be fully restored.

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

DR. GARG SECONDED THE MOTION.

Mr. Sinnott stated that the proposed amendment is fundamentally wrong. Dr. Kegler is a convicted drug felon who committed his felony in the course of his practice. The disciplinary guidelines call for a minimum sanction of revocation for this violation. The Board has already revoked three other physicians' licenses for drug-related felonies today. There is nothing special about this case. The Board should revoke Dr. Kegler's license.

Dr. Egner suggested that the Board needs to discuss drug felonies. Not all are exactly the same. Is letting a patient walk out of a doctor's office with a prescription for 50 Percocet or Soma the same as having a bottle of 60 Valium?

Mr. Sinnott stated that drug felonies are serious criminal offenses.

Dr. Egner agreed, but stated that the Board looks at the circumstances surrounding these cases. If the Board doesn't look at the circumstances, then it should just send a letter saying that the license will be revoked on all such cases.

Mr. Sinnott stated that, barring extraordinary circumstances, that should be the case.

Dr. Steinbergh stated that she cannot support revocation of Dr. Kegler's license. She believes the objections filed to the Hearing Officer's Report and Recommendation are appropriate, and the letters filed on Dr. Kegler's behalf are persuasive. She does not feel this case warrants permanent revocation.

Dr. Steinbergh added that she does not believe that all drug felony cases are the same. Each case is very, very different.

Dr. Bhati stated that what surprises him in this case is that Dr. Kegler was not put on the stand to answer questions. That was a fundamental mistake. Dr. Kegler should have taken that opportunity to clarify the situation. During the criminal trial, Dr. Kegler was given the option of receiving treatment in lieu of conviction, and he turned down that opportunity. Dr. Bhati stated that this tells him something. Dr. Bhati added that he is not sure that all drug felons are the same, but this is a very serious charge. Is this a remediable situation? He doesn't know. Dr. Bhati stated that he would be happier with a suspension for at least three years, with five years of probation.

Ms. Noble spoke against revocation in this case, stating that she believes Dr. Kegler is capable of learning from this experience and not repeating it. Other felons the Board has seen have been persons who were drug users, or who were giving drugs to known addicts. The Board can't treat all felons the same. The Board allows rehabilitation for drug dependent individuals, and should allow rehabilitation in cases such as this as well. Dr. Kegler has no reason to accept treatment in lieu of conviction since he was not an addict. Why should he subject himself to such treatment? Ms. Noble urged adoption of the proposed amendment.

Mr. Sinnott stated that he doesn't know what the Board is going to rehabilitate Dr. Kegler from, except commission of a felony. The Board's message must be that if a physician uses a medical license to commit felonies, the Board will take that license.

Ms. Noble stated that, if that is the case, the Board should do it for all drug cases. Drug abuse is mushrooming now. If the Board wants to get a hand on drug users, it should apply more restrictions on them. Dr. Kegler is not a drug user. He made a mistake, but she believes he has learned from that mistake. No death occurred as a result, and no patient harm has been done. That must be taken into consideration.

Dr. Agresta asked for an explanation of felony degrees. He stated that a fourth degree felony is not the same as a first degree felony.

Mr. Sinnott stated that that is correct.

Dr. Agresta commented that underage drinking is a fourth degree felony.

Dr. Egner stated that there was the case of Dr. Shumrick, who pled guilty to a felony but ended up with a reprimand.

Mr. Sinnott stated that he cannot account for that.

Dr. Egner stated that the Board must look at the circumstances surrounding each case. She doesn't approve of what Dr. Kegler did, but she can't consider it in the same light as a more serious crime, and she cannot sanction permanent revocation in this case.

Mr. Sinnott asked what mitigating circumstances should allow this drug felon to continue to practice. He stated that the Board is limited to the hearing record, and cannot consider what Mr. Burlew said today.

Dr. Steinbergh stated that this was a family situation. There was no patient harm, and there was no evidence that Dr. Kegler is an inappropriate physician.

Mr. Sinnott commented, except for the fact that Dr. Kegler is a felon.

Dr. Egner stated that twelve prescriptions over two years for his daughter doesn't make him an inappropriate physician.

Ms. Noble stated that the Board has been more lenient with others who have done more wrong.

Dr. Buchan stated that Dr. Kegler wrote a prescription for 60 Valium in his daughter's name, but took the medication himself.

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

VOTE:	Dr. Bhati	- nay
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- nay
	Ms. Noble	- aye
	Mr. Sinnott	- nay
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Stienecker	- 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 JAMES L. KEGLER, M.D. DR. BHATI SECONDED THE MOTION.

Dr. Agresta stated that the harshest penalty the Board could have imposed in this case is revocation. The amendment is strong, and he can support it.

Dr. Garg stated that, in listening to everyone, he can see that some members are concerned about consistency. He does not feel that this proposed sanction is inconsistent. Not every infraction or crime is the same. The proposed sanction is appropriate.

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

VOTE:	Dr. Bhati	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye

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

The motion carried.

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STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43260-9315 • (614) 466-3934

October 11, 1995

NOTICE OF IMMEDIATE SUSPENSION

AND

OPPORTUNITY FOR HEARING

James L. Kegler, M.D.
629 Oak Street
Suite 104
Cincinnati, OH 45206

Dear Doctor Kegler:

In accordance with Sections 2929.17 and/or 3719.12(B), Ohio Revised Code, the Office of the Prosecuting Attorney of Hamilton County, Ohio reported that on or about September 15, 1995, in the Hamilton County Court of Common Pleas, you pleaded guilty to one (1) felony count of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code.

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

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

- (1) On or about September 15, 1995, in the Hamilton County Court of Common Pleas, you pleaded guilty to one (1) felony count of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code.

Your acts, conduct, and/or omissions underlying your guilty plea as alleged in paragraph (1) above, individually and/or collectively, constitute "(s)elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law

Mailed 10/12/95

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James L. Kegler, M.D.

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regulating the possession, distribution, or use of any drug." as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.

Further, your guilty plea as alleged in paragraph (1) above, individually and/or collectively, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a felony." as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

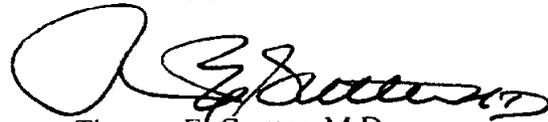
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 348 886 952
RETURN RECEIPT REQUESTED

cc: John Burlew, Esq.
CERTIFIED MAIL # P 348 886 953
RETURN RECEIPT REQUESTED