

State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

September 10, 2014

Barry Howard Brooks, M.D.
13241 County Line Road
Chesterland, OH 44026

RE: Case No. 14-CRF-043

Dear Doctor Brooks:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 10, 2014, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, and adopting an Amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Any such appeal must be filed in accordance with all requirements specified in Section 119.12, Ohio Revised Code, and must be filed with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within (15) days after the date of mailing of this notice.

THE STATE MEDICAL BOARD OF OHIO

*Mark Bechtel, MD
by J.B. Stanton*

Mark A. Bechtel, M.D.
Secretary

MAB:jam
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7032 2901 3751
RETURN RECEIPT REQUESTED

CC: John R. Irwin, Esq.
CERTIFIED MAIL NO. 91 7199 9991 7032 2901 3768
RETURN RECEIPT REQUESTED

Mailed 10-3-14

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 10, 2014, 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, 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 Barry Howard Brooks, M.D., Case No. 14-CRF-043, 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.



Mark Bechtel, M.D.
Mark A. Bechtel, M.D. *by J. Blum*
Secretary

September 10, 2014
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 14-CRF-043

BARRY HOWARD BROOKS, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 10, 2014

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

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Barry Howard Brooks, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brooks' certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:
 - 1. **Application for Reinstatement or Restoration:** Dr. Brooks shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 - 2. **Medical Billing Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Brooks shall submit acceptable documentation of successful completion of a course or courses dealing with medical billing. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education

requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

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

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

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

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

1. **Modification of Terms**: Dr. Brooks shall not request modification of the terms, conditions, or limitations of probation for at least one year after the imposition of these probationary terms, conditions, and limitations.
2. **Obey the Law**: Dr. Brooks shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

3. **Declarations of Compliance:** Dr. Brooks shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which his certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal Appearances:** Dr. Brooks shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate has been restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every **six** months thereafter, and/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.

5. **Practice Plan:** Within 30 days of the date of Dr. Brooks' reinstatement or restoration, or as otherwise determined by the Board, Dr. Brooks shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brooks' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Brooks shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Brooks submits his practice plan, he shall also submit the name of the curriculum vitae of a monitoring physician for prior written approval by the Secretary and Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Brooks and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Brooks and his medical practice, and shall review Dr. Brooks' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brooks and his medical practice, and on the review of Dr. Brooks' patient charts. Dr. Brooks shall ensure that the reports are forwarded to the Board on a quarterly

basis and are received in the Board's offices no later than the due date for Dr. Brooks' declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Brooks shall immediately so notify the Board in writing. In addition, Dr. Brooks shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Brooks shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Brooks' monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Brooks' monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

6. **Billing Monitor:** Within 30 days of the date of Dr. Brooks' reinstatement or restoration, or as otherwise determined by the Board, Dr. Brooks shall submit for prior written approval by the Secretary and Supervising Member of the Board the name and curriculum vitae of an individual to monitor Dr. Brooks' medical billing. The billing monitor shall monitor Dr. Brooks' medical billing practices to ensure that they comply with the law and standard billing practices, and provide the Board with reports concerning Dr. Brooks' billing. Dr. Brooks shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brooks' declaration of compliance.

In the event that the designated billing monitor becomes unable or unwilling to serve in this capacity, Dr. Brooks shall immediately so notify the Board in writing. In addition, Dr. Brooks shall make arrangements acceptable to the Board for another billing monitor within 30 days after the previously designated billing monitor becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Brooks shall further ensure that the previously designated billing monitor also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any individual proposed to serve as Dr. Brooks' billing monitor, or may withdraw its approval of any individual previously approved to serve as Dr.

Brooks' billing monitor, in the event that the Secretary and Supervising Members of the Board that the determine that any such billing monitor had demonstrated a lack of cooperation in providing information to the Board for any other reason.

7. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Brooks is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
 8. **Required Reporting of Change of Address:** Dr. Brooks shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brooks' certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Brooks violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Brooks shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Brooks shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.

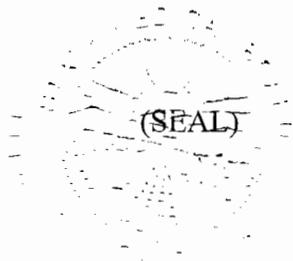
In the event that Dr. Brooks provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Brooks

receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Brooks shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Brooks shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph F:** Dr. Brooks shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Mark Bechtel, M.D.

Mark A. Bechtel, M.D.
Secretary

for J. Blanton

September 10, 2014

Date

JUL - 8 2014

**STATE MEDICAL BOARD
OF OHIO**

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 14-CRF-043

Barry Howard Brooks, M.D.,

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Hearing Examiner Blue

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated April 9, 2014, the State Medical Board of Ohio ("Board") notified Barry Howard Brooks, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board stated its proposed action was based on an allegation that on May 23, 2013, Dr. Brooks pleaded no contest to and was convicted of Medicaid Fraud, in violation of Ohio Revised Code Section ("R.C.") 2913.40, a first degree misdemeanor. In addition, the Board alleged that, on February 28, 2014, it was notified by the Department of Health and Human Services that Dr. Brooks was excluded from participating in any and all capacity in the Medicare, Medicaid, and all Federal health care programs as a result of his misdemeanor conviction.

The Board further alleged that Dr. Brooks' acts, conduct, and/or omissions, individually and/or collectively, constitute:

- "A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as set forth in R.C. 4731.22(B)(11); and/or
- "Termination or suspension from participation in the Medicare or Medicaid programs by the Department of Health and Human Services or other responsible agency for any act or acts that also would constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section," as set forth in R.C. 4731.22(B)(25).

Accordingly, the Board advised Dr. Brooks of his right to request a hearing in this matter. By request filed on April 25, 2014, Dr. Brooks requested a hearing. (State's Exhibits ("St. Exs.") 1, 2)

Appearances

Mike DeWine, Attorney General, and James T. Wakley, Assistant Attorney General, for the State of Ohio. John R. Irwin, Esq., for Dr. Brooks.

Hearing Date: July 1, 2014

PROCEDURAL MATTER

Upon review of the State's exhibits, the Hearing Examiner discovered that Dr. Brooks' social security number was not redacted in State's Exhibit 7. As such, the Hearing Examiner redacted Dr. Brooks' social security number from State's Exhibit 7.

SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background Information

1. Barry H. Brooks, M.D., was born in 1948. He obtained his medical degree in 1974 from Harvard Medical School in Boston, Massachusetts. From 1975 to 1976, Dr. Brooks completed an internship in psychiatry at the Brockton Veterans Administration Hospital in Brockton, Massachusetts. From 1976 to 1979, Dr. Brooks completed a one-year internship in internal medicine followed by a two-year internal medicine residency at the Cleveland Clinic Foundation ("Cleveland Clinic") in Cleveland, Ohio. Dr. Brooks was initially licensed to practice medicine in Ohio in 1977. (Respondent's Exhibit ("Resp. Ex.") F; State of Ohio *eLicense* Center at, <https://license.ohio.gov.lookup>, query on July 1, 2014; Hearing Transcript ("Tr.") at 15-16, 33)
2. Dr. Brooks testified that, from 1979 to May 2013, he was in private practice as an internal medicine physician in the Cleveland area. He stated that, from May 2013 through November 2013, he was employed by One Health Ohio as a primary care physician in Warren, Ohio. He testified that, since November 2013, he has worked as a locum tenens physician in Ohio. (Tr. at 14-20, 34-35, 81)
3. On or about July 24, 1986, the Board issued an Entry of Order ("July 1986 Order"). Among other things, the July 1986 Order revoked Dr. Brooks' certificate to practice medicine and surgery in Ohio, then stayed such revocation, based upon his violation of R.C. 4731.22(B)(3) and (B)(9). The July 1986 Order also imposed probationary terms, conditions, and limitations for at least five years and not less than eight years. (St. Ex. 6)

Dr. Brooks testified that he completed probation and has not had any further disciplinary action against him. (Tr. at 32, 43-44)

Criminal Conviction

4. In the Franklin County Municipal Court, Franklin County, Ohio, Dr. Brooks was charged with the following as set forth in the Complaint filed on May 22, 2013:

Complainant, being duly sworn, states that the above named defendant, at Franklin County/Columbus, Ohio, on or about the 1st day of January, 2009 to on or about July 31, 2012 in Franklin County, Ohio, Barry H. Brooks, did knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the medical assistance program, to wit: submitting claims for service in excess of actual services rendered, the value of the property, services, or funds obtained for each false representation was less than one thousand dollars (\$1,000.00) in violation of section [R.C.] 2913.40(B) * * *, a misdemeanor of the First degree.

(St. Ex. 4)

5. On May 23, 2013, in the Franklin County Municipal Court, Franklin County, Ohio, Dr. Brooks pleaded no contest to, and was convicted of, Medicaid Fraud, in violation of R.C. 2913.40, a first-degree misdemeanor. Although the Sentence Entry indicated that no fine or court costs were assessed against Dr. Brooks, Dr. Brooks testified that he was fined \$11,000.00 and that he paid it. (St. Ex. 5; Hearing Transcript ("Tr.") at 26)

Notification of Exclusion

6. By letter dated February 28, 2014, the Department of Health and Human Services, Office of Inspector General, notified the Board that Dr. Brooks was excluded from participating in any and all capacity in the Medicare, Medicaid, and all Federal health care programs as a result of his May 23, 2013 misdemeanor conviction in the Franklin County Municipal Court. (St. Ex. 7; Tr. at 27)

Dr. Brooks' Testimony

7. Dr. Brooks testified that he was a solo practitioner for 30 years and that his practice was affiliated with the Cleveland Clinic since its inception. He stated that he saw 25 to 30 patients per day, treated adolescents to adults, and employed an office manager and two medical technicians. (Tr. at 21-23)
8. Dr. Brooks explained his billing system prior to 2011:

It was very cumbersome. I had a person dedicated to that. It was done by hand. I had to go through everything. * * *

I would, of course, see the patient, write a note, and then on the paper, check the visit, and the billing person would get that and then she would prepare a bill and send it to Medicaid or Medicare.

(Tr. at 57-58)

9. Dr. Brooks further explained that, to determine the amount to charge Medicaid and/or Medicare, he chose the billing codes that were assigned to the complexity of the visit. (Tr. at 59-60)
10. Dr. Brooks testified that, in 2009, the Cleveland Clinic began managing his practice which included his billing and financial services.¹ He explained that he permitted the Clinic to manage his practice because “the economic climate now doesn’t sustain private practice on its own.” (Tr. at 54-55) He testified that, in addition to managing his billing and financial services, the Clinic also provided the following services to his practice:

Computer hardware, software, training support for staff. They had a very nice group health program. They had workers’ compensation programs that were far cheaper than the state. * * *

[w]e went to electronic * * * medical records * * *. We’re using Epic which is a well[-]known electronic medical records system.

I would see a patient * * * and enter a progress note into the electronic medical record. And then the summary should dictate what the billing code should be.

(Tr. at 54-56, 61)

11. Dr. Brooks testified that, unlike before, the Clinic began selecting the codes to be charged to Medicaid for office visits. He affirmed that he was not provided an opportunity to review the bills before they were submitted to Medicare and/or Medicaid. He also stated that he never asked to review his bills because “they were the Cleveland Clinic” and he “trusted them.” (Tr. at 62, 72)
12. Dr. Brooks testified that, in 2012, he was randomly audited by the State of Ohio. He explained that the State of Ohio subpoenaed 200 of his medical charts and billing records of Medicaid patients. He admitted that, as a result of this random audit, he was charged with Medicaid fraud and he later pleaded no contest to those charges as set forth above. (Tr. at 23, 26, 51-53)

¹ Dr. Brooks initially testified that the Clinic started managing his practice, including his billing and financial services, in 2011. However, when further questioned by the Hearing Examiner, he corrected himself and indicated that it started in 2009. (Tr. at 54-55, 98-99, 101-105)

13. As evidence, Dr. Brooks submitted five examples of the 200 charts that were subpoenaed by the State of Ohio. He testified that these five examples are fair and representative of the 200 submitted charts. Dr. Brooks testified that, for example, Patient 1 was charged for a Level 4 office visit when the office visit should have been charged as a Level 2 office visit. (Resp. Exs. A-G; Tr. at 66-68)
14. Dr. Brooks testified that, when the errors came to light, he complained “bitterly” to the IT Department at Cleveland Clinic. He stated that the IT Department corrected the “glitch.” He explained that he later learned that, to determine which code to charge, the IT Department took all of the previous diagnoses and made that the complexity of the visit. In other words, the computer program was adding together the diagnoses to develop a high complexity calculation regardless of the fact that Dr. Brooks did not treat all of the diagnoses at that particular visit. (Tr. at 73, 76, 78)
15. Dr. Brooks testified that, after his conviction, his affiliation with the Cleveland Clinic ended. (Tr. at 79)
16. Dr. Brooks explained what he has learned from this experience:

First of all, it’s my responsibility ultimately. If a patient presents to me with pneumonia and they die, it’s not my office’s fault. It may be the disease, it may be a mistake I made. Whatever happens, it’s my responsibility. It’s just the bottom line. * * *

If I ever get back into where charges are billed, I will be so thorough and to make sure that it is absolutely clean and well researched because I know it’s my responsibility.

(Tr. at 74, 83)

17. Dr. Brooks testified that he would be willing to take any courses that the Board recommends and/or requires. (Tr. at 83)

FINDINGS OF FACT

1. On May 23, 2013, in the Franklin County Municipal Court, Franklin County, Ohio, Barry Howard Brooks, M.D., pleaded no contest to, and was convicted of, one count of Medicaid Fraud, in violation of R.C. 2913.40, a first-degree misdemeanor.
2. On February 28, 2014, the Board was notified by the Department of Health and Human Services that Dr. Brooks was excluded from participating in any and all capacity in the

Medicare, Medicaid, and all Federal health care programs as a result of his May 23, 2013 misdemeanor conviction in the Franklin County Municipal Court.

CONCLUSIONS OF LAW

1. Dr. Brooks' criminal conviction, as set forth in Findings of Fact 1, individually and/or collectively, constitutes "a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility of intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as set forth in R.C. 4731.22(B)(11).
2. Dr. Brooks' acts, conduct, and/or omissions, as set forth in Findings of Fact 1 and 2, individually and/or collectively, constitute "[t]ermination or suspension from participation in the Medicare or Medicaid programs by the Department of Health and Human Services or other responsible agency for any act or acts that also would constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section," as set forth in R.C. 4731.22(B)(25).

DISCUSSION OF PROPOSED ORDER

It is undisputed that Dr. Brooks pleaded no contest to, and was found guilty of Medicaid Fraud, a first-degree misdemeanor. There is also no question that Dr. Brooks was excluded from participating in Medicare, Medicaid, and all Federal health care programs as a result of his misdemeanor conviction.

Counsel for Respondent argued that Dr. Brooks has accepted responsibility as the provider and paid his fine. However, counsel for Respondent maintained that Dr. Brooks was not directly responsible for the overbilling to Medicaid; rather, he argued that a computer program error at the Cleveland Clinic caused the overbilling. Counsel for Respondent noted that Dr. Brooks has had a long-standing and productive career in medicine. He asked the Board for leniency when determining Dr. Brooks' proposed order.

Counsel for the State argued that, despite Dr. Brooks' defense, Dr. Brooks was found guilty of overbilling Medicaid. He added that Dr. Brooks' 2013 misdemeanor conviction was also his second criminal conviction in the course of practice. However, counsel for the State acknowledged that he believed that Dr. Brooks "didn't know this was happening, but he should have." Counsel for the State did not make any recommendations as to discipline.

Based on the foregoing, the Hearing Examiner recommends a suspension of Dr. Brooks' certificate for at least 90 days, require Dr. Brooks to take a medical billing course and professional ethics course as conditions for reinstatement, and probation for two years. The Hearing Examiner believes this Order takes into account his misdemeanor conviction and

exclusion from Medicaid while also taking into consideration that Dr. Brooks took responsibility for his actions and paid his court fine.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Barry Howard Brooks, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than ninety days.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brooks' certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:

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

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

3. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Brooks shall submit acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in

compliance with this provision shall be in addition to the Continuing Medical Education period(s) in which they are completed.

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

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Brooks has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion pursuant to Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Brooks' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Modification of Terms:** Dr. Brooks shall not request modification of the terms, conditions, or limitations of probation for at least one year after the imposition of these probationary terms, conditions, and limitations.
 2. **Obey the Law:** Dr. Brooks shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 3. **Declarations of Compliance:** Dr. Brooks shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which his certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 4. **Personal Appearances:** Dr. Brooks shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate has been restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every **six** months thereafter, and/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.

5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Brooks is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
 6. **Required Reporting of Change of Address:** Dr. Brooks shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brooks' certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Brooks violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Brooks shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Brooks shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.

In the event that Dr. Brooks provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Brooks shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Brooks shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph F:** Dr. Brooks shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Danielle R. Blue, Esq.
Hearing Examiner

State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 10, 2014

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Ramprasad announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Ramprasad asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Precious LaYon Barnes, D.O.; Harry N. Bernard, D.P.M.; Barry Howard Brooks, M.D.; Jessop Mark McDonnell, M.D.; and Cassandra Rose Parrott, D.O.

ROLL CALL:	Dr. Bechtel	- aye
	Dr. Saferin	- aye
	Dr. Rothermel	- aye
	Dr. Steinbergh	- aye
	Mr. Kenney	- aye
	Dr. Ramprasad	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schachat	- aye
	Mr. Gonidakis	- aye
	Mr. Giacalone	- aye

Dr. Ramprasad 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:	Dr. Bechtel	- aye
	Dr. Saferin	- aye
	Dr. Rothermel	- aye
	Dr. Steinbergh	- aye
	Mr. Kenney	- aye
	Dr. Ramprasad	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schachat	- aye
	Mr. Gonidakis	- aye
	Mr. Giacalone	- aye

Dr. Ramprasad noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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 any disciplinary matters. In the matters before the Board today, Dr. Bechtel served as Secretary and Dr. Saferin served as Supervising Member.

Dr. Ramprasad reminded all parties that no oral motions may be made during these proceedings.

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

.....
BARRY HOWARD BROOKS, M.D.
.....

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Barry Howard Brooks, M.D. Dr. Rothermel seconded the motion.

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

Mr. Giacalone briefly reviewed Dr. Brooks' career, including his training in the fields of psychiatry and internal medicine. From 1979 to May 2013, Dr. Brooks maintained a private practice as an internal medical physician in the Cleveland area. From May to November 2013, Dr. Brooks was employed by One Health Ohio as a primary care physician. Since 2013, Dr. Brooks has worked as a *locum tenens* physician in Ohio. On or about July 24, 1986, Dr. Brooks came before this Board on a separate matter, namely his conviction on 13 felony counts involving attempted illegal processing of drug documents associated with his prescribing Dilaudid for individuals he knew to be drug addicts. At that time, the Board issued an order revoking Dr. Brooks' Ohio medical license, but stayed the revocation and imposed probationary terms for a minimum of five years.

Mr. Giacalone stated that this current matter has resulted from Dr. Brooks' plea of No Contest to and conviction of Medicare fraud, a first-degree misdemeanor. Although the sentence entry indicates that no fine or court costs were assessed against Dr. Brooks, Dr. Brooks testified at hearing that he paid a fine of \$11,000.00. A letter dated February 28, 2014, from the U.S. Department of Health and Human Services, Office of the Inspector General, notified the Board that Dr. Brooks was excluded in any and all capacities from Medicare, Medicaid, and all federal health programs due to his conviction.

Mr. Giacalone stated that Dr. Brooks maintains that he was not directly responsible for overbilling Medicaid, but rather a computer program error at the Cleveland Clinic was the cause. According to Dr. Brooks' testimony, the Cleveland Clinic managed his practice from 2009 to 2012, including his billing and financial services. Dr. Brooks further testified that, to his knowledge, no other physicians have had convictions or exclusions from federal health programs, even though many other physicians used the same billing program that Dr. Brooks used.

Based on the foregoing facts, Mr. Giacalone recommended accepting the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Brooks. The Proposed Order, if adopted, would suspend Dr. Brooks' medical license for a minimum of 90 days, require him to take courses in medical billing and professional ethics as conditions for reinstatement or restoration, and then impose probationary conditions on his license for at least two years.

Dr. Ramprasad stated that in medical practice all billings usually generate from the physician, even when an electronic medical record is being used. Dr. Ramprasad did not know of any situation where the physician is not in charge of billing because the physician must record the level of the service being rendered. Dr. Ramprasad characterized the terms of the Proposed Order as a "gift" in this situation.

Dr. Steinbergh concurred that the Proposed Order was a gift, one which she disagreed with. Dr. Steinbergh stated that when someone defrauds Medicaid, they defraud everyone because the program is funded by tax revenue. Dr. Steinbergh agreed with Dr. Ramprasad that a physician is responsible for properly billing for his or her services. Dr. Steinbergh stated that it is very significant that Medicaid auditors sampled 200 of Dr. Brooks' cases and found 200 errors.

Dr. Steinbergh reiterated that being convicted of Medicaid fraud is very serious. Dr. Steinbergh stated that in the past, the Board has suspended physician's licenses for a year or more for Medicaid and Medicare fraud. Dr. Steinbergh offered an amended Order for the Board's consideration; a written version was provided to the Board members by the staff. Dr. Steinbergh's proposed amended Order mirrors the Proposed Order, except that it includes an additional probationary term that Dr. Brooks must have a practice plan approved by the Board. The practice plan will require Dr. Brooks to not only have a monitoring physician to review his medical records, but also another individual, separate from the monitoring physician, to monitor Dr. Brooks' billing practices. Dr. Steinbergh stated that the individual monitoring Dr. Brooks' billing need not be a physician, but must be someone with auditing abilities, such as a certified public accountant.

Dr. Steinbergh further commented that, though she thinks the 90-day suspension should be longer, she has left the time of suspension unchanged in her proposed amendment. Dr. Steinbergh stated that she will acquiesce to the judgment of the Board regarding the proper length of suspension.

Dr. Steinbergh moved to amend the Proposed Order as presented to the Board members. Dr. Soin seconded the motion.

Dr. Ramprasad stated that he will now entertain discussion in the above matter.

Dr. Soin stated that he approved of the concept that Dr. Brooks should have a practice plan approved by the Board, but also agreed that a minimum 90-day suspension is a gift considering Dr. Brooks' violations. Dr. Soin stated that physicians should not use ignorance as an excuse for gross incompetence or negligence. Dr. Soin added that physicians must be accountable for all parts of their practices.

Mr. Gonidakis commented that three of his colleagues on the Board have now described the proposed minimum 90-day suspension of Dr. Brooks' license as a "gift." Mr. Gonidakis questioned why the Board should grant a gift in this case. Mr. Gonidakis agreed with Dr. Steinbergh's comments that Medicaid fraud is fraud against everyone. Mr. Gonidakis questioned whether a 90-day suspension should become the new standard in such cases. Dr. Sethi opined that a minimum one-year suspension would be appropriate.

Ms. Anderson commented that under the Board's applicable disciplinary guidelines, based on a misdemeanor committed in the course of practice, the minimum discipline is an indefinite suspension of no less than 180 days followed by a minimum probation of two years; the maximum discipline under the guidelines is permanent revocation. Dr. Steinbergh noted that the proposed 90-day minimum suspension is below the Board's guidelines. Mr. Kenney agreed with Dr. Sethi's recommendation of a minimum one-year suspension.

Mr. Giacalone stated that as a non-physician member of the Board, he had not appreciated the fact that the practicing physician would, by necessity, be intricately involved in the billing process. Mr. Giacalone thanked the physician members of the Board for clarifying this point and agreed that the minimum suspension of Dr. Brook's license should be longer than 90 days.

Dr. Steinbergh wished to alter her proposed amendment so that the minimum suspension of Dr. Brooks' license will be one year. No Board member objected to the change to the amendment. The change to the amendment was accepted.

The proposed amended Order before the Board read as follows:

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Barry Howard Brooks, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brooks' certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Brooks shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Medical Billing Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Brooks shall submit acceptable documentation of successful completion of a course or courses dealing with medical billing. The exact number of hours and the specific content of the course or courses shall

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

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

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

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

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

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

1. **Modification of Terms**: Dr. Brooks shall not request modification of the terms, conditions, or limitations of probation for at least one year after the imposition of these probationary terms, conditions, and limitations.
2. **Obey the Law**: Dr. Brooks shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

3. **Declarations of Compliance:** Dr. Brooks shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which his certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Personal Appearances:** Dr. Brooks shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate has been restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every **six** months thereafter, and/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.
5. **Practice Plan:** Within 30 days of the date of Dr. Brooks' reinstatement or restoration, or as otherwise determined by the Board, Dr. Brooks shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brooks' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Brooks shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Brooks submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary and Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Brooks and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Brooks and his medical practice, and shall review Dr. Brooks' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brooks and his medical practice, and on the review of Dr. Brooks' patient charts. Dr. Brooks shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brooks' declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Brooks shall immediately so notify the Board in writing. In addition, Dr. Brooks shall make arrangements acceptable to the Board for another monitoring physician within

30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Brooks shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Brooks' monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Brooks' monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

6. **Billing Monitor:** Within 30 days of the date of Dr. Brooks' reinstatement or restoration, or as otherwise determined by the Board, Dr. Brooks shall submit for prior written approval by the Secretary and Supervising Member of the Board the name and curriculum vitae of an individual to monitor Dr. Brooks' medical billing. The billing monitor shall monitor Dr. Brooks' medical billing practices to ensure that they comply with the law and standard billing practices, and provide the Board with reports concerning Dr. Brooks' billing. Dr. Brooks shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brooks' declarations of compliance.

In the event that the designated billing monitor becomes unable or unwilling to serve in this capacity, Dr. Brooks shall immediately so notify the Board in writing. In addition, Dr. Brooks shall make arrangements acceptable to the Board for another billing monitor within 30 days after the previously designated billing monitor becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Brooks shall further ensure that the previously designated billing monitor also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any individual proposed to serve as Dr. Brooks' billing monitor, or may withdraw its approval of any individual previously approved to serve as Dr. Brooks' billing monitor, in the event that the Secretary and Supervising Member of the Board determine that any such billing monitor has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Brooks is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
8. **Required Reporting of Change of Address:** Dr. Brooks shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brooks' certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Brooks violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Brooks shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Brooks shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.

In the event that Dr. Brooks provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.
 2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Brooks shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Brooks shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Brooks receives from the Board written notification of the successful completion of his probation.
 3. **Required Documentation of the Reporting Required by Paragraph F:** Dr. Brooks shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original

ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

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

ROLL CALL:	Dr. Bechtel	- abstain
	Dr. Saferin	- abstain
	Dr. Rothermel	- aye
	Dr. Steinbergh	- aye
	Mr. Kenney	- aye
	Dr. Ramprasad	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schachat	- abstain
	Mr. Gonidakis	- aye
	Mr. Giacalone	- aye

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Barry Howard Brooks, M.D. Mr. Kenney seconded the motion. A vote was taken:

ROLL CALL:	Dr. Bechtel	- abstain
	Dr. Saferin	- abstain
	Dr. Rothermel	- aye
	Dr. Steinbergh	- aye
	Mr. Kenney	- aye
	Dr. Ramprasad	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schachat	- abstain
	Mr. Gonidakis	- aye
	Mr. Giacalone	- aye

The motion to approve as amended carried.

State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

April 9, 2014

Case number: 14-CRF- 043

Barry Howard Brooks, M.D.
2225 Noble Road
Cleveland Heights, OH 44112

Dear Doctor Brooks:

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 May 23, 2013, in the Franklin County Municipal Court of Columbus, Ohio, you pled no contest to and were convicted of one count of Medicaid Fraud, a misdemeanor of the first degree, a copy of which is attached hereto and incorporated herein.
- (2) On or about February 28, 2014, the Board was notified by the Department of Health and Human Services that you are excluded from participating in any and all capacity in the Medicare, Medicaid and all Federal health care programs as a result of your conviction in the Franklin County Municipal Court, a copy of which is attached hereto and incorporated herein.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

The facts as alleged in paragraphs (1) through (2) above, individually and/or collectively, constitute "[t]ermination or suspension from participation in the Medicare or Medicaid programs by the Department of Health and Human Services or other responsible agency for any act or acts that also would constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section," as that clause is used in Section 4731.22(B)(25), 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

Martindale 4-10-14

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.
Acting Secretary

JCS/AGL/pev
Enclosures

CERTIFIED MAIL #91 7199 9991 7033 2012 8873
RETURN RECEIPT REQUESTED

CC: John R. Irwin, J.D., M.D.
17458 Lakesedge Trail
Chagrin Falls, OH 44023

CERTIFIED MAIL #91 7199 9991 7033 2012 8880
RETURN RECEIPT REQUESTED

STATE OF OHIO,
CITY OF COLUMBUS/

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

Plaintiff,

CASE NO. 13/12136

-vs-

Barry Brooks
Defendant.

DISMISS _____

- Court Reporter Present
- Jury waiver executed
- Defense counsel present

**SENTENCE ENTRY
(INDIRECT)**

Defendant entered a plea of (GUILTY) (NO CONTEST) to the (STATED) (AMENDED) charge of Medical Fraud in violation of Section 2913.40

- Based upon the (DEFENDANTS STIPULATION) (COURT FINDING) there were sufficient facts to find the defendant guilty.
- Court accepts defendant's guilty plea.

Defendant is a _____ offender within _____ years. Defendant represented by _____
Having considered the principles of sentencing outlined in R.C. 2929.21 and the factors set forth in R.C. 2929.22, the following sentence is imposed:

FINE:
\$ 0 Fine and court costs. Suspend \$ _____ of the fine/costs for _____
\$ _____ Fine including costs. Suspend \$ _____ of the fine/costs for _____

IN ACCORDANCE WITH R.C. 2947.14, THE COURT MAKES THE FOLLOWING FINDINGS:

- Per defendant's own statement, he/she is able to pay the fine/costs imposed by FW. Time payments authorized if costs not paid, refer to City Attorney pursuant to R.C. 2947.23.
- Pursuant to R.C. 2947.14, the court finds defendant unable to pay. Pursuant to R.C. 2929.28 defendant shall perform _____ hours community service

In accordance with R.C. 2929.28(D), judgment is hereby rendered against defendant and in favor of the appropriate political subdivision or legal entity for the financial sanctions imposed herein.

RESTITUTION:
Pursuant to R.C. 2929.28(D), an order is rendered against defendant and in favor of _____ for restitution in the amount of \$ _____

- Restitution payments shall be made directly to the victim.
- Restitution payments shall be made to the above named party through the restitution office of the department of probation services.
- Restitution ordered by agreement of the parties. Installment payments authorized. See separate Restitution Entry.

JAIL TERM: _____ Total days in FCCC. Suspend _____ days. Credit _____ days for time served

MEDICAL BOARD

Length of confinement _____ days in _____ Enforcement date _____

JUN 20 2013

COMMUNITY CONTROL: The Court hereby imposes a period of community control for _____ years. The defendant shall be under the general control and supervision of the Department of Probation Services of the Franklin County Municipal Court for purposes of reporting any violations of the sanctions imposed herein. In addition, as a further condition of the community control sanction(s) imposed herein:
Defendant shall comply with "Conditions of Supervision" adopted by the Franklin County Municipal Court. Defendant is not to violate any law and not be engaged in an offensive course of conduct. Defendant may not leave Franklin County, Ohio without permission from his/her probation officer.
Defendant must abide by all additional orders or instructions by this court or the probation officer, report promptly (within one week), and correctly report any change of address and telephone number to the probation officer.

ISRP (work release) _____ Enforcement Date(s) _____
Home Incarceration _____ days. Enforcement Date _____ Electronic Monitoring Required _____
Special Enforcement Instructions: _____

<input type="checkbox"/> Community service _____ hours	<input type="checkbox"/> Attend victim impact panel	<input type="checkbox"/> Attend Chemical Dependency Assessment
<input type="checkbox"/> Attend Defensive Driving Course	<input checked="" type="checkbox"/> Pay fines and costs.	<input type="checkbox"/> Strict compliance
<input type="checkbox"/> No further acts of violence	<input type="checkbox"/> No same or similar offense	<input type="checkbox"/> Attend 3 day DIP and follow up.
<input type="checkbox"/> No odor/consumption of alcohol and/or drugs of abuse/no refusals		<input type="checkbox"/> Submit to alcohol/drug screen(s)
<input type="checkbox"/> Stay away from _____		<input type="checkbox"/> Compliance with all vehicle sanctions ordered
<input type="checkbox"/> Pay restitution to: _____ in the amount of \$ _____		<input type="checkbox"/> Take all Doctor prescribed medication
<input type="checkbox"/> Assign to A.D.A.P.		<input type="checkbox"/> Abide by all rules and instructions of the A.D.A.P.
<input type="checkbox"/> Provided No Convictions		<input type="checkbox"/> Any and all counseling required by the Probation Officer.
<input type="checkbox"/> Successfully complete Domestic Violence, Anger Management and/or mental health counseling as determined by the Probation Department.		
<input type="checkbox"/> Successfully complete alcohol/chemical dependency counseling and NA/AA as deemed appropriate by the Probation Department.		
<input type="checkbox"/> Convert to Non-Reporting Community Control after P.O. meets with defendant and explains terms of Probation.		

Further: _____

DRIVING PRIVILEGES/ SUSPENSION:
Beginning date _____ Class _____ Length _____
 Occupational/Limited driving privileges authorized per separate entry. Effective date _____ Yellow plates required
 Proof of Financial Responsibility provided to officer/to the court. Proof of Financial Responsibility not provided. Clerk to notify BMV.

VEHICLE SANCTIONS: Vehicle ordered immobilized _____ days per separate entry.

IT IS SO ORDERED 5/23/13
DATE _____ JUDGE JAMES P. O'GRADY



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



0017-1042

FEB 28 2014

Assistant Executive Director
State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, OH 43215-6127

Dear Assistant Executive Director:

RE: Barry H. Brooks
13241 County Line Road
Chesterland, OH 44026-2814
UPIN: A77479
NPI: 1205813441
Sanction Authority: 1128 (a)(1)
OI File Number H-13-42260-9

M.D.
DOB: 11/27/1948
SSN: 272-46-3458
License No.: 35.040359
Medicaid Provider No.: 0387719
Medicare Provider No.: 0445077

The subject identified above is being excluded from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act (Act). These actions are effective 20 days from the date of this letter, and are the result of the subject's conviction in the Franklin County Municipal Court, Columbus, Ohio.

Section 1128(e) of the Act requires that the appropriate licensing or certification authority be notified of such an exclusion, requested to make appropriate investigations and invoke sanctions in accordance with State law and policy, and asked to inform the Inspector General of this Department with respect to any actions taken in response to this request.

Accordingly, if you have not already done so, we request you to make appropriate investigations and invoke sanctions pursuant to applicable State law and policy. We also ask that you fully and currently inform us with respect to any action taken. The information to be supplied should be sent to the Special Agent in Charge, Office of Inspector General, Office of Investigations, 233 North Michigan Avenue, Suite 1330, Chicago, Illinois 60601. That office may be reached at (312) 353-2740.

Any questions you may have in this regard should be referred to that office.

Sincerely,

Charles Grant
Charles Grant
Exclusions Director
Office of Investigations

MEDICAL BOARD

MAR 03 2014

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

July 24, 1986

Barry H. Brooks, M.D.
Heights Rockefeller Building
3109 Mayfield Rd., Room 203
Cleveland Heights, Ohio 44118

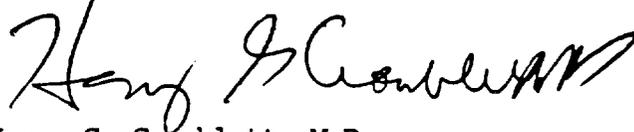
Dear Doctor Brooks:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Lauren Lubow, Esq., Hearing Examiner, State Medical Board of Ohio; a certified copy of the Motions by the State Medical Board, meeting in regular session on July 10, 1986, amending said Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 364 198
RETURN RECEIPT REQUESTED

cc: Gerald S. Gold, Esq.
Ohio Savings Plaza
Cleveland, Ohio 44114

CERTIFIED MAIL NO. 569 364 199
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

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 Lauren Lubow, Esq., Hearing Examiner, State Medical Board of Ohio; and the attached copy of the Motions by the State Medical Board, meeting in regular session on July 10, 1986, amending said Report and Recommendation as the Findings and Order of the State Medical Board, constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Barry H. Brooks, 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 and in its behalf.

(SEAL)



Henry G. Gramblett, M.D.
Secretary

July 24, 1986

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *
 *
BARRY H. BROOKS, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 10th day of July, 1986.

Upon the Report and Recommendation of Lauren Lubow, Esq., Hearing Examiner, in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, which Report and Recommendation was amended by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the 10th day of July, 1986.

It is hereby ORDERED:

That the license of Barry H. Brooks, M.D., to practice medicine and surgery in the State of Ohio be revoked. Such revocation is stayed, and Dr. Brooks is placed on probation for a term not less than five (5) years, nor to exceed eight (8) years, provided that he complies with the following terms and conditions:

1. Dr. Brooks shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Brooks shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the terms of probation.
3. Dr. Brooks shall appear in person for interviews before the full Board or its designated representative at three month intervals, or as otherwise requested by the Board.
4. In the event that Dr. Brooks should leave Ohio for three continuous months, or to reside or to practice outside the state, Dr. Brooks must notify the State Medical Board in writing of the dates of departure or return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.

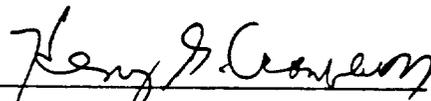
BARRY H. BROOKS, M.D.

5. Dr. Brooks shall not prescribe, administer, dispense, order or possess (except as prescribed, administered, or dispensed to him by another person so authorized by law) controlled substances as defined by State or Federal law, except for those listed in Schedules IV and V, for a minimum of two years from the effective date of this Order. Dr. Brooks shall not resume prescribing, administering, dispensing, ordering or possessing controlled substances in Schedules other than IV and V without prior written authorization from the Board.
6. Within 30 days of the effective date of this Order, Dr. Brooks shall submit to the full Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the full Board, Dr. Brooks shall undergo and continue psychiatric treatment no less than twice per month, or as otherwise directed by the Board. Dr. Brooks shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as frequently as the Board otherwise directs.
7. Dr. Brooks shall submit daily specimens for random urine screening by a physician to be approved by the Board. Such screenings shall be conducted weekly on a random basis, or as otherwise determined by the Board. Dr. Brooks shall ensure that the weekly screening reports are forwarded directly to the Board on a monthly basis. The Board retains the right to require Dr. Brooks to submit urine specimens for analysis without prior notice.
8. Within 30 days of the effective date of this Order, Dr. Brooks shall undertake and maintain participation in an alcohol rehabilitation program acceptable to the Board no less than two times per week. In the Quarterly Reports to the Board, Dr. Brooks shall provide documentary evidence of continuing compliance with this program. In addition, Dr. Brooks shall maintain active participation in the Impaired Physician's Program.
9. Dr. Brooks shall abstain completely from the personal use or possession of drugs, except for those available for purchase over the counter, or those prescribed, administered, or dispensed to him by another person so authorized by law.
10. Dr. Brooks shall abstain completely from the use of alcohol.

BARRY H. BROOKS, M.D.

11. If Dr. Brooks violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Brooks' license.
12. Upon successful completion of probation, Dr. Brooks' license will be fully restored.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

July 24, 1986
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF BARRY H. BROOKS, M.D.

The matter of Barry H. Brooks, M.D., came before me, Lauren Lubow, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 11, 1986.

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INTRODUCTION AND SUMMARY OF EVIDENCE

I. MODE OF CONDUCT

- A. During the course of the hearing, rules of evidence were relaxed and both the State and the Respondent were given great latitude in demonstrating the relevancy and materiality of testimony and exhibits offered, as well as in attempting to discredit testimony and evidence presented by the opposing party.

II. BASIS FOR HEARING

- A. By letter of November 7, 1985, the State Medical Board of Ohio notified Barry H. Brooks, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in the State of Ohio. Dr. Brooks was advised that he was in potential violation of the Medical Practice Act, to wit:
1. Section 4731.22(B)(3), Ohio Revised Code, "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes...."
 2. Section 4731.22(B)(3), Ohio Revised Code, "...conviction of violation of any federal or state law regulating the possession, distribution, or use of any drug."
 3. Section 4731.22(B)(9), Ohio Revised Code, "Conviction of a felony whether or not committed in the course of his practice."

The State's charges emanate from the allegation that Dr. Brooks, on or about March 7, 1985, was convicted in the Court of Common Pleas, Cuyahoga County, Ohio, of thirteen (13) felony counts of having violated Sections 2925.23 and 2915.23, Ohio Revised Code.

- B. In response to the November 7, 1985 letter, Dr. Brooks, through counsel, requested a hearing in this matter.

III. APPEARANCE OF COUNSEL

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Attorney General, by Yvette M. McGee, Assistant Attorney General.
- B. On behalf of the Respondent: Gerald S. Gold, Esq., and John S. Pyle, Esq.

IV. TESTIMONY HEARD

- A. Presented by the State:
1. Barry H. Brooks, M.D., as on cross-examination
- B. Presented by the Respondent:
1. Barry H. Brooks, M.D.
 2. Robert Lee Cole, Investigator, Ohio State Board of Pharmacy

V. EXHIBITS EXAMINED

- A. Presented by the State:
1. Exhibit #1 - November 7, 1985, citation letter from the State Medical Board of Ohio to Barry H. Brooks, M.D.
 2. Exhibit #2 - November 19 1985, letter to the Board from Dr. Brooks requesting a hearing and asking that all further matters be referred to his attorney, Gerald S. Gold
 3. Exhibit #3 - December 10, 1985, letter to Dr. Brooks from Lauren Lubow, Assignment & Hearing Attorney, State Medical Board of Ohio, acknowledging the request for a hearing and setting and continuing same pursuant to Section 119.09, Ohio Revised Code
 4. Exhibit #4 - December 30, 1985, letter to Gerald S. Gold, Esq., from Lauren Lubow scheduling Dr. Brooks' hearing for January 21, 1986
 5. Exhibit #5 - Notice of appearance and request for continuance from Mr. Gold on behalf of the Respondent, asking that the hearing be rescheduled for March 6, 1986

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6. Exhibit #6 - Order and Entry by the Hearing Officer, Lauren Lubow, Esq., rescheduling the hearing for February 11, 1986
7. Exhibit #7 - Certified copy of the Journal Entry evidencing Dr. Brooks' conviction

B. Presented by the Respondent:

1. Exhibit A - Curriculum Vitae of Dr. Barry H. Brooks
2. Exhibit B - Discharge Summary from Hazelden, a treatment center for alcoholism and chemical addiction
3. Exhibit C - Discharge Form documenting Dr. Brooks' discharge from the Hazelden program
4. Exhibit D - Individual Aftercare Plan for Health summarizing the care of Dr. Brooks subsequent to discharge from the Hazelden program
5. Exhibit E - January 27, 1986, letter to Mr. Gold from Emma L. Lewis, CAC, Treatment Specialist, Alcoholism Services of Cleveland, Inc., regarding the treatment of Dr. Brooks
6. Exhibit F - February 6, 1986, letter to the State Medical Board from Ralph G. Wieland, M.D., regarding the character of Dr. Brooks
7. Exhibit G - February 10, 1986, letter to Mr. Gold from Sandra H. Austin, Chief Operating Officer, Huron Road Hospital, regarding the character of Dr. Brooks
8. Exhibit H - January 28, 1986, letter from Edgar B. Jackson, Jr., M.D., regarding the character of Dr. Brooks

FINDINGS OF FACT

1. Barry H. Brooks, M.D., prescribed Dilaudid, a Schedule II narcotic, to individuals whom he knew to be drug addicts for the purpose of facilitating their withdrawal from heroin.

This fact is established by the Respondent's testimony, Transcript at pages 26-27.

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2. On or about March 7, 1985, Barry H. Brooks, M.D., was convicted in the Court of Common Pleas, Cuyahoga County, Ohio, of thirteen (13) felony counts of having violated Section 2922.23 and 2915.23, Ohio Revised Code, involving attempted illegal processing of drug documents.

This fact is established by State's Exhibit #7.

CONCLUSIONS

Dr. Barry H. Brooks' conviction of thirteen felony counts involving attempted illegal processing of drug documents is sufficient basis for the Board to revoke his license, pursuant to Section 4731.22(B)(3) and (B)(9), Ohio Revised Code. In addition, the acts which led to his conviction establish sufficient basis for revocation, in and of themselves.

Dr. Brooks' course of treatment for drug addicted individuals is curious in more than one respect. As Pharmacy Board investigator Robert Cole noted, Dr. Brooks' practice of prescribing Dilaudid to facilitate detoxification was not only illegal, but also blatant: the prescriptions themselves declared that the medication was being used for an explicitly illegal purpose.

While Dr. Brooks' practice was unquestionably in violation of the law, the conviction might have been mitigated to some degree by the doctor's essentially announcing his crime, ceasing the illegal prescribing practice, and readily assisting in investigations stemming from his actions. However, Dr. Brooks' cooperation and sincerity cannot erase the underlying act of using a dangerous drug for other than legal and legitimate therapeutic purposes.

Dr. Brooks testifies that he was taught in medical school to use the narcotic Dilaudid for the treatment of heroin addiction. He describes this treatment as administration of Dilaudid "...orally in decreasing doses over a period of time, as an inpatient over a period of three to five days." (Transcript at page 14)

If Dr. Brooks intended, as he claims in his defense, to apply this method of treatment to the individuals who sought his assistance to withdrawal from heroin, one would expect to see Dilaudid administered in the same manner: orally to inpatients in decreasing dosages over three to five days. Yet, by his own testimony, Dr. Brooks treated his patients on an outpatient basis with narcotics for four to six weeks,

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2 mg to 4 mg, four times a day, and observed their progress only once every two to four weeks. No controls of any kind were used to monitor the use of a widely abused narcotic by individuals known to be drug addicts.

With regard to Dr. Brooks' plea that his judgment was impaired by alcoholism at the time these incidents took place, it should be emphasized that impairment cannot excuse acts which result in conviction or which might have an adverse impact on other individuals. Such acts constitute independent basis for disciplinary action by this Board.

Accordingly, I find:

Violation 1

The acts of prescribing by Dr. Brooks as set forth in Find of Fact #1, which resulted in his conviction, constitute a violation of division (B)(3) of Section 4731.22, Ohio Revised Code.

Violation 2

The conviction of Dr. Brooks as set forth in Finding of Fact #2 constitutes a violation of divisions (B)(3) and (B)(9) of Section 4731.22, Ohio Revised Code.

PROPOSED ORDER

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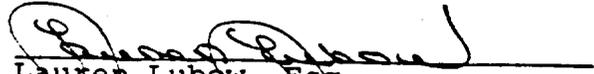
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MEDICAL BOARD

It is hereby ORDERED that the license of Barry H. Brooks, M.D., to practice medicine and surgery in the State of Ohio be revoked.

This Order shall become effective 30 days from the date of mailing of notification of approval by the State Medical Board of Ohio.

Effective immediately, Dr. Brooks shall surrender his Drug Enforcement Administration certificate to prescribe, dispense, order, or administer controlled substances, and shall hereafter not apply for or hold same. Further, prior to the effective date of the revocation Order, Dr. Brooks

shall not undertake the treatment of any patients not
already under his care.


Lauren Lubow, Esq.
Hearing Examiner

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OHIO STATE
MEDICAL BOARD

EXCERPT FROM THE MINUTES OF JULY 10, 1986

REPORT AND RECOMMENDATION IN THE MATTER OF BARRY BROOKS, M.D.

Dr. Rauch asked if each member of the Board had received, read, and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of Barry Brooks, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- aye
	Dr. O'Day	- aye
	Dr. Stephens	- aye
	Mr. Johnston	- aye
	Dr. Rauch	- aye

Ms. Lubow read the Findings of Fact, Conclusions, and Proposed Order of her Report and Recommendation in the above matter, the original of which shall be maintained in the exhibits section of this Journal.

Dr. Rauch advised that Dr. Brooks' attorney, Gerald S. Gold, has requested permission to address the Board. Dr. Rauch advised Mr. Gold that under Ohio's administrative procedure act, it is a matter of the Board's discretion to accept additional statements, evidence, or testimony, and that he would call for a vote to determine whether the Board believed it would be appropriate and necessary for Mr. Gold to address it at this time. He asked in what way Mr. Gold's statements would address matters not already contained in the hearing record.

Mr. Gold stated that his comments will explain why it is important for the Board to consider Dr. Brooks' objections to the hearing officer's report and recommendation.

DR. BARNES MOVED TO ALLOW MR. GOLD TO ADDRESS THE BOARD. DR. LANCIONE SECONDED THE MOTION.

Dr. Stephens asked if Mr. Gold's statements will contain new material, or if they would be reiterating the objections already submitted. Mr. Gold stated that his statements will not contain new material, but will only explain the importance of the objections.

A roll call vote was taken on Dr. Barnes' motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- nay
	Ms. Rolfes	- nay
	Dr. Rothman	- nay
	Dr. O'Day	- nay

Dr. Stephens - nay
Mr. Johnston - abstain

The motion failed.

DR. O'DAY MOVED THAT THE PROPOSED ORDER IN THE MATTER OF BARRY BROOKS, M.D., BE AMENDED TO READ AS FOLLOWS:

IT IS HEREBY ORDERED THAT THE LICENSE OF BARRY BROOKS, M.D., TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO BE REVOKED. SUCH REVOCATION IS STAYED, AND DR. BROOKS IS PLACED ON PROBATION FOR A TERM NOT LESS THAN FIVE YEARS, NOR TO EXCEED EIGHT YEARS, PROVIDED THAT HE COMPLIES WITH THE FOLLOWING TERMS AND CONDITIONS:

1. DR. BROOKS SHALL OBEY ALL FEDERAL, STATE AND LOCAL LAWS, AND ALL RULES GOVERNING THE PRACTICE OF MEDICINE IN OHIO.
2. DR. BROOKS SHALL SUBMIT QUARTERLY DECLARATIONS UNDER PENALTY OF PERJURY STATING WHETHER THERE HAS BEEN COMPLIANCE WITH ALL THE TERMS OF PROBATION.
3. DR. BROOKS SHALL APPEAR IN PERSON FOR INTERVIEWS BEFORE THE FULL BOARD OR ITS DESIGNATED REPRESENTATIVE AT THREE MONTH INTERVALS, OR AS OTHERWISE REQUESTED BY THE BOARD.
4. IN THE EVENT THAT DR. BROOKS SHOULD LEAVE OHIO FOR THREE CONTINUOUS MONTHS TO RESIDE OR TO PRACTICE OUTSIDE THE STATE, DR. BROOKS MUST NOTIFY THE STATE MEDICAL BOARD IN WRITING OF THE DATES OF DEPARTURE OR RETURN. PERIODS OF TIME SPENT OUTSIDE OF OHIO WILL NOT APPLY TO THE REDUCTION OF THIS PROBATIONARY PERIOD.
5. DR. BROOKS SHALL NOT PRESCRIBE, ADMINISTER, DISPENSE, ORDER OR POSSESS (EXCEPT AS PRESCRIBED, ADMINISTERED, OR DISPENSED TO HIM BY ANOTHER PERSON SO AUTHORIZED BY LAW) CONTROLLED SUBSTANCES AS DEFINED BY STATE OR FEDERAL LAW, EXCEPT FOR THOSE LISTED IN SCHEDULES IV AND V, FOR A MINIMUM OF TWO YEARS FROM THE EFFECTIVE DATE OF THIS ORDER. DR. BROOKS SHALL NOT RESUME PRESCRIBING, ADMINISTERING, DISPENSING, ORDERING OR POSSESSING CONTROLLED SUBSTANCES IN SCHEDULES OTHER THAN IV AND V WITHOUT PRIOR WRITTEN AUTHORIZATION FROM THE BOARD.
6. WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER, DR. BROOKS SHALL SUBMIT TO THE FULL BOARD FOR ITS PRIOR APPROVAL THE NAME AND QUALIFICATIONS OF A PSYCHIATRIST OF HIS CHOICE. UPON APPROVAL BY THE FULL BOARD, DR. BROOKS SHALL UNDERGO AND CONTINUE PSYCHIATRIC TREATMENT NO LESS THAN TWICE PER MONTH, OR AS OTHERWISE DIRECTED BY THE BOARD. DR. BROOKS SHALL ENSURE THAT PSYCHIATRIC REPORTS ARE FORWARDED BY HIS TREATING PSYCHIATRIST TO THE BOARD ON A QUARTERLY BASIS, OR AS FREQUENTLY AS THE BOARD OTHERWISE DIRECTS.
7. WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER, DR. BROOKS SHALL UNDERTAKE AND MAINTAIN PARTICIPATION IN AN ALCOHOL REHABILITATION PROGRAM AC-

CEPTABLE TO THE BOARD NO LESS THAN TWO TIMES PER WEEK. IN THE QUARTERLY REPORTS TO THE BOARD, DR. BROOKS SHALL PROVIDE DOCUMENTARY EVIDENCE OF CONTINUING COMPLIANCE WITH THIS PROGRAM. IN ADDITION, DR. BROOKS SHALL MAINTAIN ACTIVE PARTICIPATION IN THE IMPAIRED PHYSICIANS PROGRAM.

8. DR. BROOKS SHALL ABSTAIN COMPLETELY FROM THE PERSONAL USE OR POSSESSION OF DRUGS, EXCEPT FOR THOSE AVAILABLE FOR PURCHASE OVER THE COUNTER, OR THOSE PRESCRIBED, ADMINISTERED, OR DISPENSED TO HIM BY ANOTHER PERSON SO AUTHORIZED BY LAW.
9. DR. BROOKS SHALL ABSTAIN COMPLETELY FROM THE USE OF ALCOHOL.
10. IF DR. BROOKS VIOLATES PROBATION IN ANY RESPECT, THE BOARD, AFTER GIVING HIM NOTICE AND THE OPPORTUNITY TO BE HEARD, MAY SET ASIDE THE STAY ORDER AND IMPOSE THE REVOCATION OF DR. BROOKS' LICENSE.
11. UPON SUCCESSFUL COMPLETION OF PROBATION, DR. BROOKS' LICENSE WILL BE FULLY RESTORED.

MS. ROLFES SECONDED THE MOTION.

Dr. Lancione asked if condition number 7 should specify a program such as A.A. or N.A. Dr. Rothman commented since the program has to be acceptable to the Board, he does not feel specifying a program is necessary.

Dr. Barnes asked why Dr. O'Day offered the amendment. Dr. O'Day stated that she read the transcript carefully, and was impressed with the fact that a representative of the Pharmacy Board came forward to testify on Dr. Brooks' behalf. She added that Dr. Brooks has a fine reputation, and has a great deal to offer to the Cleveland community. She would like to see him be permitted to continue practicing, and feels that the conditions of probation are sufficient.

Dr. Buchan asked Ms. Lubow for her opinion of the amendment. Ms. Lubow stated that she supports the amendment.

A roll call vote was taken on Dr. O'Day's motion:

ROLL CALL VOTE:	Dr. Cramblett,	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- aye
	Dr. O'Day	- aye
	Dr. Stephens	- aye
	Mr. Johnston	- abstain

The motion carried.

DR. BARNES MOVED TO APPROVE AND CONFIRM MS. LUBOW'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER AS AMENDED IN THE MATTER OF BARRY BROOKS, M.D. DR. STEPHENS

RE: Barry Brooks, M.D.

Page 4

SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- aye
	Dr. O'Day	- aye
	Dr. Stephens	- aye
	Mr. Johnston	- abstain

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

November 7, 1985

Barry H. Brooks, M. D.
14100 Cedar Road, Suite 280
University Heights, Ohio 44121

Dear Doctor Brooks:

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 the following reason:

On or about March 7, 1985, you were convicted in the Court of Common Pleas, Cuyahoga County, Ohio, case number CR 194715, of thirteen (13) counts of having violated Section 2925.23 and 2923.02, Ohio Revised Code, to wit: Attempted Illegal Processing of Drug Documents. Each said count constitutes a felony.

The acts underlying the above convictions constitute "selling, 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.

Further, the above convictions constitute "conviction of 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.

Further, the above convictions constitute "conviction of a felony whether or not committed in the course of his practice", 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, that request must be made 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 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.

STATE OF OHIO
THE STATE MEDICAL BOARD

Page Two
Barry H. Brooks, M. D.

November 7, 1985

In the event that there is no request for such hearing made 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.

Enclosed for your examination are copies of Section 4731.22, Ohio Revised Code as in effect prior to August 27, 1982 and as in effect after August 27, 1982.

Very truly yours,



Henry G. Cramblett, M. D.
Secretary

HGC:caa

enclosure

CERTIFIED MAIL NO. P 569 361 837
RETURN RECEIPT REQUESTED

Sec. 4731.22 Grounds for discipline.

(A) The state medical board, by a vote of not less than five of its members, may refuse to grant a certificate to a person found guilty of fraud in passing the examination, or fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

(B) The board shall, to the extent permitted by law, limit, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate a certificate for one or more of the following reasons:

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

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

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

(4) Wilfully betraying a professional secret or engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(5) Except as permitted by section 4731.44 of the Revised Code, advertising for or soliciting patients;

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same of similar cir-

cumstances, whether or not actual injury to a patient is established;

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

(8) Knowingly maintaining a professional connection or association with a person who is in violation of this chapter or rules of the board or with a person who knowingly aids, assists, procures, or advises an unlicensed person to practice medicine contrary to this chapter or rules of the board;

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

(10) Conviction of a felony committed not in the course of his practice;

(11) Conviction of a felony or misdemeanor committed in the course of his practice;

(12) Violation of the conditions of limitation upon which a limited or temporary license or certificate to practice is issued;

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

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

(15) The violation of any provision of a code of ethics of a national professional organization as specified in this division. "National professional organization" means the American medical association, the American osteopathic association, the American podiatry association, the American physical therapy asso-

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ciation, and such other national professional organizations as are determined, by rule, by state medical board. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The practitioner whose certificate is being suspended or revoked shall not be found guilty of the violation of a code of ethics of an organization not appropriate to his profession.

(16) Inability to practice according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, chemicals, or as a result of a physical condition or adjudication of incompetence as provided in section 4731.221 [4731.22.1] of the Revised Code. In enforcing this division, the board upon a showing or a possible violation, may compel any individual licensed or certified to practice by this chapter to submit to a mental or physical examination as required by and at the expense of the board. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations against him unless the failure is due to circumstances beyond his control, and a default and final order may be entered without the taking of testimony or presentation of evidence. An individual licensed by this chapter affected under this section shall be afforded an opportunity to demonstrate to the board that he can resume his practice in compliance with acceptable and prevailing standards under the provisions of his certificate. For the purpose of this section, any individual licensed or certified to practice by this chapter accepts the privilege of practicing in this state, and by so doing or by the making and filing of a registration to practice in this state, shall be deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have

waived all objections to the admissibility of the testimony or examination reports constitute a privileged communication.

(17) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

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

(C) (1) The board shall investigate evidence which appears to show that any person has violated any provision of this chapter. Any person may report to the board under oath any information such person may have appearing to show a violation of any provision of this chapter.

(2) Any individual licensed or certified to practice or any association or society of individuals licensed or certified under this chapter shall report to the board any information appearing to show a violation of any provision of this chapter. Any person or society who reports under this section and provides such information in good faith shall not be subject to suit for civil damages as a result thereof.

(3) In absence of fraud or bad faith, neither the board nor any member, agent, representative, or employee thereof shall be held liable in damages to any person by reason of investigating or acting upon information presented to it pursuant to this chapter.

Sec. 4731.221 Suspension of certificate of mentally ill or mentally incompetent practitioner.

If any person who has been granted a certificate under Chapter 4731. of the Revised Code is adjudicated incompetent for the purpose of holding the certificate, as provided in section 5122.301 [5122.30.1] of the Revised Code, his