



# State Medical Board of Ohio

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

April 11, 2007

David Herbert Procter, M.D.  
Register No. 072373-032 HCU  
Federal Medical Center  
P. O. Box 14500  
Lexington, KY 40512

Dear Doctor Procter:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 11, 2007, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

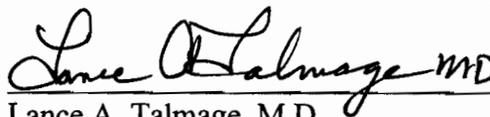
CERTIFIED MAIL NO. 91 7108 2133 3933 4658 8992  
RETURN RECEIPT REQUESTED

*Mailed 4/12/07*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 11, 2007, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of David Herbert Procter, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.  
Secretary

(SEAL)

April 11, 2007

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

DAVID HERBERT PROCTER, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 11, 2007.

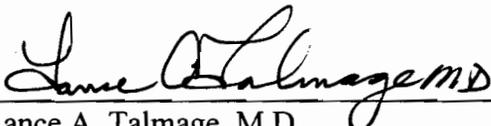
Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED, that:

The certificate of David Herbert Procter, M.D., aka David Herbert Proctor, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)

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

April 11, 2007  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION 2007 MAR 13 P 1: 22**  
**IN THE MATTER OF DAVID HERBERT PROCTER, M.D.,**  
**AKA DAVID HERBERT PROCTOR, M.D.**

The Matter of David Herbert Procter, M.D., aka David Herbert Proctor, M.D.,<sup>1</sup> was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on February 1, 2007.

**INTRODUCTION**

**I. Basis for Hearing**

A. By letter dated September 13, 2006, the State Medical Board of Ohio [Ohio Board] notified David Herbert Procter, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Ohio Board based its proposed action on the following six allegations:

1. In April 1988, the Ohio Board reprimanded Dr. Procter for misrepresentation of fact in his certificate renewal application for the 1987-1988 biennium.
2. In July 1999, the Ohio Board summarily suspended Dr. Procter's certificate on the ground that his continued practice presented a danger of immediate and serious harm to the public. This action was taken following an immediate suspension of Dr. Procter's Kentucky license by the Kentucky Board of Medical Licensure [Kentucky Board].
3. In November 2000, the Ohio Board suspended Dr. Procter's certificate for an indefinite period of time with conditions for reinstatement.
4. In August 2003, Dr. Procter pleaded guilty and was found guilty of one felony count of conspiracy to distribute and possession with intent to distribute Schedule II, III and IV controlled substances in violation of 21 United States Code [U.S.C.] 846; and of two felony counts of distribution of Schedule III and IV controlled substances without a legitimate medical purpose/outside usual medical practice in violation of 21 U.S.C. 841(a)(1).
5. In February 2004, Dr. Procter pleaded guilty and was found guilty of one felony count of conspiracy to commit an offense against the United States in violation of 18 U.S.C. 371.
6. In April 2004, the Office of Inspector General, United States Department of Health and Human Services, excluded Dr. Procter from participation in

---

<sup>1</sup>For simplicity, this Report and Recommendation will use only the first spelling of "Procter" in order to refer to the Respondent.

Medicare, Medicaid, and all federal health care programs for a minimum period of 25 years.

The Ohio Board alleged that Dr. Procter's acts, conduct and/or omissions constitute:

1. "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug" as that language is used in Section 4731.22(B)(3), Ohio Revised Code;
2. 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 felony," as that language is used in Section 4731.22(B)(9), Ohio Revised Code; and
3. "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 that language is used in Section 4731.22(B)(25), Ohio Revised Code, to wit: violation of 21 U.S.C. 846 and 841(a)(1).

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

- B. By letter filed on October 4, 2006, Dr. Procter requested a hearing. (State's Exhibit 1B)

## II. Appearances

- A. On behalf of the State of Ohio: Marc Dann, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. Dr. Procter appeared on his own behalf.

## **EVIDENCE EXAMINED**

### I. Testimony Heard

No witnesses were presented.

II. Exhibits Examined

A. Presented by the State

State's Exhibits 1A through 1H: Procedural exhibits.

State's Exhibit 2A: Indictment in *United States of America v. David Herbert Procter, M.D., et al.*, Case No. 02CR11, redacted in part.

State's Exhibit 3A: Plea Agreement in *U.S. v. Procter*, Case No. 02CR11, redacted in part.

State's Exhibit 4: Judgment in *U.S. v. Procter*, Case No. 02CR11.

State's Exhibit 5: Amended Judgment in *U.S. v. Procter*, Case No. 02CR11, redacted in part.

State's Exhibit 6: Minutes from April 28, 2003, arraignment in *U.S. v. Procter*, Case No. 02CR11.

State's Exhibit 7: Minutes from February 17, 2004, sentencing in *United States of America v. David Herbert Procter, et al.*, Case No. 03-4.

State's Exhibit 8A: Indictment in *U.S. v. Procter*, Case No. 03-4, redacted in part.

State's Exhibit 9A: Superseding Indictment in *U.S. v. Procter*, Case No. 03-4, redacted in part.

State's Exhibit 10A: Plea agreement in *U.S. v. Procter*, Case No. 03-4, redacted in part.

State's Exhibit 11: Judgment in *U.S. v. Procter*, Case No. 03-4.

State's Exhibit 12A: Transcript from the April 28, 2003, hearing in *U.S. v. Procter*, Case No. 02CR11, redacted in part.

State's Exhibit 13: Documents maintained by the Ohio Board related to two prior Ohio disciplinary matters involving Dr. Procter.

State's Exhibit 14: April 30, 2004, exclusion notice to Dr. Procter from the Office of Inspector General, United States Department of Health and Human Services.

B. Presented by the Respondent

No exhibits were presented.

C. Proffered Exhibits

The following exhibits were neither admitted to the record nor considered by the Hearing Examiner, but were held as proffered material:

State's Exhibit 2: Indictment in *U.S. v. Procter*, Case No. 02CR11, unredacted.

State's Exhibit 3: Plea Agreement in *U.S. v. Procter*, Case No. 02CR11, unredacted.

State's Exhibit 8: Indictment in *U.S. v. Procter*, Case No. 03-4, unredacted.

State's Exhibit 9: Superseding Indictment in *U.S. v. Procter*, Case No. 03-4, unredacted.

State's Exhibit 10: Plea agreement in *U.S. v. Procter*, Case No. 03-4, unredacted.

State's Exhibit 12: Transcript from the April 28, 2003, hearing in *U.S. v. Procter*, Case No. 02CR11, unredacted.

### **PROCEDURAL MATTERS**

In Dr. Procter's request for a hearing in this matter, he asked that the hearing be delayed until after the United States Court of Appeals for the Sixth Circuit had issued its decision in his appeal, Case No. 06-5586. By letter dated October 19, 2006, the Hearing Examiner explained to Dr. Procter the Ohio Board's long-standing policy of not delaying its hearings for such a purpose and notified him of Section 4731.22(H), Ohio Revised Code, in the event that his pleas and convictions are overturned. (State's Exhibit 1D)

Also, the Hearing Examiner noticed that the Respondent's social security number was listed on State's Exhibit 5. That number was redacted from State's Exhibit 5 post-hearing.

### **SUMMARY OF THE EVIDENCE**

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

1. In 1977, the Kentucky Board issued a license to David Herbert Procter, M.D., to practice as a physician in that state. In 1978, the Ohio Board issued a certificate to Dr. Procter to allow him to practice as a physician in Ohio. Also in 1978, the Drug Enforcement Administration authorized Dr. Procter to write prescriptions for controlled substances. (State's Exhibit [St. Ex.] 3A at 2; March 7, 2006 <<https://license.ohio.gov/Lookup/SearchDetail.asp?ContactIdnt=2979336&DivisionIdnt=78&Type=L>>)
2. From 1977 through nearly all 1998, Dr. Procter practiced medicine in the South Shore area of Kentucky, which is across the Ohio River from Portsmouth, Ohio. Beginning around January 1999 and continuing through June 2002, Dr. Procter did not actively practice medicine, but was in charge of his clinics in the South Shore area of Kentucky. (St. Exs. 3A at 2, 13 at 13)
3. In April 1987, the Ohio Board notified Dr. Procter that it had proposed disciplinary action against his Ohio certificate because: (a) the Kentucky Board had suspended Dr. Procter's Kentucky license based upon improper prescribing practices; and (b) Dr. Procter did not correctly indicate on his Ohio certificate renewal application that disciplinary action had been taken or initiated against him since his last renewal. (St. Ex. 13 at 66-67)

The Kentucky Board subsequently rescinded its suspension decision and ordered that no disciplinary action be taken against Dr. Procter. Thereafter, the Ohio Board concluded that no current "other state action" had occurred, but Dr. Procter had misrepresented a fact on his Ohio license renewal application. Accordingly, the Ohio Board reprimanded Dr. Procter on April 13, 1988. (St. Ex. 13 at 56-65)

4. On July 14, 1999, the Ohio Board summarily suspended Dr. Procter's Ohio certificate on the ground that his continued practice presented a danger of immediate and serious harm to the public. Moreover, the Ohio Board notified Dr. Procter that it intended to determine whether to discipline his Ohio certificate as a result of a June 18, 1999, Emergency Order of Suspension issued by the Kentucky Board. The Kentucky Board had found that, in light of several facts, Dr. Procter's practice of medicine in that state constituted a danger to his patients and the general public. Among other things, the Kentucky Board found probable cause to warrant findings of fact that:
  - a. Dr. Procter had engaged in sexual activity with three female patients during office visits;
  - b. Upon review of more than 60 patient charts, Dr. Procter had departed from and failed to conform to standards of acceptable and prevailing medical practice;
  - c. He had committed a pattern of acts that would be deemed to be "gross incompetence, gross ignorance, gross negligence or malpractice;"

- d. Dr. Procter's neurologist had ordered him not to work due to having a memory deficit secondary to a closed head injury suffered in a traffic accident; and
- e. A neuropsychological evaluation recommended that Dr. Procter refrain from practicing medicine until the above deficits have remitted to permit adequate performance of duties.

(St. Ex. 13 at 16, 26-30, 32-36)

On August 17, 2000, the Kentucky Board issued an Agreed Order of Surrender, in which Dr. Procter agreed to an indefinite suspension of his Kentucky license based upon the fact that he had "developed a physical or mental disability, or other condition, such that continued practice is dangerous to patients or the public." (St. Ex. 13 at 16)

On November 8, 2000, the Ohio Board suspended Dr. Procter's Ohio certificate for an indefinite period of time, imposed several conditions before it would consider reinstatement, and imposed a five-year probationary period with terms, conditions, and limitations thereafter. Among the conditions for reinstatement was a requirement that Dr. Procter provide the Ohio Board with acceptable documentation of his full and unrestricted licensure in Kentucky. (St. Ex. 13 at 3-23)

- 5. On July 15, 2002, an indictment was filed in the United States District Court for the Eastern District of Kentucky charging Dr. Procter with four felony counts. He was re-arraigned on April 28, 2003. Dr. Procter was charged in the first three counts as follows:

Count One: Beginning in about 1996 and continuing through June of 2002, \* \* \* [Dr. Procter and others] did knowingly and intentionally conspire confederate and agree together \* \* \* [to] knowingly and intentionally distribute, dispense, and possess with intent to distribute and dispense, measurable quantities of Schedule II, Schedule III and Schedule IV controlled substances; all in violation of Title 21 United States Code Section 846.

Count Two: Between on or about December of 1997 and continuing through on or about October 1998, \* \* \* [Dr. Procter] did knowingly and intentionally distribute and dispense measurable quantities of Schedule III and Schedule IV controlled substances to [name redacted] without a legitimate medical purpose and outside the usual course of medical practice; all in violation of Title 21 United States Code Section 841(a)(1).

Count Three: Between on or about November of 1996 and continuing through on or about October of 1998, \* \* \* [Dr. Procter] did knowingly and intentionally distribute and dispense measurable quantities of Schedule III and Schedule IV controlled substances to [name redacted] without a legitimate

medical purpose and outside the usual course of medical practice; all in violation of Title 21 United States Code Section 841(a)(1).

(St. Ex. 2A at 3-5; St. Ex. 12A at 4-7; St. Ex. 6) The case was designated *United States of America v. David Herbert Procter, M.D., et al.*, Case No. 02CR11.

6. On April 28, 2003, Dr. Procter appeared in court and entered a plea of guilty to counts one through three of the indictment in Case No. 02CR11. Among other things, the written plea agreement reflects that the United States could prove the following facts beyond a reasonable doubt:

Between December of 1997 through October of 1998, Dr. Procter distributed Schedule III and IV narcotics to [name redacted] without a legitimate medical purpose and outside the usual course of medical practice. Ms. [name redacted] was his patient. Initially, Dr. Procter treated her medical situation, but over time he prescribed excessive amounts of Schedule III and IV narcotics for her without concern for her medical needs and at a time when she was dependent upon the narcotics. Additionally, he had sex with her in his office during a time when she was vulnerable and when she was dependent upon the narcotics. David Herbert Procter, M.D. continued to write the narcotics, in part, in order to maintain the sexual relationship with her.

Between November of 1996 through October of 1998, Dr. Procter distributed Schedule III and IV narcotics to [name redacted] without a legitimate medical purpose and outside the usual course of medical practice. Ms. [name redacted] was his patient. Initially, Dr. Procter treated her medical situation, but over time he prescribed excessive amounts of Schedule III and IV narcotics for her without concern for her medical needs and at a time when she was dependent upon the narcotics. Additionally, he had sex with her in his office during a time when she was vulnerable and when she was dependent upon the narcotics. David Herbert Procter, M.D. continued to write the narcotics, in part, in order to maintain the sexual relationship with her.

Between 1996 and 1998, Dr. Procter saw an ever increasing number of patients. At times he saw as many as 80 or more in a day. While many patients initially came to Dr. Procter with legitimate medical needs, often work related, Dr. Procter routinely prescribed Schedule II, III and IV narcotics for them month after month with out a legitimate medical purpose and outside the usual course of medical practice. Many became dependent upon the narcotics. These patients became his patient base. For these patients, Dr. Procter performed limited, if any, meaningful medical examinations, kept minimal, if any, patient charts, and routinely wrote prescriptions for Lorcet, Valium, Xanax and Soma for them. Patients were required to come back monthly to generate additional office fees. Most of Dr. Procter's patients paid in cash. Many patients came from great

distances. For one year, Dr. Procter was open on Saturday, but with few, if any of his regular staff. On Saturday he saw patients wanting narcotic prescriptions and they paid strictly in cash.

In January of 1998, investigators from the [Kentucky Board] obtained certain patient files or charts from Dr. Procter's office. In December of 1998, Dr. Procter surrendered his license to practice medicine to the [Kentucky Board]. Thereafter, he kept his clinic open and his clinic continued to dispense Schedule II, III and IV narcotics by employing a series of locum tenens doctors from across the country.

Not all of the locum tenens doctors dispensed narcotics to Dr. Procter's patients to his satisfaction or to his patients' desires for narcotics. \* \* \* Although Dr. Procter limited or insulated his contact with the locum tenens doctors and their respective agencies, nevertheless he was in charge of his clinics in South Shore. He regularly encouraged the doctors directly or indirectly through his office managers to see more patients each day and had them [ ] write narcotic prescriptions for his patients without a legitimate medical purpose and outside the usual course of medical practice.

(St. Ex. 3A at 3-6)

During the April 28, 2003, hearing, Dr. Procter testified that, on average, his office brought in \$75,000 or \$80,000 per month. (St. Ex. 12A at 24)

7. On August 28, 2003, Dr. Procter was sentenced for the first three counts charged in Case No. 02CR11 to 200 months of imprisonment and three years of supervised release, and required to participate in an intensive drug abuse program during his incarceration and during his supervised release. Additionally, Dr. Procter was required to pay a \$250,000 fine and a \$300 assessment. (St. Ex. 4)

Following an appeal, Dr. Procter was resentenced on April 24, 2006, for the convictions related to the first three counts charged in Case No. 02CR11. The court imposed a total of 141 months of imprisonment. Moreover, the court: (a) required Dr. Procter to participate in an intensive drug abuse program during his incarceration; (b) required, upon release from imprisonment, Dr. Procter to be on supervised release for a term of three years during which he shall participate in an intensive drug education and treatment program, shall abstain from alcohol, shall submit to drug and alcohol testing, and shall participate in a program of mental health treatment; and (c) ordered that, if Dr. Procter is deported upon release from imprisonment, the term of supervised release shall be tolled. Additionally, Dr. Procter was required to pay a \$250,000 fine and a \$300 assessment. (St. Ex. 5)

8. On September 10, 2003, an indictment was filed in the United States District Court for the Eastern District of Kentucky charging Dr. Procter with two felony counts. On October 8,

2003, a superseding indictment was filed, also charging Dr. Procter with two felony counts, including the following:

Count 1: David Herbert Procter, [redacted names] and others, did unlawfully and knowingly conspire to commit an offense against the laws of the United States, that is, for David Herbert Procter to flee the jurisdiction of the United States District Court, Eastern District of Kentucky and not appear for his sentencing [in Case No. 2CR11] which had been set for August 18, 2003, at 1:30 p.m., in Ashland, Kentucky, a violation of 18 U.S.C. §3146(a).

\* \* \*

The object and purpose of the conspiracy was for David Herbert Procter, with the assistance of [names redacted] and others, to flee the jurisdiction of the United States District Court at Ashland, Kentucky, to avoid a sentence of incarceration by surreptitiously traveling from the Ashland, Kentucky area through Canada to the Cayman Islands in the British West Indies, and for David Herbert Procter, with the assistance of [names redacted] and others, to relocate in the Cayman Islands of the British West Indies.

(St. Exs. 8A and 9A) That case was designated *United States of America v. David Herbert Procter, et al.*, Case No. 03-4.

9. On December 30, 2003, Dr. Procter entered into a plea agreement to resolve Case No. 03-4. Among other things, the written plea agreement reflects that the United States could prove the following facts beyond a reasonable doubt:

In August of 2003, David Herbert Procter entered into a conspiracy with [names redacted] to flee the jurisdiction of the United States District Court at Ashland, Kentucky, and to avoid a sentence of incarceration by surreptitiously traveling from the Ashland, Kentucky area through Canada to the Cayman Islands in the British West Indies. David Herbert Procter intended to relocate in the Cayman Islands in the British West Indies and begin a new medical practice with the help of co-conspirators [names redacted.]

On August 13, 2003, David Herbert Procter and [name redacted] met with [name redacted] in his law offices in Portsmouth, Ohio. [Name redacted] agreed to help David Herbert Procter relocate and become licensed in the Cayman Islands to practice medicine. [Name redacted] was paid a sum of money for his part of the agreement. Further, he agreed to travel to the Cayman Islands in advance of David Herbert Procter and [name redacted] and make ready for their arrival.

\* \* \*

Late on August 14 or early on August 15, 2003, David Herbert Procter and [name redacted] attempted to enter Canada in the Jeep Grand Cherokee via the Detroit, Michigan, tunnel between the United States and Canada.

(St. Ex. 10A at 2-3)

10. On February 17, 2004, Dr. Procter appeared in court and entered a plea of guilty to Count One of the indictment in Case No. 03-4. He was sentenced to 18 months of imprisonment to run concurrent with his term of incarceration in Case No. 02CR11. The judgment entry further noted that, if Dr. Procter “gains legal right to be a citizen of the United States, he is to be placed on supervised release for a term of three (3) years, to be served concurrently with [Case No. 02CR11].” The judgment entry also included additional conditions for the supervised release and a \$100 assessment. (St. Exs. 7, 11)
11. On April 30, 2004, the Office of the Inspector General, Department of Health and Human Services, sent notice to Dr. Procter that he was being excluded from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of 25 years. The notice reflected that it was effective 20 days thereafter and that the exclusion was based upon his felony conviction in Case No. 02CR11 related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance. (St. Ex. 14)

### **FINDINGS OF FACT**

1. On or about April 13, 1988, the Ohio Board reprimanded Dr. Procter for misrepresentation of fact in his certificate renewal application for the 1987-1988 biennium.
2. On or about July 14, 1999, the Ohio Board summarily suspended Dr. Procter’s Ohio certificate on the ground that his continued practice presented a danger of immediate and serious harm to the public. The summary suspension was based upon a June 18, 1999, Emergency Order of Suspension issued by the Kentucky Board that immediately suspended Dr. Procter’s Kentucky medical license.
3. On or about November 8, 2000, the Ohio Board suspended Dr. Procter’s Ohio certificate to practice medicine and surgery in Ohio for an indefinite period of time with conditions for reinstatement, including that he provide the Ohio Board with acceptable documentation evidencing his full and unrestricted licensure in Kentucky.

The Ohio Board found that the Kentucky Board, in its Emergency Order of Suspension, had found that there was probable cause to warrant findings of fact that, among other things: (a) Dr. Procter had engaged in sexual activity with three female patients during office visits; (b) a review of more than 60 patient charts concluded that Dr. Procter had departed from and failed to conform to standards of acceptable and prevailing medical practice; (c) Dr. Procter had committed a pattern of acts which would be deemed to be

“gross incompetence, gross ignorance, gross negligence or malpractice;” (d) Dr. Procter’s neurologist had ordered him not to work due to having a memory deficit secondary to a closed head injury suffered in a traffic accident; and (e) a neuropsychological evaluation had recommended that Dr. Procter refrain from practicing medicine until the above deficits have remitted to permit adequate performance of duties.

4. On or about August 28, 2003, in the United States District Court for the Eastern District of Kentucky, in Case No. 02CR11, Dr. Procter pleaded guilty and was found guilty of one felony count of conspiracy to distribute and possession with intent to distribute Schedule II, III and IV controlled substances in violation of 21 U.S.C. 846; and two felony counts of distribution of Schedule III and IV controlled substances without a legitimate medical purpose/outside usual medical practice in violation of 21 U.S.C. 841(a)(1).

The plea agreement in Case No. 02CR11 reflects that the government could prove beyond a reasonable doubt that: (a) Dr. Procter prescribed excessive amounts of Schedule III and IV narcotics to two female patients and had sex with them in his office, without concern for their medical needs and at a time when they were vulnerable and dependent upon the narcotics; (b) Dr. Procter continued to write prescriptions for the narcotics, in part, to maintain the sexual relationships with those patients; (c) Dr. Procter saw as many as 80 or more patients per day, prescribing Schedule II, III and IV narcotics for them month after month without a legitimate medical purpose and outside the usual course of practice, with many becoming dependent upon the narcotics; and (d) these patients became his patient base.

On or about April 24, 2006, Dr. Procter was resentenced for his convictions in Case No. 02CR11. The Correction of Sentence on Remand provided for: (a) imprisonment for a total term of 141 months; (b) required Dr. Procter to participate in an intensive drug abuse program during incarceration; (c) required that, upon release from imprisonment, Dr. Procter to be on supervised release for a term of three years during which he shall participate in an intensive drug education and treatment program, shall abstain from alcohol, shall submit to drug and alcohol testing, and shall participate in a program of mental health treatment; (d) ordered that, if Dr. Procter is deported upon release from imprisonment, the term of supervised release shall be tolled; and (e) required Dr. Procter to pay a criminal monetary penalty in the amount of \$250,000.

5. On or about February 17, 2004, in the United States District Court for the Eastern District of Kentucky, in Case No. 03-4, Dr. Procter pleaded guilty and was found guilty of one felony count of conspiracy to commit an offense against the United States in violation of 18 U.S.C. 371. This plea agreement reflects that the government could prove beyond a reasonable doubt that: (a) after Dr. Procter had entered into the plea agreement to three counts of the indictment in Case No. 02CR11 and prior to the scheduled sentencing hearing on August 18, 2003, Dr. Procter conspired, along with others, to flee the jurisdiction of the Court in Ashland, Kentucky, in order to avoid a sentence of incarceration; (b) intending to begin a new medical practice in the Cayman Islands, British

West Indies, Dr. Procter sought to surreptitiously travel from the Ashland, Kentucky area through Canada to the Cayman Islands; and (c) Dr. Procter attempted to enter Canada via the Detroit, Michigan tunnel between the United States and Canada late on August 14, 2003, or early on August 15, 2003.

Dr. Procter was sentenced to 18 months of imprisonment to run concurrent with his term of incarceration in Case No. 02CR11. The judgment entry further noted that, if Dr. Procter “gains legal right to be a citizen of the United States, he is to be placed on supervised release for a term of three (3) years, to be served concurrently with [Case No. 02CR11].” The court imposed additional conditions for the supervised release and a \$100 assessment.

6. On or about April 30, 2004, the Office of Inspector General, United States Department of Health and Human Services, issued a notice of exclusion to Dr. Procter from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of 25 years. The exclusion was based upon his felony conviction in Case No. 02CR11 of a criminal offense related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

### CONCLUSIONS OF LAW

1. The guilty plea and/or the judicial finding of guilt of Dr. Procter, as set forth in Finding of Fact 4 constitutes “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug” as that language is used in Section 4731.22(B)(3), Ohio Revised Code.
2. The guilty pleas and/or the judicial findings of guilt of Dr. Procter, as set forth in Findings of Fact 4 and 5 constitutes 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 felony,” as that language is used in Section 4731.22(B)(9), Ohio Revised Code.
3. The April 30, 2004, notice of exclusion from the Office of Inspector General, United States Department of Health and Human Services, issued to Dr. Procter, as set forth in Finding of Fact 6, constitutes “[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 language is used in Section 4731.22(B)(25), Ohio Revised Code, to wit: violation of 21 U.S.C. 846 and 841(a)(1).

\* \* \* \* \*

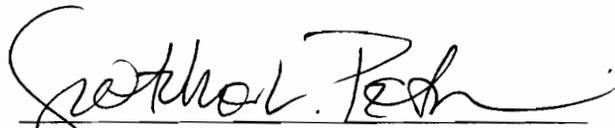
Many of Dr. Procter's wrongful activities and criminal acts occurred in the course of his practice of medicine and surgery in Kentucky. The extreme nature of Dr. Procter's acts and the lengthy period of time in which they occurred demonstrate that Dr. Procter is not fit or worthy of keeping his Ohio certificate. The proposed order would permanently revoke his Ohio certificate.

**PROPOSED ORDER**

It is hereby ORDERED, that:

The certificate of David Herbert Procter, M.D., aka David Herbert Procter, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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



Gretchen L. Petrucci  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF APRIL 11, 2007

### REPORTS AND RECOMMENDATIONS

Dr. Kumar announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Irina Aleksandrovna Gendler, M.D.; Eileen C. Golden, M.D.; Paul Evan Kelner, M.D.; Alla Mikhli, D.P.M.; and David Herbert Procter, M.D. A roll call was taken:

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

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

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

Dr. Steinbergh - aye  
Dr. Kumar - aye

Dr. Kumar noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matter of Dr. Gendler, as that case is not disciplinary in nature and concerns only the doctor's qualifications for licensure. . In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

DAVID HERBERT PROCTER, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF PAUL EVAN KELNER, M.D. DR. VARYANI SECONDED THE MOTION.**

,  
.....

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

ROLL CALL:

Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Madia	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Amato	- abstain
Dr. Robbins	- aye
Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

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

September 13, 2006

David Herbert Procter, M.D.  
AKA David Herbert Procter, M.D.  
Rt. 1 BX419P  
South Shore, Kentucky 41175

Dear Doctor Procter:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [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 April 15, 1988, by Entry of Order, the Ohio Board reprimanded you for misrepresentation of fact in your application for renewal of your Ohio license for the 1987-1988 biennium.
- (2) On or about July 14, 1999, the Ohio Board issued to you a Notice of Summary Suspension and Opportunity for Hearing pursuant to the determination that your continued practice presented a danger of immediate and serious harm to the public. The summary suspension was based upon the June 18, 1999, Kentucky Board of Medical Licensure [Kentucky Board] Emergency Order of Suspension that immediately suspended your Kentucky medical license.

Subsequently, on or about November 8, 2000, the Ohio Board, by Entry of Order, suspended your Ohio certificate to practice medicine and surgery for an indefinite period of time with conditions for reinstatement, including that you provide the Ohio Board with acceptable documentation evidencing your full and unrestricted licensure in Kentucky. To date, you have not applied for reinstatement/restoration of your Ohio certificate.

The Ohio Board found that the Kentucky Board in their Emergency Order of Suspension had found that there was probable cause to warrant the findings of fact that, *inter alia*, you had engaged in sexual activity with three female patients during office visits; that a review of more than 60 of your patient charts concluded that you had departed from, and failed to conform to, standards of acceptable and prevailing medical practice; that you had committed a pattern of acts which would be deemed to be "gross incompetence, gross ignorance, gross

*Mailed 9-14-06*

negligence or malpractice;” that your neurologist had ordered you not to work due to your having a memory deficit secondary to a closed head injury suffered in a traffic accident and that a neuropsychological evaluation recommended you refrain from practicing medicine until the above deficits have remitted to permit adequate performance of duties.

- (3) On or about August 28, 2003, in the United States District Court, Eastern District of Kentucky, you pleaded guilty to, and were found guilty of, the below felony counts:

- |          |                     |  |
|----------|---------------------|--|
| Count 1: | 21 U.S.C. 846       | Conspiracy to distribute and possession with intent to distribute Schedule II, III and IV controlled substances.               |
| Count 2: | 21 U.S.C. 841(a)(1) | Distribution of Schedule III and IV controlled substances without a legitimate medical purpose/outside usual medical practice. |
| Count 3: | 21 U.S.C. 841(a)(1) | Distribution of Schedule III and IV controlled substances without a legitimate medical purpose/outside usual medical practice. |

In the plea agreement, you admitted, *inter alia*, that you prescribed excessive amounts of Schedule III and IV narcotics to two female patients and had sex with them in your office, without concern for their medical needs and at a time when they were vulnerable and dependent upon the narcotics. Further, you admitted that you continued to write prescriptions for the narcotics, in part, to maintain the sexual relationships with those patients.

Further, you admitted that you saw as many as 80 or more patients per day, prescribing Schedule II, III and IV narcotics for them month after month without a legitimate medical purpose and outside the usual course of practice, with many becoming dependent upon the narcotics. You admitted these patients became your patient base.

On or about April 24, 2006, you were resentenced. This Correction of Sentence on Remand provided for imprisonment for a total term of 141 months; that you shall participate in an intensive drug abuse program during incarceration; that upon release from imprisonment, you shall be on supervised release for a term of three years during which you shall participate in an intensive drug education and treatment program; that you shall abstain from alcohol and submit to drug and alcohol testing; that you shall participate in a program of mental health

treatment; and that, if you are deported upon release from imprisonment, the term of supervised release shall be tolled. Further, you were required to pay a criminal monetary penalty in the amount of \$250,000.

The conduct underlying the above pleas of guilty and judicial findings of guilt is provided in greater detail in the July 15, 2002 Indictment, April 28, 2003 Plea Agreement, August 28, 2003 Judgment in a Criminal Case and April 24, 2006 Amended Judgment in a Criminal Case, copies of which are attached hereto and incorporated herein.

- (4) On or about February 17, 2004, in the United States District Court, Eastern District of Kentucky, you pleaded guilty to, and were found guilty of, the below felony count:

Count 1:           18 U.S.C. 371           Conspiracy to Commit Offense Against the United States.

In this plea agreement, you admitted that, after you had entered into the previous plea agreement to three counts of the indictment, as provided in paragraph (3) above, and prior to your scheduled sentencing hearing August 18, 2003, you conspired, along with two others, to flee the jurisdiction of the Court in Ashland, Kentucky, in order to avoid a sentence of incarceration. Intending to begin a new medical practice in the Cayman Islands, British West Indies, you sought to surreptitiously travel from the Ashland, Kentucky area through Canada to the Cayman Islands. Further, you attempted to enter Canada via the Detroit, Michigan tunnel between the United States and Canada late on August 14, 2003 or early on August 15, 2003.

The conduct underlying the above plea of guilty and judicial finding of guilt is provided in greater detail in the September 10, 2003 Indictment, October 8, 2003 Superseding Indictment, February 17, 2004 Plea Agreement and February 17, 2004 Judgment in a Criminal Case, copies of which are attached hereto and incorporated herein.

- (5) On or about April 30, 2004, the Office of the Inspector General, United States Department of Health & Human Services [U.S. DHHS], issued to you a notice of exclusion from participation in Medicare, Medicaid, and all Federal health care programs for a minimum period of 25 years. The exclusion was based upon your felony conviction of a criminal offense related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as provided in paragraph (3) above. A copy of the U.S. DHHS notice of exclusion letter is attached hereto and incorporated herein.

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

Further, your pleas of guilty and the judicial findings of guilt, as alleged in paragraph (3) and (4) 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 felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, the U.S. DHHS exclusion, as alleged in paragraph (5) above, constitutes “[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, to wit: Section 4731.22(B)(3), Ohio Revised Code, to wit: violation of 21 U.S.C. 846 and 21 U.S.C. 841(a)(1).

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Ohio 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 Ohio 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 Ohio 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 Ohio Board may specify that its action is permanent. An individual subject to a permanent action taken by the

David Herbert Procter, M.D.  
AKA David Hebert Proctor, M.D.  
Page 5

Ohio Board is forever thereafter ineligible to hold a certificate to practice and the Ohio Board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7004 2510 0006 9801 8036  
RETURN RECEIPT REQUESTED

David Herbert Procter, M.D.  
AKA David Herbert Proctor, M.D.  
Register No. 07273-032  
FMC Lexington  
Federal Medical Center  
P.O. Box 14500  
Lexington, Kentucky 40512

CERTIFIED MAIL # 7004 2510 0006 9801 8029  
RETURN RECEIPT REQUESTED

Stephen D. Milner, Esq.  
Security Trust Building  
271 West Short Street, Suite 510  
Lexington, Kentucky 40507

CERTIFIED MAIL # 7004 2510 0006 9801 8012  
RETURN RECEIPT REQUESTED

No. 02-CK-11

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND

THE UNITED STATES OF AMERICA

v.

DAVID HERBERT PROCTER, M.D.,  
NANCY J. SADLER, & MARY KATHERINE DIALS

INDICTMENT

- 21/846 - Conspiracy to distribute controlled substances, 1 Count
- 21/841(a)(1) - Distribution of controlled substances, 3 Counts

A TRUE BILL



FOREPERSON

Filed in Open Court on July 15, 2002  
Eastern District of Kentucky

FILED

CLERK

JUL 15 2002

Bail, \$

AT Ashland  
LESLIE G. WHITMER  
Clerk, U.S. District Court

I certify that this is a true and correct copy of the original filed in my office on:

7-15-02

Leslie G. Whitmer, Clerk

By

*M. Decker*

Deputy Clerk

Date:

6-8-06

STATE MEDICAL BOARD  
OF OHIO

2006 JUN 12 A 10: 22

UNITED STATES DISTRICT COURT Eastern District of Kentucky  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND

FILED

JUL 15 2002

At Ashland  
LESLIE G. WHITMER  
Clerk, U.S. District Court

UNITED STATES OF AMERICA

VS.

INDICTMENT NO. 0:02CR11 (HRW)

DAVID HERBERT PROCTER, M.D.,  
NANCY J. SADLER, and  
MARY KATHERINE DIALS

STATE MEDICAL BOARD  
OF KENTUCKY  
2006 JUN 12 A 10:22

\* \* \* \* \*

INTRODUCTION

At all times material to this Indictment:

1. DAVID HERBERT PROCTER, M.D., was a doctor of medicine. He was licensed to practice medicine in the Commonwealth of Kentucky as a general practitioner in 1977. In February of 1978, he was permitted by The Drug Enforcement Administration (DEA) to write narcotic prescriptions. In 1987, he opened a clinic in South Shore, Kentucky, which he has operated under various names, including First Care of South Shore, Physicians Care of Kentucky and Plaza Healthcare. In November of 1998, he was involved in an automobile accident. In December of 1998, he ceased to actively practice medicine and began recruiting temporary doctors to staff his clinic. Through June of 2002, his clinic remained open through the use of temporary doctors.

2. **NANCY J. SADLER** was employed by Dr. Procter at his clinic in South Shore, Kentucky, as an office manager. In August of 2000, she left her employment with Dr. Procter's clinic and went to work at another medical clinic.

3. **MARY KATHERINE DIALS** was employed by Dr. Procter at his clinic in South Shore, Kentucky, as an office manager. She was employed at Dr. Procter's clinic through June of 2002.

STATE MEDICAL BOARD  
OF KENTUCKY  
2008 JUN 12 A 10:22

COUNT 1  
21 U.S.C. § 846

**THE GRAND JURY CHARGES:**

1. The allegations contained in paragraphs 1 - 3 of the Introduction above are restated and incorporated herein by reference.

2. Beginning in about 1996 and continuing through June of 2002, in Greenup and other counties, in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER, M.D.,  
NANCY J. SADLER, and  
MARY KATHERINE DIALS,**

the defendants herein, did knowingly and intentionally conspire, confederate and agree together, and with other persons known and unknown to the Grand Jury, to commit offenses defined in Title 21, United States Code, Section 841(a)(1), that is, to knowingly and intentionally distribute, dispense, and possess with intent to distribute and dispense, measurable quantities of Schedule II,

Schedule III, and Schedule IV controlled substances; all in violation of Title 21, United States Code, Section 846.

COUNT 2

21 U.S.C. § 841(a) (1)

**THE GRAND JURY FURTHER CHARGES:**

1. The allegations contained in paragraph 1 of the Introduction above are restated and incorporated herein by reference.

2. Between on or about December of 1997 and continuing through on or about October of 1998, in Greenup and other counties, in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER, M.D.,**

the defendant herein, did knowingly and intentionally distribute and dispense measurable quantities of Schedule III and Schedule IV controlled substances to ██████████ ██████████ without a legitimate medical purpose and outside the usual course of medical practice; all in violation of Title 21, United States Code, Section 841(a) (1).

COUNT 3

21 U.S.C. § 841(a) (1)

**THE GRAND JURY FURTHER CHARGES:**

1. The allegations contained in paragraph 1 of the Introduction above are restated and incorporated herein by reference.

2005 JUN 12 A 10: 22

STATE MEDICAL BOARD  
OF OHIO

2. Between on or about November of 1996 and continuing through on or about October of 1998, in Greenup and other counties, in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER, M.D.,**

the defendant herein, did knowingly and intentionally distribute and dispense measurable quantities of Schedule III and Schedule IV controlled substances to D [REDACTED] G [REDACTED], also know as D [REDACTED] H [REDACTED], without a legitimate medical purpose and outside the usual course of medical practice; all in violation of Title 21, United States Code, Section 841(a) (1).

**COUNT 4**  
**21 U.S.C. § 841(a) (1)**

**THE GRAND JURY FURTHER CHARGES:**

1. The allegations contained in paragraph 1 of the Introduction above are restated and incorporated herein by reference.

2. Between on or about August of 1997 and continuing through on or about January of 1999, in Greenup and other counties, in the Eastern District of Kentucky, and elsewhere,

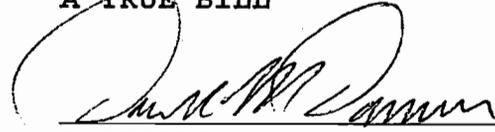
**DAVID HERBERT PROCTER, M.D.,**

the defendant herein, did knowingly and intentionally distribute and dispense measurable quantities of Schedule III and Schedule IV controlled substances to T [REDACTED] B [REDACTED] without a legitimate medical purpose and outside the usual course of medical practice;

STATE MEDICAL BOARD  
OF OHIO  
2006 JUN 12 A 10:23

all in violation of Title 21, United States Code, Section  
841(a)(1).

A TRUE BILL



FOREPERSON

APPROVED:



GREGORY F. VAN TATENHOVE  
UNITED STATES ATTORNEY

STATE MEDICAL BOARD  
OF OHIO  
2006 JUN 12 A 10:23

PENALTIES

COUNT 1: NM than 20 years, and a fine of NM than \$1,000,000.

COUNTS 2 - 4: Regarding Schedule II Controlled Substances, NM than 20 years, and a fine of NM than \$1,000,000.

Regarding Schedule III Controlled Substances, NM than 5 years, and a fine of NM than \$250,000.

Regarding Schedule IV Controlled Substances, NM than 3 years, and a fine of NM than \$250,000.

PLUS: Mandatory Special Assessment of \$100 on each count, and restitution if applicable.

STATE MEDICAL BOARD  
OF OHIO

2006 JUN 12 A 10:23

**APR 28 2003**

At Ashland  
**LESLIE G. WHITMER**  
Clerk, U.S. District Court

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND

INDICTMENT NO. 02-11-1

UNITED STATES OF AMERICA

PLAINTIFF

V.

**PLEA AGREEMENT**

DAVID HERBERT PROCTER, M.D.

DEFENDANT

\* \* \* \* \*

1. The United States of America and the Defendant enter into this Plea Agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).

2. The Defendant agrees to enter a plea of guilty, not a nolo contendere or *Alford* plea, to Counts One, Two and Three of the Indictment, charging violations of (Count One) Title 21, United States Code, Section 846, (Counts Two and Three) Title 21, United States Code, Section 841(a)(1).

3. The essential elements of Title 21, United States Code, Section 846, as alleged in Count One are:

(a) The Defendant and at least one other person conspired, and agreed, to commit the crime of knowingly acquiring controlled substances by deception; and

STATE MEDICAL BOARD

2005 JUN 12 A 10:23

I certify that this is a true and correct copy of the original filed in my office on:

4-28-03  
Leslie G. Whitmer, Clerk  
By M. Heaberlin  
Deputy Clerk  
Date: 6-8-06

(b) the Defendant knowingly and voluntarily joined the conspiracy; and

4. The essential elements of Title 21, United States Code, Section 841(a)(1), as alleged in Counts Two and Three are:

(a) The Defendant knowingly and intentionally dispensed Scheduled ~~III~~ and ~~IV~~ controlled substances, *IIII* *IIII*

(b) and did so not for a legitimate medical purpose and not in the usual course of a professional medical practice

5. As to Counts One through Three, the United States could prove the following facts, which accurately represent the Defendant's offense conduct and establish the essential elements of the offense, beyond a reasonable doubt:

David Herbert Procter, M.D. was licensed by the Kentucky Board of Medical Licensure in 1977 to practice medicine in Kentucky. In February of 1978, the Drug Enforcement Administration registered David Herbert Procter, M.D. authorizing him to write prescriptions for controlled substances. He practiced medicine in several locations in the South Shore area of Greenup County, Kentucky, from 1977 through December of 1998. After December of 1998, although he did not actively practice medicine, he was in charge of his clinics in the South Shore area of Greenup County, Kentucky through June of 2002.

STATE MEDICAL BOARD  
2008 JUN 12 A 10:23

From 1996, through June of 2002, in Greenup County, Kentucky, HERBERT DAVID PROCTER, M.D. knowingly and intentionally conspired with others, all of whom are not named herein to knowingly and intentionally distribute, dispense and possess with intent to distribute and dispense measurable quantities of Schedule II, III and IV controlled substances by doing some of the following acts:

Between December of 1997 through October of 1998, Dr. Procter distributed Schedule III and IV narcotics to S██████████ C██████████ without a legitimate medical purpose and outside the usual course of medical practice. Ms. C██████████ was his patient. Initially, Dr. Procter treated her medical situation, but over time he prescribed excessive amounts of Schedule III and IV narcotics for her without concern for her medical needs and at a time when she was dependant upon the narcotics. Additionally, he had sex with her in his office during a time when she was vulnerable and when she was dependent upon the narcotics. David Herbert Procter, M.D. continued to write the narcotics, in part, in order to maintain the sexual relationship with her.

Between November of 1996 through October of 1998, Dr. Procter distributed Schedule III and IV narcotics to D██████████ G██████████ without a legitimate medical purpose and outside

the usual course of medical practice. Ms. G [REDACTED] was his patient. Initially, Dr. Procter treated her medical situation, but over time he prescribed excessive amounts of Schedule III and IV narcotics for her without concern for her medical needs and at a time when she was dependant upon the narcotics. Additionally, he had sex with her in his office during a time when she was vulnerable and when she was dependent upon the narcotics. David Herbert Procter, M.D. continued to write the narcotics, in part, in order to maintain the sexual relationship with her.

Between 1996 and 1998, Dr. Procter saw an ever increasing number of patients. At times he saw as many as 80 or more in a day. While many patients initially came to Dr. Procter with legitimate medical needs, often work related, Dr. Procter routinely prescribed Schedule II, III and IV narcotics for them month after month with out a legitimate medical purpose and outside the usual course of medical practice. Many became dependent upon the narcotics. These patients became his patient base. For these patients, Dr. Procter performed limited, if any, meaningful medical examinations, kept minimal, if any, patient charts, and routinely wrote prescriptions for Lorcet, Valium, Xanax and Soma for them. Patients were required to come back monthly

to generate additional office fees. Most of Dr. Procter's patients paid in cash. Many patients came from great distances. For one year, Dr. Procter was open on Saturday, but with few, if any of his regular staff. On Saturday he saw patients wanting narcotic prescriptions and they paid strictly in cash.

In January of 1998, investigators from the Kentucky Board of Medical Licensure obtained certain patient files or charts from Dr. Procter's office. In December of 1998, Dr. Procter surrendered his license to practice medicine to the Kentucky Board of Medical Licensure. Thereafter, he kept his clinic open and his clinic continued to dispense Schedule II, III and IV narcotics by employing a series of locum tenens doctors from across the country.

Not all of the locum tenens doctors dispensed narcotics to Dr. Procter's patients to his satisfaction or to his patients' desires for narcotics. Several locum tenens came, saw and left without fulfilling their terms because of the nature of the pain practice. However, Drs. Steven Snyder, Frederick Cohn, Fortune Williams, and Rodolfo Santos took up where Dr. Procter left off by seeing as many as 80 or more patients a day, and wrote excessive amounts of narcotic prescriptions without a legitimate medical purpose and

outside the usual course of medical practice. Although Dr. Procter limited or insulated his contact with the locum tenens doctors and their respective agencies, nevertheless he was in charge of his clinics in South Shore. He regularly encouraged the doctors directly or indirectly through his office managers to see more patients each day and had them to write narcotic prescriptions for his patients without a legitimate medical purpose and outside the usual course of medical practice.

Sometime during the spring of 1999, Dr. Snyder was the locum tenen at Dr. Procter's clinic. Dr. Snyder was home sick for several days. The clinic was without a doctor on site and patients were wanting their narcotic. Nancy Sadler and others went to Dr. Snyder's home and had Dr. Snyder sign more than a hundred blank prescriptions. Upon return to the office, Nancy Sadler and others filled in the body of the prescriptions for Schedule III and IV narcotics. The prescriptions were handed out to patients who had not seen a doctor. This was done in order to satisfy the patients desire for narcotics.

6. No agreement exists between the United States and the Defendant about what his sentence will be; however, the

STATE MEDICAL BOARD  
2008 JUN 12 A 10:23

United States will recommend a sentence at the lowest end of the guideline range for level 32.

7. The maximum statutory punishment for the four counts in the indictment are as follows:

(A) Count One: not more than 20 years imprisonment, a fine of not more than \$1,000,000.00, or both, and a term of supervised release of at least 3 years.

(B) Counts Two and Three: not more than 5 years imprisonment, a fine of not more than \$250,000.00, and a term of supervised release of at least 2 years.

(C) There is a mandatory special assessment of \$100.00 per count, a total of \$300.00, pursuant to Title 18, United States Code, Section 3013 which applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

8. The United States and the Defendant acknowledge that the following sentencing guidelines calculations apply to the Defendant but do not bind the Court.

(a) United States Sentencing Guidelines, November 1, 2002, manual will determine the Defendant's guideline range.

(b) Pursuant to § 2D1.1(5), [based on 973,320 units of Schedule II and 620,000 units of Schedule III] the base offense level is 30.

(c) Pursuant to § 3B1.3, abuse of a position of trust, the offense level is increased by 2 levels.

(d). Pursuant to § 3A1.1, an offense involving a vulnerable victim, increase the base offense level by 2 levels.

(e) Pursuant to § 3E1.1(a), acceptance of responsibility, decrease the base offense level by 2.

(F) Based on the above, the Defendant's total offense level is 32.

(G) There is no agreement as to the criminal history.

9. The Defendant will cooperate fully with the United States in the investigation or prosecution of the matters in the Indictment and all related matters, including but not limited to testifying truthfully in all proceedings. If the Defendant provides substantial assistance in the investigation or prosecution of other persons who have committed an offense, the United States will consider filing a § 5K1.1 motion for a downward departure from the

2005 JUN 12 A 10:24

STATE MEDICAL BOARD  
OFFICE

sentencing guidelines, but the downward departure is not to exceed 25% of the guideline range of a level 32. The decision to file a motion is solely within the discretion of the United States.

10. The United States will not bring additional charges against the Defendant in the Eastern District of Kentucky based upon evidence in its possession at the time of the execution of this Agreement and arising out of the Defendant's conduct within the Eastern District of Kentucky, unless the Defendant breaches this Agreement.

11. This Agreement does not bind the United States Attorney's Offices in districts other than the Eastern District of Kentucky, concerning matters under investigation or prosecution in the other districts.

12. All statements and testimony that the Defendant provides must be truthful. This Agreement does not preclude the prosecution of the Defendant for perjury or making false declarations relating to statements or any testimony rendered pursuant to this Agreement.

13. The United States will recommend releasing the Defendant on the current bond for future court appearances.

14. The Defendant is able to pay a fine, and the mandatory special assessment. By agreement between the

United States and the Defendant, he will pay the mandatory special assessment of \$300.00, at the time of the entry of the plea, and he will pay a fine of \$250,000.00 at the time of his sentencing.

15. The Defendant waives the statutory right to appeal the guilty plea and conviction. The Defendant also waives the statutory right to attack collaterally the guilty plea and conviction.

16. If the Defendant violates any part of this Agreement, the United States has the option of voiding this Agreement and seeking an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

17. This document contains the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky, and the Defendant. No other promises have been made to the Defendant.

18. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

GREGORY F. VAN TATENHOVE  
UNITED STATES ATTORNEY

Date: 4/28/03

By:

*Patrick H. Molloy*  
Patrick H. Molloy  
Edwin S. Walbourn III  
Assistant U.S. Attorneys

Date: 4/28/03

*David Herbert Procter, M.D.*  
David Herbert Procter, M.D.  
Defendant

Date: 4/28/03

*Scott A. Cox*  
Scott Cox  
Attorney for Defendant

APPROVED, this 28 day of April, 2003

*Henry R. Wilhoit*  
HON. HENRY R. WILHOIT  
SENIOR U.S. DISTRICT JUDGE

STATE MEDICAL BOARD  
DEFEND  
2008 JUN 12 A 10:24

# UNITED STATES DISTRICT COURT

EASTERN

District of

KENTUCKY

UNITED STATES OF AMERICA

V.

DAVID H. PROCTOR

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number:

ASH. CR. 0:02cr11-1-HRW

SCOTT C. COX

Defendant's Attorney

Eastern District of Kentucky

**FILED**

**AUG 28 2003**

At Ashland  
**LESLIE G. WHITMER**  
Clerk, U.S. District Court

### THE DEFENDANT:

pleaded guilty to count(s) 1, 2 and 3

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

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

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21:846	Conspiracy to distribute and possession with intent to distribute Schedule II, III and IV controlled substances	June 2002	1
21:841(a)(1)	Distribution of Schedule III and IV controlled substances with- out a legitimate medical purpose/outside usual medical practice	Oct. 1998	2,3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) 4  is  are dismissed on the motion of the United States.

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

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 07273-032

Defendant's Residence Address:

Post Office Box 806

South Shore, Kentucky 41175

Defendant's Mailing Address:

Same as above

Thursday, August 28, 2003 at Ashland, Kentucky

Date of Imposition of Judgment

Leslie G. Whitmer, Clerk  
Name and Title of Judicial Officer

August 28, 2003

Date

I certify that this is a true and correct copy of the original filed in my office.

8-28-03  
Leslie G. Whitmer, Clerk  
M. Blatterlin  
Deputy Clerk

Date: 8-28-03

2003 JUN 17 A 10:25

STATE MEDICAL BOARD

QC

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASH. CR. 0:02cr11-1-HRW

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Two Hundred (200) Months.

X The court makes the following recommendations to the Bureau of Prisons:  
That the defendant shall participate in an intensive drug abuse program during the term of incarceration.

X The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

2006 JUN 12 A 10 25

STATE MARSHAL BOARD

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASH. CR. 0:02cr11-1-HRW

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term THREE (3) YEARS.  
During the term of supervised release, the defendant shall participate in an intensive drug abuse program as directed by Probation Office.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

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

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

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

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

### STANDARD CONDITIONS OF SUPERVISION

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

STATE MEDICAL BOARD  
JUL 21 2002  
57 01 A 12 00C 900Z

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASH. CR. 0:02cr11-1-HRW

**SPECIAL CONDITIONS OF SUPERVISION**

**ACKNOWLEDGMENT**

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
U. S. Probation Officer / Designated Witness

\_\_\_\_\_  
Date

2006 JUN 12 A 10:25

STATE MEDICAL BOARD

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASH. CR. 0:02cr11-1-HRW

**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 300.00	\$ 250,000.00	\$ NONE

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
----------------------	----------------------------------	--	--

<b>TOTALS</b>	\$ _____	\$ _____	
---------------	----------	----------	--

STATE MEDICAL BOARD  
OF OHIO  
2006 JUN 12 A 10:25

- If applicable, restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
  - the interest requirement is waived for the  fine and/or  restitution.
  - the interest requirement for the  fine and/or  restitution is modified as follows:

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

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASH. CR. 0:02cr11-1-HRW

### SCHEDULE OF PAYMENTS

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

- A  Lump sum payment of \$ 250,300.00 due immediately, ~~balance due~~ or as soon as the United States can ascertain the location of his money.  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D, or  E below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  E below); or
- C  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Special instructions regarding the payment of criminal monetary penalties:

**Criminal monetary penalties are payable to:**  
Clerk, U. S. District Court  
Eastern District of Kentucky  
1405 Greenup Avenue, Suite 336  
Ashland, KY 41101

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

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

STATE MEDICAL BOARD  
OF KENTUCKY  
2006 JUN 12 A 10:25

APR 24 2006

UNITED STATES DISTRICT COURT

EASTERN

District of

KENTUCKY, AT COVINGTON

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE  
LESLIE G. WHITMER  
CLERK U.S. DISTRICT COURT

V.

DAVID HERBERT PROCTOR

Case Number: ASHLAND CRIM. 0:02CR11-1-DLB

USM Number: 07273-032

\*\* STEPHEN MILNER

Defendant's Attorney

Date of Original Judgment: Filed 8/28/2003  
(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant  28 U.S.C. § 2255 or  18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- pleaded guilty to count(s) 1, 2, AND 3
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846	Conspiracy to distribute and possession with intent to distribute	June 2002	1
21:841(a)(1)	Distribution of Schedule III and IV controlled substances without a legitimate medical purpose/outside usual medical practice	October 1998	2,3

The defendant is sentenced as provided in pages 2 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as amended or modified by the Supreme Court's January 12, 2005, decision in United States v. Booker and United States v. Fanfan.

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) 4  is  are dismissed on the motion of the United States.

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

Thursday, April 20, 2006 at Ashland, KY

Date of Imposition of Judgment

*David L. Bunning*  
Signature of Judge

DAVID L. BUNNING, U. S. DISTRICT JUDGE

Name and Title of Judge

April 21st 2006

Date

STATE MEDICAL BOARD  
2006 JUN 12 A 10:24

**S** scanned

I certify that this is a true and correct copy of the original filed in my office on:

4-24-06

Leslie G. Whitmer, Clerk

By M. Healer

Deputy Clerk

Date: 6-8-06

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASHLAND CRIMINAL 0:02CR11-1-DLB

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term

**\*\* ONE HUNDRED FORTY-ONE (141) MONTHS.** This term of imprisonment is comprised of 141 Months on Count One, 60 Months on Count Two to be served concurrently with Count One, 60 Months on Count 3 to be served concurrently with the sentence imposed on Counts One and Two, for a total of 141 Months. Additionally, this sentence shall be served concurrently with the sentence imposed by Judgment in Ashland Criminal Action 0:03cr4DLB.

X The court makes the following recommendations to the Bureau of Prisons:

- 1) That the defendant shall participate in an intensive drug abuse program during the term of incarceration.
- \* 2) That the defendant continue to be designated for service of sentence at the Federal Medical Center in Lexington, Kentucky.

X The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

- at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_
- as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on \_\_\_\_\_
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

STATE MEDICAL BOARD  
2006 JUN 12 A 10:24

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_ with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASHLAND CRIMINAL 0:02CR11-1-DLB

**SPECIAL CONDITIONS OF SUPERVISION**

1) That the defendant participate in an intensive drug education and treatment program as directed by the Probation Office and shall submit to periodic drug and alcohol testing at the direction and discretion of the Probation Officer during the term of supervision.

\* 2) The defendant shall abstain from the use of alcohol.

\* 3) The defendant shall participate in a program of mental health treatment at the direction and discretion of the Probation Officer until such time as the defendant is released from the program by the Probation Officer.

\* 4) The defendant shall submit his person, residence and curtilage, office or vehicle to a search, upon direction and discretion of the Probation Office.

STATE MEDICAL BOARD  
OF OHIO  
2006 JUN 12 A 10:24

Pursuant to Public Law 108-405, Revised DNA Collection Requirements Under the Justice for All Act of 2004, the defendant shall submit to DNA collection if the offense of conviction is a felony.

**ACKNOWLEDGMENT**

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_  
(Defendant)

\_\_\_\_\_ Date

\_\_\_\_\_ U. S. Probation Officer/Designated Witness

\_\_\_\_\_ Date



DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASHLAND CRIMINAL 0:02CR11-1-DLB

### SCHEDULE OF PAYMENTS

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

- A  Lump sum payment of \$ 250,300.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Criminal monetary penalties are payable to:  
Clerk, U. S. District Court  
1405 Greenup Avenue, Suite 336  
Ashland, KY 41101

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

STATE MEDICAL BOARD  
2006 JUN 12 A 10:24

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

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASHLAND CRIMINAL 0:02CR11-1-DLB  
DISTRICT: EASTERN DISTRICT OF KENTUCKY AT ASHLAND

**STATEMENT OF REASONS**  
**(Not for Public Disclosure)**

**REDACTED**

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASHLAND CRIMINAL 0:02CR11-1-DLB  
DISTRICT: EASTERN DISTRICT OF KENTUCKY AT ASHLAND  
**STATEMENT OF REASONS**  
(Not for Public Disclosure)

**REDACTED**

DEFENDANT: DAVID HERBERT PROCTOR  
CASE NUMBER: ASHLAND CRIMINAL 0:02CR11-1-DLB  
DISTRICT: EASTERN DISTRICT OF KENTUCKY AT ASHLAND

**STATEMENT OF REASONS**

**(Not for Public Disclosure)**

**REDACTED**

No. 03-4-HEW

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND**

**THE UNITED STATES OF AMERICA**

v.

**DAVID HERBERT PROCTER and  
CAROLYN LYKINS**

**INDICTMENT**

18/371 - Conspiracy - 1 Count  
18/3146(a) - Failure to appear - 1 Count

A TRUE BILL

*Judy Weller*  
FOREPERSON

Filed in Open Court on September 10, 2003

Eastern District of Kentucky

CLERK

**FILED**

Bail, \$ SEP 10 2003

AT COWINGTON  
LESLIE G WHITMER  
CLERK U.S. DISTRICT COURT

**OHIO STATE MEDICAL BOARD**

SEP 05 2006

I certify that this is a true and correct copy  
of this document as filed in my office on:

9-10-03

By M. Heaberlin  
Deputy Clerk

Date: 9-01-06

Eastern District of Kentucky

**FILED**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND**

**SEP 10 2003**

AT COVINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

**UNITED STATES OF AMERICA**

**V.**

**INDICTMENT NO. 03-4 (HRW)**

**DAVID HERBERT PROCTER and  
CAROLYN LYKINS**

\* \* \* \* \*

**INTRODUCTION:**

1. DAVID HERBERT PROCTER resides in South Shore, Kentucky. On July 15, 2002, a federal grand jury at Ashland, Kentucky, returned Indictment No. 02-CR-11-01 against him charging him with one count of conspiracy to distribute controlled substances, and three substantive counts of dispensing controlled substances. On July 22, 2002, he was arraigned on Indictment No. 02-CR-11-01, and plead not guilty. His bond was set at \$10,000.00, unsecured, and his travel was restricted to the Eastern District of Kentucky and the Southern District of Ohio. On April 28, 2003, he entered a plea of guilty to three counts of the indictment; i.e., conspiracy to dispense controlled substances, and two substantive counts of dispensing controlled substances. His sentencing hearing was assigned for August 18, 2003, at 1:30 p.m. at Ashland, Kentucky. He was released on the same conditions as previously imposed at his arraignment; i.e, a \$10,000.00

**OHIO STATE MEDICAL BOARD**

**SEP 05 2006**

unsecured bond, and his travel was restricted to the Eastern District of Kentucky and the Southern District of Ohio, plus he was ordered to surrender his Canadian passport.

2. CAROLYN LYKINS is a companion of David Herbert Procter. She resides in Rush, Kentucky.

**THE GRAND JURY CHARGES:**

**COUNT 1**  
**18 U.S.C. § 371**

3. The allegations contained in paragraphs 1 through 2 above of the Introduction are incorporated herein.

4. Beginning at a time in July 2003, the exact date unknown, and continuing through August 15, 2003, in Boyd, Franklin, Carter, and Greenup Counties, in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER and  
CAROLYN LYKINS,**

and others, did unlawfully and knowingly conspire to commit an offense against the laws of the United States, that is, for David Herbert Procter to flee the jurisdiction of the United States District Court, Eastern District of Kentucky and not appear for his sentencing which had been set for August 18, 2003, at 1:30 .p.m, in Ashland, Kentucky, a violation of 18 U.S.C. § 3146(a).

**MANNER AND MEANS OF THE CONSPIRACY**

5. The object and purpose of the conspiracy was for David Herbert Procter, with

the assistance of Carolyn Lykins and others, to flee the jurisdiction of the United States District Court at Ashland, Kentucky, and to avoid a sentence of incarceration by surreptitiously traveling from the Ashland, Kentucky area through Canada to the Cayman Islands located in the Carribean Sea.

**OVERT ACTS**

6. In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by members of the conspiracy in Boyd, Franklin, Carter, and Greenup Counties, in the Eastern District of Kentucky, and elsewhere:

A) In July 2003, David Herbert Procter and Carolyn Sue Lykins made a trip together to Niagra Falls, New York.

B) On August 13, 2003, David Herbert Procter stayed overnight at a motel in the Cattletsburg, Kentucky area. While there, he was visited by Carolyn Sue Lykins.

C) On August 13, 2003, Carolyn Sue Lykins furnished David Herbert Procter with her Jeep Grand Cherokee automobile.

D) On August 14, 2003, Carolyn Sue Lykins met with a friend of hers, and obtained from her a birth certificate and Social Security number.

E) On August 14, 2003, Carolyn Sue Lykins caused an application to be made for a Social Security card at the Social Security Office in Ashland, Kentucky, in a name other than her true name.

F) On or about August 14, 2003, Carolyn Sue Lykins made two cash withdrawals from the Kentucky Farmers Bank, Cattletsburg, Kentucky, in the sums of \$255.00 and \$30,000.00.

G) On August 14, 2003, David Herbert Procter used the Jeep Grand Cherokee automobile to travel to Christie Cruise Travel Masters in Ashland, Kentucky.

H) On August 14, 2003, David Herbert Procter reserved two sets of airline tickets at Christie Cruise Travel Masters in Ashland, Kentucky, on Air Canada as follows: (1) Friday, August 15, 2003, Toronto, Canada to Vancouver, Canada, (2) Saturday, August 16, 2003, Vancouver, Canada to Toronto, Canada, and (3) Sunday, August 17, 2003, from Toronto, Canada to Grand Cayman, Cayman Islands.

I) On August 14, 2003, David Herbert Procter and Carolyn Sue Lykins traveled to Cincinnati, Ohio, where Carolyn Sue Lykins obtained an Ohio Identification card in the name of Elizabeth A. Crisp.

J) On August 14 or August 15, 2003, David Herbert Procter drove the Jeep Cherokee automobile and Carolyn Sue Lykins drove her Volkswagen automobile from Cincinnati, Ohio, to a place in Toledo, Ohio. Shortly thereafter, they departed Toledo, Ohio, en route to Detroit, Michigan, in the Jeep Grand Cherokee, and left the Volkswagen in Toledo, Ohio.

K) Late on August 14 or early on August 15, 2003, David Herbert Procter and Carolyn Sue Lykins attempted to enter Canada in the Jeep Grand Cherokee via the

Detroit, Michigan, tunnel between the United States and Canada.

L) At the time they attempted to enter Canada, David Herbert Procter and Carolyn Sue Lykins had in their possession the following items:

- \* \$40,785.00 in cash,
- \* a false Ohio Identification Card,
- \* a Kentucky birth certificate,
- \* withdrawal slips from the Kentucky Farmers Bank, Cattletsburg, Kentucky, in the sums of \$225.00 and \$30,000.00,
- \* several bags of luggage, and
- \* a flight itinerary on Air Canada as follows: (1) Friday, August 15, 2003, Toronto, Canada to Vancouver, Canada, (2) Saturday, August 16, 2003, Vancouver, Canada to Toronto, Canada, and (3) Sunday, August 17, 2003, from Toronto, Canada to Grand Cayman, Cayman Islands.

All in violation of 18 U.S.C. § 371.

**COUNT 2**  
**18 U.S.C. § 3146(a)**

7. The allegations contained in Introductory paragraph 1 are restated herein.

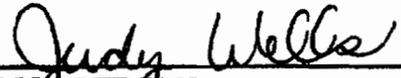
8. On or about August 18, 2003, in Boyd County in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER,**

after having been released under the provisions of Chapter 207 of Title 18, United States

Code, in connection with a charge of an offense punishable by imprisonment for a term of five years or more, did knowingly fail to appear before the United States District Court for the Eastern District of Kentucky, at Ashland, Kentucky, for sentencing, as required by the terms of the conditions of release as ordered by the Court, all in violation of 18 U.S.C. § 3146(a).

**A TRUE BILL**

  
\_\_\_\_\_  
**FOREPERSON**

  
\_\_\_\_\_  
**GREGORY VANTATENHOVE**  
**UNITED STATES ATTORNEY**

**PENALTIES**

**COUNTS 1 & 2: Not more than 5 years imprisonment, \$250,000 fine,  
and 3 years supervised release**

**PLUS: Mandatory Special Assessment of \$100 each count**

No. 03-4-S

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND**

**THE UNITED STATES OF AMERICA**

**v.  
DAVID HERBERT PROCTER, CAROLYN LYKINS, and  
GARY FRANKLIN BELLITER**

**INDICTMENT**

18/371 - Conspiracy - 1 Count  
18/3146(a) - Failure to appear - 1 Count

A TRUE BILL

*Judith Walker*  
FOREPERSON

Filed in Open Court on October 8, 2003

CLERK Eastern District of Kentucky

**FILED**

Bail, \$ OCT 8 - 2003

AT COVINGTON  
LESLIE G. WHITMER  
CLERK U.S. DISTRICT COURT

OHIO STATE MEDICAL BOARD

SEP 05 2006

I certify that this is a true and correct copy of the original filed in my office on:

10-8-03

Leslie G. Whitmer, Clerk

By *M. Healer Dun*

Deputy Clerk

Date: 9-1-06

Eastern District of Kentucky

**FILED**

**OCT 8 - 2003**

AT COVINGTON  
LESLIE G. WHITMER  
CLERK U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND**

**UNITED STATES OF AMERICA**

**V.**

**SUPERSEDING INDICTMENT NO. 03-4-S**

**DAVID HERBERT PROCTER,  
CAROLYN LYKINS, AND  
GARY FRANKLIN BILLITER**

\* \* \* \* \*

**INTRODUCTION:**

1. DAVID HERBERT PROCTER resides in South Shore, Kentucky. On July 15, 2002, a federal grand jury at Ashland, Kentucky, returned Indictment No. 02-CR-11-01 against him charging him with one count of conspiracy to distribute controlled substances, and three substantive counts of dispensing controlled substances. On July 22, 2002, he was arraigned on Indictment No. 02-CR-11-01, and plead not guilty. His bond was set at \$10,000.00, unsecured, and his travel was restricted to the Eastern District of Kentucky and the Southern District of Ohio. On April 28, 2003, he entered a plea of guilty to three counts of the indictment; i.e., conspiracy to dispense controlled substances, and two substantive counts of dispensing controlled substances. His sentencing hearing was assigned for August 18, 2003, at 1:30 p.m. at Ashland, Kentucky. He was released on the same conditions as previously imposed at his arraignment; i.e, a \$10,000.00

OHIO STATE MEDICAL BOARD

SEP 05 2006

unsecured bond, and his travel was restricted to the Eastern District of Kentucky and the Southern District of Ohio, plus he was ordered to surrender his Canadian passport.

2. CAROLYN LYKINS is a companion of David Herbert Procter. She resides in Rush, Kentucky.

3. GARY FRANKLIN BILLITER is an attorney with offices in Portsmouth, Ohio.

**THE GRAND JURY CHARGES:**

**COUNT 1**  
**18 U.S.C. § 371**

3. The allegations contained in paragraphs 1 through 2 above of the Introduction are incorporated herein.

4. Beginning at a time in July 2003, the exact date unknown, and continuing through August 18, 2003, in Boyd, Franklin, Carter, and Greenup Counties, in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER,  
CAROLYN LYKINS, and  
GARY FRANKLIN BILLITER,**

and others, did unlawfully and knowingly conspire to commit an offense against the laws of the United States, that is, for David Herbert Procter to flee the jurisdiction of the United States District Court, Eastern District of Kentucky and not appear for his sentencing which had been set for August 18, 2003, at 1:30 .p.m, in Ashland, Kentucky, a violation of 18 U.S.C. § 3146(a).

**MANNER AND MEANS OF THE CONSPIRACY**

5. The object and purpose of the conspiracy was for David Herbert Procter, with the assistance of Carolyn Sue Lykins, Gary Franklin Billiter and others, to flee the jurisdiction of the United States District Court at Ashland, Kentucky, to avoid a sentence of incarceration by surreptitiously traveling from the Ashland, Kentucky area through Canada to the Cayman Islands in the British West Indies, and for David Herbert Procter, with the assistance of Carolyn Sue Lykins, Gary Franklin Billiter and others, to relocate in the Cayman Islands in the British West Indies.

**OVERT ACTS**

6. In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by members of the conspiracy in Boyd, Franklin, Carter, and Greenup Counties, in the Eastern District of Kentucky, and elsewhere:

A) In July of 2003, David Herbert Procter and Carolyn Sue Lykins made a trip together to Niagra Falls, New York.

B) On August 13, 2003, David Herbert Procter and Carolyn Sue Lykins met with Gary Franklin Billiter in his law offices in Portsmouth, Ohio.

C) On August 13, 2003, David Herbert Procter stayed overnight at a motel in the Ashland/Cattletsburg, Kentucky area. While there, he was visited by Carolyn Sue Lykins.

D) On August 13, 2003, Carolyn Sue Lykins furnished David Herbert Procter with her Jeep Grand Cherokee automobile.

E) On August 14, 2003, Carolyn Sue Lykins caused a friend of hers to make an application for a duplicate Social Security card at the Social Security Office in Ashland, Kentucky.

F) On August 14, 2003, Carolyn Sue Lykins met with her friend, and obtained from her a birth certificate and Social Security number both in a name other than Carolyn Sue Lykins.

G) On August 14, 2003, Carolyn Sue Lykins made two cash withdrawals from the Kentucky Farmers Bank, Cattletsburg, Kentucky, in the sums of \$255.00 and \$30,000.00.

H) On August 14, 2003, David Herbert Procter used the Jeep Grand Cherokee automobile to travel to Christie Cruise Travel Masters in Ashland, Kentucky.

I) On August 14, 2003, David Herbert Procter reserved two sets of airline tickets at Christie Cruise Travel Masters in Ashland, Kentucky, on Air Canada as follows: (1) Friday, August 15, 2003, Toronto, Canada to Vancouver, Canada, (2) Saturday, August 16, 2003, Vancouver, Canada to Toronto, Canada, and (3) Sunday, August 17, 2003, from Toronto, Canada to Grand Cayman, Cayman Islands.

J) On August 14, 2003, David Herbert Procter and Carolyn Sue Lykins traveled to Cincinnati, Ohio, where Carolyn Sue Lykins obtained an Ohio Identification card in a name other than Carolyn Sue Lykins.

**K) On August 14 or August 15, 2003, David Herbert Procter drove the Jeep Cherokee automobile and Carolyn Sue Lykins drove her Volkswagen automobile from Cincinnati, Ohio, to a place in Toledo, Ohio. Shortly thereafter, they departed Toledo, Ohio, en route to Detroit, Michigan, in the Jeep Grand Cherokee, and left the Volkswagen in Toledo, Ohio.**

**L) On August 14, 2003, Gary Franklin Billiter left several phone messages for Carolyn Sue Lykins, and one was to the effect that he had made contact and everything was "set up" in the Cayman Islands for Dr. Procter and that he would contact them after he arrived in the Cayman Islands.**

**M) On August 14, 2003, Gary Franklin Billiter traveled to the Cayman Islands in the British West Indies and registered at the Marriott Beach Resort Hotel where he stayed until August 16, 2003.**

**N) Late on August 14 or early on August 15, 2003, David Herbert Procter and Carolyn Sue Lykins attempted to enter Canada in the Jeep Grand Cherokee via the Detroit, Michigan, tunnel between the United States and Canada.**

**O) At the time they attempted to enter Canada, David Herbert Procter and Carolyn Sue Lykins had in their possession the following items:**

- \* \$40,785.00 in cash,**
- \* an Ohio Identification Card,**
- \* a Kentucky birth certificate,**

- \* withdrawal slips from the Kentucky Farmers Bank, Cattletsburg, Kentucky, in the sums of \$225.00 and \$30,000.00,
- \* several bags of luggage, and
- \* a flight itinerary on Air Canada as follows: (1) Friday, August 15, 2003, Toronto, Canada to Vancouver, Canada, (2) Saturday, August 16, 2003, Vancouver, Canada to Toronto, Canada, and (3) Sunday, August 17, 2003, from Toronto, Canada to Grand Cayman, Cayman Islands.

P) On August 15, 2003, Gary Franklin Billiter placed a call from his hotel room in the Cayman Islands to Carolyn Sue Lykins in which he stated in substance that he was upset that Dr. Procter had been arrested, that he had everything arranged for Dr. Procter in the Cayman Islands, and that he would be returning to the United States on August 16, 2003.

Q) On August 17, 2003, Gary Franklin Billiter placed a phone call to Carolyn Sue Lykins and said in substance that he wanted to meet with her.

R) On August 18, 2003, Gary Franklin Billiter met with Carolyn Sue Lykins at the Bob Evans Restaurant in Portsmouth, Ohio, and said in substance that everything had been arranged for Dr. Procter and that she should not have been with Dr. Procter when he was arrested.

All in violation of 18 U.S.C. § 371.

**COUNT 2**  
**18 U.S.C. § 3146(a)**

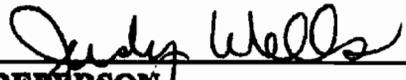
7. The allegations contained in Introductory paragraph 1 are restated herein.

8. On or about August 18, 2003, in Boyd County in the Eastern District of Kentucky, and elsewhere,

**DAVID HERBERT PROCTER,**

after having been released under the provisions of Chapter 207 of Title 18, United States Code, in connection with a charge of an offense punishable by imprisonment for a term of five years or more, did knowingly fail to appear before the United States District Court for the Eastern District of Kentucky, at Ashland, Kentucky, for sentencing, as required by the terms of the conditions of release as ordered by the Court, all in violation of 18 U.S.C. § 3146(a).

**A TRUE BILL**

  
\_\_\_\_\_  
**FOREPERSON**

  
\_\_\_\_\_  
**GREGORY VAN TATENHOVE**  
**UNITED STATES ATTORNEY**

**PENALTIES**

**COUNTS 1 & 2: Not more than 5 years imprisonment, \$250,000 fine,  
and 3 years supervised release**

**PLUS: Mandatory Special Assessment of \$100 on each count**

Eastern District of Kentucky

TENDERED

Date: 12/30/03

LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND

Eastern District of Kentucky

FILED

FEB 17 2004

AT COVINGTON  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

SUPERSEDING INDICTMENT  
NO. 03-4-S

V.

**PLEA AGREEMENT**

David Herbert Procter

\* \* \* \* \*

1. The United States of America and the Defendant enter into this Plea Agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).

2. The Defendant agrees to enter a plea of guilty, not a nolo contendere or Alford plea, to Count One of the Superseding Indictment which charges a violation of Title 18, United States Code, Section 371.

3. The essential elements of Title 18, United States Code, Section 371, as alleged in Count One are:

(a) The Defendant and at least one other person conspired, and agreed, to commit the crime of Procter failing to appear before the United States District Court for the Eastern District of Kentucky for sentencing as required by the terms of the conditions of release as ordered by the Court, and

(b) the Defendant knowingly and voluntarily joined the conspiracy.

I certify that this is a true and correct copy of the original filed in my office on:

2-17-04

Leslie G. Whitmer, Clerk

By M. Heaberlin  
Deputy Clerk

Date: 9-01-06

OHIO STATE MEDICAL BOARD

SEP 05 2006

4. As to Count One, the United States could prove the following facts, which accurately represent the Defendant's offense conduct and establish the essential elements of the offense, beyond a reasonable doubt:

On July 15, 2002, a federal grand jury at Ashland, Kentucky, returned Indictment No. 02-CR-11-01 against David Herbert Procter charging him with one count of conspiracy to distribute controlled substances, and three substantive counts of dispensing controlled substances.

On July 22, 2002, he was arraigned on the Indictment and plead not guilty. His bond was set at \$10,000.00, unsecured, and his travel was restricted to the Eastern District of Kentucky and the Southern District of Ohio.

On April 28, 2003, he entered a plea of guilty to three counts of the indictment. His sentencing hearing was set for August 18, 2003, at 1:30 p.m. at Ashland, Kentucky. He was released on the condition that he continue on the \$10,000.00 unsecured bond, and appear in Court as ordered. Additionally, his travel was restricted to the Eastern District of Kentucky and the Southern District of Ohio, plus he was ordered to surrender his Canadian passport.

In August of 2003, David Herbert Procter entered into a conspiracy with Carolyn Sue Lykins and Gary Franklin Billiter to flee the jurisdiction of the United States District Court at Ashland, Kentucky, and to avoid a sentence of incarceration by surreptitiously traveling from the Ashland, Kentucky area through Canada to the Cayman Islands in the British West Indies. David Herbert Procter intended to relocate in the Cayman Islands in the British West Indies and begin a new medical practice with the help of co-conspirators Carolyn Sue Lykins and Gary Franklin Billiter.

On August 13, 2003, David Herbert Procter and Carolyn Sue Lykins met with Gary Franklin Billiter in his law offices in Portsmouth, Ohio. Gary Franklin

**OHIO STATE MEDICAL BOARD**

SEP 05 2006

Billiter agreed to help David Herbert Procter relocate and become licensed in the Cayman Islands to practice medicine. Gary Franklin Billiter was paid a sum of money for his part of the agreement. Further, he agreed to travel to the Cayman Islands in advance of David Herbert Procter and Carolyn Sue Lykins and make ready for their arrival.

On August 13, 2003, David Herbert Procter stayed overnight at a motel in the Ashland/Cattletsburg, Kentucky area. While there, he was visited by Carolyn Sue Lykins. Also on that day, Carolyn Sue Lykins furnished David Herbert Procter with her Jeep Grand Cherokee automobile.

On August 14, 2003, Carolyn Sue Lykins gathered materials from which she could establish a new identity. Also on that day, Carolyn Sue Lykins obtained cash from the Kentucky Farmers Bank, Cattletsburg, Kentucky, in excess of \$30,000.00. Later, David Herbert Procter reserved two sets of airline tickets at Christie Cruise Travel Masters in Ashland, Kentucky, on Air Canada as follows: (1) Friday, August 15, 2003, Toronto, Canada to Vancouver, Canada, (2) Saturday, August 16, 2003, Vancouver, Canada to Toronto, Canada, and (3) Sunday, August 17, 2003, from Toronto, Canada to Grand Cayman, Cayman Islands.

Still later on August 14, 2003, David Herbert Procter and Carolyn Sue Lykins drove in separate cars to Cincinnati, Ohio, where Carolyn Sue Lykins obtained an Ohio Identification card in a name other than Carolyn Sue Lykins. Next, David Herbert Procter drove a Jeep Cherokee and Carolyn Sue Lykins drove a Volkswagen from Cincinnati, Ohio, to a place in Toledo, Ohio. Shortly thereafter, they departed Toledo, Ohio, en route to Detroit, Michigan, in the Jeep Grand Cherokee, and left the Volkswagen in Toledo, Ohio.

Late on August 14 or early on August 15, 2003, David Herbert Procter and Carolyn Sue Lykins attempted to enter Canada in the Jeep Grand Cherokee via the Detroit, Michigan, tunnel between the United States and Canada. At the time they attempted to enter Canada, David Herbert Procter and Carolyn Sue Lykins had in their possession some of the following items:

- \* \$40,785.00 in cash,
- \* an Ohio Identification Card,
- \* a Kentucky birth certificate,
- \* several bags of luggage, and
- \* a flight itinerary on Air Canada as follows:  
(1) Friday, August 15, 2003, Toronto, Canada  
to Vancouver, Canada, (2) Saturday, August 16,  
2003, Vancouver, Canada to Toronto, Canada, and  
(3) Sunday, August 17, 2003, from Toronto, Canada  
to Grand Cayman, Cayman Islands.

5. No agreement exists between the United States and the Defendant about what his sentence will be; however, the United States will not oppose a sentence to run concurrently with the Defendant's sentence on Ashland, Kentucky Indictment No. 02-CR-11-01.

6. The maximum statutory punishment for Count One of the Indictment is not more than 5 years imprisonment, a fine of not more than \$250,000.00, or both, and a term of supervised release of 3 years. There is a mandatory special assessment of \$100.00 per count, a total of \$100.00, pursuant to Title 18, United States Code, Section 3013 which applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

7. The United States and the Defendant acknowledge that the following sentencing guidelines calculations apply to the Defendant but do not bind the Court.

(a) United States Sentencing Guidelines, November

1, 2003, manual will determine the Defendant's guideline range.

(b) Pursuant to U.S.S.G. § 2J1.6(a)(2), the base offense level is 6 for failure to appear by the defendant.

(c) Pursuant to U.S.S.G. § 2J1.6(b)(2)(A), the base offense level is increased 9 levels because the underlying offense was punishable by a term exceeding 15 years.

(d) Pursuant to U.S.S.G. § 3E1.1(a), the base offense level is decreased by 2 levels for acceptance of responsibility.

(e) There is no agreement as to the criminal history.

8. The Defendant will cooperate fully with the United States in the investigation and prosecution of the matters in the Indictment, including testifying truthfully in all proceedings should the United States decide to call him as a witness.

9. The United States will not bring additional charges against the Defendant in the Eastern District of Kentucky based upon evidence in its possession at the time of the execution of this Agreement and arising out of the

Defendant's conduct within the Eastern District of Kentucky, unless the Defendant breaches this Agreement.

10. This Agreement does not bind the United States Attorney's Offices in districts other than the Eastern District of Kentucky, concerning matters under investigation or prosecution in the other districts.

11. All statements and testimony that the Defendant provides must be truthful. This Agreement does not preclude the prosecution of the Defendant for perjury or making false declarations relating to statements or any testimony rendered pursuant to this Agreement.

12. If the Defendant is unable to pay the mandatory special assessment, the Defendant will complete and sign a Form OBD-500 (Financial Statement of Debtor).

13. The Defendant waives the statutory right to appeal the guilty plea and conviction. The Defendant also waives the statutory right to attack collaterally the guilty plea and conviction.

14. If the Defendant violates any part of this Agreement, the United States has the option of voiding this Agreement and seeking an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

KY STATE MEDICAL BOARD

SEP 05 2006

15. This document contains the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky, and the Defendant. No other promises have been made to the Defendant.

16. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

GREGORY F. VAN TATENHOVE  
UNITED STATES ATTORNEY

Date: 12/30/03

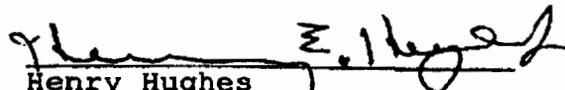
By:

  
Patrick H. Molloy  
Edwin J. Walbourn III  
Assistant U.S. Attorneys

Date: 12/30/03

  
DAVID HERBERT PROCTER, M.D.  
Defendant

Date: 12/20/03

  
Henry Hughes  
Attorney for Defendant

APPROVED, this 17<sup>th</sup> day of February, 2004.

OHIO STATE MEDICAL BOARD

SEP 05 2006



HON. DAVID BUNNING  
U.S. DISTRICT JUDGE

**OHIO STATE MEDICAL BOARD**

SEP 05 2006

# UNITED STATES DISTRICT COURT

EASTERN

District of

KENTUCKY

UNITED STATES OF AMERICA  
V.

DAVID HERBERT PROCTER

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Case Number: 03-4

HENRY HUGHES  
Defendant's Attorney

AMY BLOSSER COURT REPORTER

**Eastern District of Kentucky  
FILED**

**THE DEFENDANT:**

pleaded guilty to count(s) 1S OF THE INDICTMENT.

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

**FEB 17 2004**

**AT COVINGTON  
LESLIE O. WHITMER  
CLERK U.S. DISTRICT COURT**

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

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18:371	Conspiracy to Committ Offense Against the United States	July, 2003	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) 2 is  are dismissed on the motion of the United States.

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

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 07273-032

Defendant's Residence Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

February 17, 2004

Date of Imposition of Judgment

*David L. Buring*  
Name and Title of Judicial Officer

February 17, 2004  
Date

**OHIO STATE MEDICAL BOARD**

**SEP 05 2006**

I certify that this is a true and correct copy of the \_\_\_\_\_ office on: \_\_\_\_\_

By M. Heisterkamp Clerk

Date: 9-1-06

AO 245B (Rev. 12/03) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 2 of 6

DEFENDANT: David Herbert Proctor  
CASE NUMBER: 03-4-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Eighteen (18) months to run concurrent with Defendant's term of incarceration in Ashland Indictment #02-CR-11.**

The court makes the following recommendations to the Bureau of Prisons:  
FCI in Lexington, Kentucky

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

OHIO STATE MEDICAL BOARD

SEP 05 2006

DEFENDANT: David Herbert Proctor  
CASE NUMBER: 03-4-1

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

**IN THE EVENT MR. PROCTOR GAINS LEGAL RIGHT TO BE A CITIZEN OF THE UNITED STATES, HE IS TO BE PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE (3) YEARS, TO BE SERVED CONCURRENTLY TO THE SUPERVISION TERM OF THREE (3) YEARS LEVIED IN ASHLAND INDICTMENT #02-CR-11.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

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

OHIO STATE MEDICAL BOARD

SEP 05 2006

AO 245B (Rev. 12/03) Judgment in a Criminal Case  
Sheet 3C - Supervised Release

Judgment - Page 4 of 6

DEFENDANT: David Herbert Proctor  
CASE NUMBER: 03-4-1

**SPECIAL CONDITIONS OF SUPERVISION**

The Defendant shall participate in a substance abuse treatment program and shall submit to periodic drug and alcohol testing at the direction and discretion of the probation officer during the term of supervision.

The Defendant shall participate in a program of mental health treatment at the direction and discretion of the probation officer, until such time as the defendant is released from the program by the probation officer.

The Defendant shall submit his person, residence and curtilage, office or vehicle to a search, upon direction and discretion of te United States Probation Office.

**ACKNOWLEDGMENT**

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
U.S. Probation Officer/Designated Witness

\_\_\_\_\_  
Date

OHIO STATE MEDICAL BOARD

SEP 05 2006



DEFENDANT: David Herbert Proctor  
CASE NUMBER: 03-4-1

**SCHEDULE OF PAYMENTS**

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

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Clerk, U.S. District Court  
Eastern District of Kentucky  
P.O. Box 1073  
Covington, Kentucky 41012

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

**OHIO STATE MEDICAL BOARD**

SEP 05 2006

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



APR 30 2004

David H. Procter, M.D.  
Fayette County Detention Center  
600 Old Frankford Circle  
Lexington, Kentucky 40510

Dear David H. Procter:

Re: OI File Number 4-04-40668-9

This is to notify you that you are being excluded in any capacity from participation in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act (Act) for a minimum period of 25 years. This action is being taken under section 1128(a)(4) of the Act (42 U.S.C. 1320a-7(a)) and is effective 20 days from the date of this letter. This exclusion is due to your felony conviction as defined in section 1128(i) (42 U.S.C. 1320a-7(i)), in the United States District Court, Eastern District of Kentucky, State of Kentucky, of a criminal offense related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

Section 1128(c)(3)(B) of the Act provides that the minimum period of exclusion shall be not less than 5 years. Your period of exclusion is greater than that because our records contain evidence of the following circumstances:

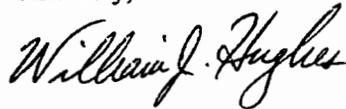
1. The acts that resulted in the conviction, or similar acts, were committed over a period of one year or ore. The acts that led to your conviction occurred from about November 1996 and continued through about June 2002.
2. The sentence imposed by the court included incarceration. The court sentenced you to 200 months imprisonment.
3. The convicted individual or entity was convicted of other offenses besides those which formed basis for the exclusion, or has been the subject of any other adverse action by a Federal, State or local government agency or aboard, if the adverse action is based on the same set of circumstances that serves as the basis for imposition of the exclusion. Your license to practice as a medical doctor was voluntarily surrendered to the Kentucky Board of Medical Licensure.

A detailed explanation of the authority for this exclusion, its effect, and your appeal rights is enclosed and is incorporated as part of this notice by specific reference. You should read this document carefully, act upon it as necessary, and retain it for future reference.

Page 2 - David H. Procter, M.D.  
OI File No. 4-04-40668-9

**REINSTATEMENT IS NOT AUTOMATIC. You must apply to the Office of Inspector General (OIG) and be granted reinstatement by the OIG. Obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate your eligibility to participate in those programs.**

Sincerely,



William J. Hughes  
Reviewing Official  
Health Care Program Exclusions  
Office of Counsel to the Inspector General

Enclosure

cc: Special Agent in Charge of Investigations, Atlanta



**Please read carefully and retain until your reinstatement is granted by  
the Office of Inspector General**

You are excluded from participation in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) (42 U.S.C. 1320a-7b) of the Social Security Act. The effect of this exclusion is that no program payment will be made to you for anything that you do, order, or prescribe, or to any employer for anything that you do, order, or prescribe to program patients (other than an emergency item or service not provided in a hospital emergency room), except as provided in regulations found at 42 CFR 1001.1901(c), during the period you are excluded.

This exclusion is global, regardless of your job or location. It applies in all States and in all programs. It applies to all Federal procurement and non-procurement programs and activities.

Your exclusion affects your ability to claim payment from these programs for items or services you render; your exclusion does not affect your ability to receive benefits under these programs.

The Office of Inspector General (OIG) is required to notify all applicable State agencies of your exclusion under 42 U.S.C. 1320a-7(d), and they are required to exclude you for at least the same period of time and until the OIG reinstates you. The OIG's exclusion is in addition to any sanction an individual State or other Federal agency may impose under its own authority. Notice will be provided to the public and other parties in accordance with 42 U.S.C. 1320a-7.

Notwithstanding 42 U.S.C. 1395w-4(g)(4), any service you provide is a non-covered service. Therefore, you cannot submit claims or cause claims to be submitted for payment under any Federal health care program. Violations of the conditions of your exclusion may subject you to criminal prosecution, the imposition of civil monetary penalties (42 U.S.C. 1320a-7a - U.S.C. 1320a-7b), and the denial of your reinstatement to the programs.

You may request a hearing before an administrative law judge in accordance with 42 CFR 1001.2007. Such a request must be made in writing within 60 days of your receiving the OIG's letter of exclusion and sent to Chief, Civil Remedies Division, Departmental Appeals Board, MS 6132, 330 Independence Avenue, SW, Cohen Building, Room G-644, Washington, D.C. 20201. Such a request must be accompanied by a copy of the OIG's letter, a statement as to the specific issues or findings with which you disagree, along with the basis for your contention that the specific issues and/or findings are incorrect.

**YOUR REINSTATEMENT IS NOT AUTOMATIC.** You will not be reinstated at the conclusion of the minimum period of exclusion, or anytime thereafter, **UNLESS YOU APPLY TO THE OIG AND ARE GRANTED REINSTATEMENT** to the Medicare and Federal health care programs under the provisions of 42 U.S.C. 1320a-7(g) and 42 CFR 1001.3001-.3005. A request for reinstatement may be made to the OIG no earlier than 90 days prior to the expiration of the minimum period of exclusion. The request must be made in writing and should be sent to the Director, Exclusions Staff, Office of Investigations, Room N2-01-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Upon receipt of the request, the OIG will notify you of the information and documentation it requires to reach a decision on your reinstatement.

**Obtaining a license or obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate your eligibility to participate in those programs.**



# State Medical Board of Ohio

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

November 8, 2000

David H. Procter, M.D.  
Rt. 1 Box 419P  
South Shore, KY 41175

Dear Doctor Procter:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 8, 2000, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0022 4402 8805  
RETURN RECEIPT REQUESTED

cc: William K. Shaw, Jr., Esq.  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0022 4402 8799  
RETURN RECEIPT REQUESTED

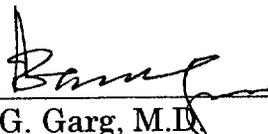
*Mailed 11.13.00*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 8, 2000, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of David H. Procter, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

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

\_\_\_\_\_  
NOVEMBER 8, 2000  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

DAVID H. PROCTER, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on November 8, 2000.

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

It is hereby ORDERED that:

1. The certificate of David H. Procter, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.
2. Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Procter shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds a any professional license. Dr. Procter shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Procter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
3. Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Procter shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Procter has

privileges or appointments. Further, Dr. Procter shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Procter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

4. The Board shall not consider reinstatement of Dr. Procter's certificate to practice unless all of the following minimum requirements have been met:
  - a. Dr. Procter shall submit an application for reinstatement, accompanied by appropriate fees, if any.
  - b. Dr. Procter shall maintain compliance with all terms and conditions of this Order, unless otherwise determined by the Board.
  - c. Upon submission of his application for reinstatement, Dr. Procter shall provide the Board with acceptable documentation evidencing his full and unrestricted licensure in the State of Kentucky.
  - d. Prior to submission of his application for reinstatement, Dr. Procter shall commence appropriate neurologic treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by a neurologist approved in advance by the Board. Dr. Procter shall submit to the Board for its prior approval the name and qualifications of a neurologist of his choice.

Prior to the initial assessment, Dr. Procter shall furnish the approved neurologist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that neurologist. Within ten days after the completion of the initial assessment, Dr. Procter shall cause a written report to be submitted to the Board from the approved neurologist. The written report shall include:

- i. A detailed plan of recommended treatment based upon the neurologist's informed assessment of Dr. Procter's current needs; and
- ii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Dr. Procter shall undergo and continue treatment at such intervals as are deemed appropriate by the treating neurologist, or as otherwise directed by the Board.

- e. Upon submission of his application for reinstatement, Dr. Procter shall provide the Board with written reports of evaluation by a neurologist acceptable to the Board indicating that Dr. Procter's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such assessment shall have been performed within sixty days prior to his application for reinstatement. Moreover, the report shall describe with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Procter's practice.
  - f. Upon submission of his application for reinstatement, Dr. Procter shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Procter's physical and/or mental conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
  - g. In the event that Dr. Procter has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
5. Upon reinstatement, Dr. Procter's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least five years:
- a. Dr. Procter shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  - b. Dr. Procter shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- c. Dr. Procter shall appear in person for interviews before the full Board or its designated representative during the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first personal appearance must occur during the fourth month following. Subsequent personal appearances must occur every third month thereafter, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Procter's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Procter shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- d. Dr. Procter shall continue treatment with the neurologist approved by the Board prior to Dr. Procter's reinstatement, at such intervals as are deemed appropriate by the treating neurologist. Dr. Procter shall continue in treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating neurologist. Dr. Procter shall ensure that neurologic reports are forwarded by the treating neurologist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Procter's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Procter's quarterly declaration.
- e. Dr. Procter shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Procter's neurologic and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
- f. Dr. Procter shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should Dr. Procter commence practice in Ohio, the Board may place his certificate under additional probationary terms, conditions, or limitations, including the following:
  - i. Prior to commencement of practice in Ohio, Dr. Procter shall submit to the Board a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in

which Dr. Procter's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. At the time Dr. Procter submits his application for reinstatement, he shall also submit for the Board's prior approval the name of a monitoring physician. Dr. Procter shall receive the Board's approval for the plan of practice and the monitoring physician prior to commencing practice in Ohio.

- ii. Dr. Procter shall practice in accordance with the plan of practice approved by the Board prior to his reinstatement. The monitoring physician shall monitor Dr. Procter and provide the Board with reports on Dr. Procter's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Procter's quarterly declaration. It is Dr. Procter's responsibility to ensure that the reports are timely submitted.

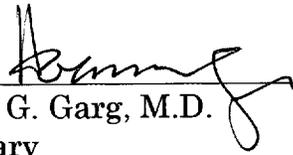
In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Procter shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Procter shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Procter shall 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.

- iii. Dr. Procter shall obtain the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to his commencement of practice in Ohio.
- g. In the event that Dr. Procter should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Procter must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- h. If Dr. Procter violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- i. If Dr. Procter violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

6. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Procter's certificate will be fully restored.

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

(SEAL)

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

NOVEMBER 8, 2000  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF DAVID H. PROCTER, M.D.**

The Matter of David H. Procter, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on September 21, 2000.

**INTRODUCTION**

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated July 14, 1999, the State Medical Board of Ohio [Board] notified David H. Procter, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of his certificate to practice medicine and surgery in Ohio. The Board further advised Dr. Procter that his continued practice of medicine in Ohio would be considered practicing medicine without a certificate, in violation of Section 4731.41, Ohio Revised Code. (State's Exhibit 1A).

Moreover, the Board notified Dr. Procter that the Board had proposed to take disciplinary action against his certificate. The Board based its proposed action on its allegations that, on or about June 18, 1999, the Kentucky Board of Medical Licensure [Kentucky Board] had entered an Emergency Order of Suspension, immediately suspending Dr. Procter's Kentucky medical license. The Emergency Order of Suspension was based upon the conclusion of the Kentucky Board that probable cause had been established to believe that Dr. Procter's practice constituted a danger to—and that an emergency order was necessary to protect, the health, welfare and safety of—Dr. Procter's patients and the general public.

The Board alleged that the Emergency Order of Suspension issued by the Kentucky Board constitutes “[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

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

- B. On August 11, 1999, William K. Shaw, Jr., Esq., submitted a written hearing request on behalf of Dr. Procter. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Anne B. Strait, Assistant Attorney General.
- B. On behalf of the Respondent: William K. Shaw, Jr., Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

No testimony was presented.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1O: Procedural exhibits.
2. State's Exhibits 2 and 3: Certified copies of documents pertaining to Dr. Procter maintained by the Kentucky Board of Medical Licensure.
3. State's Exhibit 4: Copy of a June 12, 2000, letter regarding Dr. Procter addressed to Mr. Shaw from Phillip Fisher, D.O., Ph.D., FAADEP, Huntington Spine Rehab & Pain Center, Huntington, West Virginia. (Note: Exhibit sealed to protect patient confidentiality.)
4. State's Exhibit 5: Copy of a June 12, 2000, letter regarding Dr. Procter addressed to Mr. Shaw from James F. Phifer, Ph.D., P.S.C., Tri-State Neuropsychological Consulting, Huntington, West Virginia. (Note: Exhibit sealed to protect patient confidentiality.)

B. Presented by the Attorney Hearing Examiner

Board Exhibit A: Section 311. 595, Kentucky Revised Statutes.

STATE MEDICAL BOARD  
2000 001 11 P 5:06

### **PROCEDURAL MATTERS**

In July 1999, the Board issued its Notice of Summary Suspension and Opportunity for Hearing based on an Emergency Order of Suspension issued by the Kentucky Board in June 1999. Dr. Procter requested a hearing in this matter but, by the agreement of the parties, the matter before this Board was continued pending final resolution of the matter before the Kentucky Board. The Kentucky Board issued its Agreed Order of Surrender in August 2000.

The Agreed Order of Surrender contains a section entitled Stipulations of Fact which states that "the parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Surrender." In the Stipulations of Fact, the Kentucky Board reiterated the allegations against Dr. Procter as set forth in the initial Emergency Order Suspension. Also included in the Stipulations of Fact, however, are Dr. Procter's denials of most of the allegations.

The Agreed Order of Surrender also contains a section entitled Stipulated Conclusions of Law. In that section, the Agreed Order of Surrender sets forth its legal conclusions, specifically stating that the legal bases for the Kentucky Board action had been the allegations which Dr. Procter had admitted. The Stipulated Conclusions of Law further stated that, had the matter proceeded to hearing, the remaining allegations would have provided additional legal bases for disciplinary action. Thereafter, the Agreed Order of Surrender set forth the terms of the surrender.

After the Kentucky Board issued its Agreed Order of Surrender, this Board did not amend its original allegations against Dr. Procter to include the Agreed Order of Surrender. Nevertheless, at hearing, Dr. Procter agreed that he Dr. Procter would not object to the Board's consideration of the Agreed Order of Surrender when resolving this matter.

Dr. Procter did object, however, to the Board's considering any of the Kentucky Board's allegations against Dr. Procter other than those to which Dr. Procter admitted in the Agreed Order of Surrender. Counsel for the State concurred in Dr. Procter objections. Therefore, the scope of this hearing record has been limited to the fact that the Kentucky Board had issued an Emergency Order Suspension and the allegations raised therein, and to the Kentucky Board's Agreed Order of Surrender and the stipulated facts and conclusions which provided the legal bases for that action. (See the Hearing Transcript at 6, 16-22).

### SUMMARY OF THE EVIDENCE

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

1. On June 18, 1999, the Kentucky Board of Medical Licensure [Kentucky Board] entered an Emergency Order of Suspension, immediately suspending the Kentucky medical license of David H. Procter, M.D. The Emergency Order of Suspension was based upon the conclusion of the Kentucky Board, acting by and through its Inquiry Panel B, that probable cause had been established to believe that Dr. Procter's practice constituted a danger to—and that an emergency order was necessary to protect, the health, welfare and safety of—Dr. Procter's patients and the general public. (St. Ex. 2).

In the Emergency Order of Suspension, the Kentucky Board found that there was probable cause to warrant findings of fact, which included the following:

- a. Dr. Procter had engaged in sexual activity, including fondling, kissing, oral sex, and/or sexual intercourse, with three female patients during such patients' office visits.
- b. A Board consultant who reviewed more than sixty of Dr. Procter's patient charts had concluded that:
  - i. There were "a great many problems with every chart";
  - ii. Dr. Procter had "engaged in conduct that departed from and failed to conform to the standards of acceptable and prevailing medical practice";
  - iii. Dr. Procter had committed a pattern of acts which would be deemed to be "gross incompetence, gross ignorance, gross negligence or malpractice"; and
  - iv. Dr. Procter's "practice constitute[d] a danger [to] the health, welfare and safety of [Dr. Procter's] patients and the general public."
- c. Following an automobile accident, Dr. Procter was being treated by a neurologist. The neurologist had ordered Dr. Procter not to work due to Dr. Procter's having a memory deficit secondary to a closed head injury suffered in the traffic accident.
- d. After performing a neuropsychological evaluation of Dr. Procter, a psychologist had concluded that "[g]iven the severity of impairment of frontal lobe executive functions \* \* \* and the potential detrimental impact of these deficits on patient care, it is

recommended that [Dr. Procter] refrain from practicing medicine until these deficits have remitted sufficiently to permit adequate performance of his essential job duties.”

(St. Ex. 2). (Note: Please see State’s Exhibit 3 at 13 et seq., for a copy of the consultant’s review of Dr. Procter’s patient charts.)

2. On August 17, 2000, the Kentucky Board issued an Agreed Order of Surrender. In the Agreed Order of Surrender, there is a section entitled “Stipulations of Fact” which serve as “the factual bases” for the Agreed Order of Surrender. The Stipulations of Fact reiterate the allegations set forth in the Emergency Order of Suspension. The Stipulations of Fact further advise, however, that Dr. Procter denies all allegations but for those pertaining to his memory deficit and neuropsychological impairment. (St. Ex. 3 at 2-8).

The allegations to which Dr. Procter admitted included the following:

- a. Dr. Procter had sustained injuries in an automobile crash on November 8, 1998.
  - b. As a result of the injuries, Dr. Procter underwent a neuropsychological evaluation. The report of the evaluation concluded that “given the severity of the impairment of frontal lobe executive functions (difficulties with concentration, ability to manage simultaneous demands, impaired ability to shift mental ‘set’) and the potential detrimental impact of these deficits on patient care, it is recommended that [Dr. Procter] refrain from practicing medicine until these deficits have remitted sufficiently to permit adequate performance of his essential job duties.”
  - c. Dr. Procter had voluntarily ceased the practice of medicine, and had not practiced medicine since December 4, 1998.
  - d. Finally, Dr. Procter had advised the Kentucky Board that “the medical and physical impairment, which prevents [Dr. Procter] from being able to practice medicine safely, is likely a permanent condition.” (St. Ex. 3 at 7-8).
3. In the Agreed Order of Surrender, there is a section entitled “Stipulated Conclusions of Law.” The Stipulated Conclusions of Law provides that:

Based on the Stipulations of Fact, [Dr. Procter] has developed a physical or mental disability, or other condition, such that continued practice is dangerous to patients or the public. Accordingly, there is a legal basis for the Board to impose disciplinary sanctions against his Kentucky medical license pursuant to KRS 311.595(8).

(St. Ex. 3 at 8). Section 311.595(8), Kentucky Revised Statutes, provides that the Kentucky Board may take action against a licensee who has “[d]eveloped a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public.” (Board Exhibit A).

The Stipulated Conclusions of Law further provides that:

Although [Dr. Procter] contests the allegations regarding his prescribing practice, the fee-splitting allegations and the allegations of sexual conduct with patients, he agrees that the Board would present evidence at the evidentiary hearing which would provide a basis for the Hearing Panel to conclude that there is substantial evidence that the licensee has violated KRS 311.595(5) [sexual conduct with a patient], 311.595(19) [fee-splitting], and 311.595(9) [dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof] \* \* \*. Such violations would provide additional legal authority for the Board to impose disciplinary sanctions against [his] Kentucky medical license.

(St. Ex. 3 at 8-9).

4. Finally, in the Agreed Order of Surrender, Dr. Procter and the Kentucky Board agreed that Dr. Procter would “surrender his Kentucky medical license, in lieu of revocation, for an indefinite period of time.” The Agreed Order of Surrender further provided that Dr. Procter may not petition for reinstatement of his license for a minimum period of two years. In addition, should Dr. Procter request reinstatement, he must show that “he is presently of good moral character and qualified both mentally and physically to resume the practice of medicine without undue risk or danger to his patients or the public. Moreover, Dr. Procter agreed to submit to evaluations and assessments at his own expense, and granted the Kentucky Board “full discretion” in determining whether to reinstate his license. Finally, Dr. Procter agreed that, if he is reinstated, he will be placed on probation for two to five years and that any violation of the probationary terms will result in the revocation of his license. (St. Ex. 3 at 9-10).

5. In a June 12, 2000, letter to Dr. Procter’s counsel, Phillip Fisher, D.O., Ph.D., FAADEP, Huntington Spine Rehab & Pain Center, Huntington, West Virginia, wrote as follows:

Your second question asks if Dr. Procter is currently able physically and mentally to practice medicine in a restricted or unrestricted basis. To put it quite bluntly, this man has no business practicing medicine in any form. He should not practice medicine either as a treating physician or even as an evaluating physician where no treatment is rendered. Previously, I had hoped that he would recover enough that he would at least be able to do chart

reviews where he would be able to examine medical data presented to him and process the information at his own pace. However, it is becoming more and more clear that even that niche of medical practice is beyond his grasp.

\* \* \* He is currently functioning at a very concrete level with very poor insight into the consequences or ramifications of his actions or responses. This is further confirmed by a follow-up neuropsychological evaluation performed by Dr. James Phifer, which was performed several weeks ago. Essentially, the results of this neuropsychological evaluation were so variable and non-reproducible that they are essentially useless. In my opinion, this may very well represent an example as to how he has a very dismissive attitude toward important testing which is often associated with a lack of insight into priorities and the inability to comprehend questions, situations, and ramifications of his answers.

(St. Ex. 4).

6. In a June 12, 2000, letter to Dr. Procter's counsel, James F. Phifer, Ph.D., P.S.C., Tri-State Neuropsychological Consulting, Huntington, West Virginia, advised that Dr. Procter was not mentally capable of practicing medicine. Dr. Phifer stated that Dr. Procter had exhibited "a mild to moderate global decline in all areas of intellectual functioning," including speed of mental processing and cognitive flexibility. Dr. Phifer further advised that:

With regard to his ability to practice medicine, the decline in his speed of processing will influence the speed at which he is able to retrieve necessary information (e.g. the appropriate medication and dosage for a particular malady) and the speed at which he is able to make diagnostic/treatment decisions (i.e., 'think on his feet'). His difficulty with cognitive flexibility means that he is prone to perseverating on (i.e. maintaining) a particular course of action despite feedback from the situation that would suggest some other course of action may be more appropriate (e.g., the side effects stemming from use of a particular medication suggest that another medication would be more appropriate). It is my professional opinion that these deficits would preclude Dr. Procter from safely and competently practicing medicine in any manner that involves direct patient contact. It would appear that the potential for errors in judgment (e.g., the failure to recognize or respond to specific symptom profiles, failure to generate appropriate treatment protocols in a rapid manner) would create an unacceptable risk to any potential patient.

(St. Ex. 5).

### FINDINGS OF FACT

1. On June 18, 1999, the Kentucky Board of Medical Licensure [Kentucky Board] entered an Emergency Order of Suspension, immediately suspending the Kentucky medical license of David H. Procter, M.D. The Emergency Order of Suspension was based upon the conclusion of the Kentucky Board that probable cause had been established to believe that Dr. Procter's practice constituted a danger to—and that an emergency order was necessary to protect—the health, welfare and safety of Dr. Procter's patients and the general public.

In the Emergency Order of Suspension, the Kentucky Board found that “there [was] probable cause to warrant findings of fact that:

- a. Dr. Procter had engaged in sexual activity with three female patients during such patients' office visits.
  - b. A consultant who had reviewed more than sixty of Dr. Procter's patient charts concluded that Dr. Procter had “engaged in conduct that departed from and failed to conform to the standards of acceptable and prevailing medical practice,” that Dr. Procter had committed a pattern of acts which would be deemed to be “gross incompetence, gross ignorance, gross negligence or malpractice,” and that Dr. Procter's “practice constitutes a danger [to] the health, welfare and safety of [his] patients and the general public.”
  - c. Dr. Procter's neurologist had ordered Dr. Procter not to work due to his having a memory deficit secondary to a closed head injury suffered in a traffic accident.
  - d. After performing a neuropsychological evaluation of Dr. Procter, a psychologist had concluded that “[g]iven the severity of impairment of frontal lobe executive functions \* \* \* and the potential detrimental impact of these deficits on patient care, it is recommended that [Dr. Procter] refrain from practicing medicine until these deficits have remitted sufficiently to permit adequate performance of his essential job duties.”
2. On August 17, 2000, the Kentucky Board issued an Agreed Order of Surrender. In the Agreed Order of Surrender, Dr. Procter agreed to an indefinite suspension of his license to practice in Kentucky. The legal basis for the Agreed Order of Surrender was the fact that Dr. Procter “has developed a physical or mental disability, or other condition, such that continued practice is dangerous to patients or the public,” pursuant to KRS 311.595(8).

### CONCLUSIONS OF LAW

The Emergency Order of Suspension issued by the Kentucky Board in the matter of David H. Procter, M.D., as alleged in paragraph (1) above, constitutes “[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

### PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of David H. Procter, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.
2. Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Procter shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds a any professional license. Dr. Procter shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Procter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
3. Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Procter shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Procter has privileges or appointments. Further, Dr. Procter shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Procter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

4. The Board shall not consider reinstatement of Dr. Procter's certificate to practice unless all of the following minimum requirements have been met:
  - a. Dr. Procter shall submit an application for reinstatement, accompanied by appropriate fees, if any.
  - b. Dr. Procter shall maintain compliance with all terms and conditions of this Order, unless otherwise determined by the Board.
  - c. Upon submission of his application for reinstatement, Dr. Procter shall provide the Board with acceptable documentation evidencing his full and unrestricted licensure in the State of Kentucky.
  - d. Prior to submission of his application for reinstatement, Dr. Procter shall commence appropriate neurologic treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by a neurologist approved in advance by the Board. Dr. Procter shall submit to the Board for its prior approval the name and qualifications of a neurologist of his choice.

Prior to the initial assessment, Dr. Procter shall furnish the approved neurologist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that neurologist. Within ten days after the completion of the initial assessment, Dr. Procter shall cause a written report to be submitted to the Board from the approved neurologist. The written report shall include:

- i. A detailed plan of recommended treatment based upon the neurologist's informed assessment of Dr. Procter's current needs; and
- ii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Dr. Procter shall undergo and continue treatment at such intervals as are deemed appropriate by the treating neurologist, or as otherwise directed by the Board.

- e. Upon submission of his application for reinstatement, Dr. Procter shall provide the Board with written reports of evaluation by a neurologist acceptable to the Board indicating that Dr. Procter's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such assessment shall have been performed within sixty days prior to his application for reinstatement. Moreover, the report shall describe with

particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Procter's practice.

- f. Upon submission of his application for reinstatement, Dr. Procter shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Procter's physical and/or mental conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
  - g. In the event that Dr. Procter has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
5. Upon reinstatement, Dr. Procter's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Procter shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  - b. Dr. Procter shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  - c. Dr. Procter shall appear in person for interviews before the full Board or its designated representative during the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first personal appearance must occur during the fourth month following. Subsequent personal appearances must occur every third month thereafter, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is

Dr. Procter's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Procter shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- d. Dr. Procter shall continue treatment with the neurologist approved by the Board prior to Dr. Procter's reinstatement, at such intervals as are deemed appropriate by the treating neurologist. Dr. Procter shall continue in treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating neurologist. Dr. Procter shall ensure that neurologic reports are forwarded by the treating neurologist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Procter's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Procter's quarterly declaration.
- e. Dr. Procter shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Procter's neurologic and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
- f. Dr. Procter shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should Dr. Procter commence practice in Ohio, the Board may place his certificate under additional probationary terms, conditions, or limitations, including the following:
  - i. Prior to commencement of practice in Ohio, Dr. Procter shall submit to the Board a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Procter's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. At the time Dr. Procter submits his application for reinstatement, he shall also submit for the Board's prior approval the name of a monitoring physician. Dr. Procter shall receive the Board's approval for the plan of practice and the monitoring physician prior to commencing practice in Ohio.
  - ii. Dr. Procter shall practice in accordance with the plan of practice approved by the Board prior to his reinstatement. The monitoring physician shall monitor Dr. Procter and provide the Board with reports on Dr. Procter's progress and status on a quarterly basis. All monitoring physician reports required under this

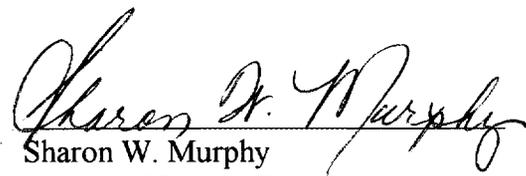
STATE MEDICAL BOARD  
OHIO

paragraph must be received in the Board's offices no later than the due date for Dr. Procter's quarterly declaration. It is Dr. Procter's responsibility to ensure that the reports are timely submitted.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Procter shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Procter shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Procter shall 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.

- iii. Dr. Procter shall obtain the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to his commencement of practice in Ohio.
  
  - g. In the event that Dr. Procter should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Procter must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  
  - h. If Dr. Procter violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
  
  - i. If Dr. Procter violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
6. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Procter's certificate will be fully restored.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 8, 2000

### REPORTS AND RECOMMENDATIONS

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

Dr. Egner asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Edward Miles Birdsong, D.O.; Timothy L. Casten, P.A.; Nasira F. Hasan, M.D.; Elliot L. Neufeld, D.O.; and David H. Procter, M.D. A roll call was taken:

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

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

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

Dr. Agresta	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Egner	- aye

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

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

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

.....

DAVID H. PROCTER, M.D.

.....

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DAVID H. PROCTER, M.D. DR. TALMAGE SECONDED THE MOTION.**

.....

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

Vote:	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

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

## NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

July 14, 1999

David H. Procter, M.D.  
Route 1, Box 419P  
South Shore, Kentucky 41175

Dear Doctor Procter:

Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on July 14, 1999, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code.

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

Additionally, pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the allegations set forth in the Notice of Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO

  
Anand G. Garg, M.D., Secretary

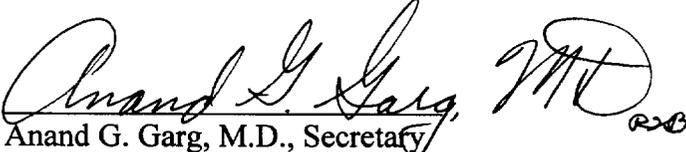
AGG:bj  
Enclosures

Mailed 7/15/99

**CERTIFICATION**

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on July 14, 1999, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

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

  
Anand G. Garg, M.D., Secretary

(SEAL)

7/14/99  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :

**DAVID H. PROCTER, M.D.** :

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 14th day of July, 1999.

Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Anand G. Garg, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination that there is clear and convincing evidence that David H. Procter, M.D., has violated Section 4731.22(B)(22), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Procter's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 14 th day of JULY, 1999 ;

It is hereby ORDERED that the certificate of David H. Procter, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that David H. Procter, M.D., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)

  
Anand G. Garg, M.D., Secretary RJG

JULY 14, 1999  
Date



# State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF JULY 14, 1999

DAVID H. PROCTER, M.D. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**MS. NOBLE MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. PROCTER. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

ROLL CALL:

Mr. Albert	- abstain
Dr. Bhati	- aye
Dr. Talmage	- aye
Dr. Somani	- aye
Dr. Egner	- aye
Mr. Browning	- aye
Dr. Stienecker	- aye
Dr. Buchan	- aye
Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

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

## NOTICE OF OPPORTUNITY FOR HEARING

July 14, 1999

David H. Procter, M.D.  
Route 1, Box 419P  
South Shore, Kentucky 41175

Dear Doctor Procter:

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

- (1) On or about June 18, 1999, the Kentucky Board of Medical Licensure (hereinafter "Kentucky Board") entered an Emergency Order of Suspension, immediately suspending your Kentucky medical license. The Emergency Order of Suspension was based upon the conclusion of the Kentucky Board, acting by and through its Inquiry Panel B, that probable cause had been established to believe that your practice constitutes a danger to, and that an emergency order is necessary to protect, the health, welfare and safety of your patients and the general public.

The Emergency Order of Suspension is supported by findings of fact, found by Inquiry Panel B to be warranted by probable cause. These findings of fact include the following:

- (a) you engaged in sexual activity, including fondling, kissing, oral sex, and/or sexual intercourse, with three female patients during such patients' office visits;
- (b) a consultant who reviewed more than 60 of your patient charts concluded that there were "a great many problems with every chart" reviewed, that you "engaged in conduct that departed from and failed to conform to the standards of acceptable and prevailing medical practice," that you committed a pattern of acts which would be deemed to be "gross incompetence, gross ignorance, gross negligence or

malpractice,” and that your “practice constitutes a danger of the health, welfare and safety of your patients and the general public”;

- (c) your neurologist ordered you not to work due to your having a memory deficit secondary to a closed head injury suffered in a traffic accident; and
- (d) after performing a neuropsychological evaluation of you, a psychologist concluded that “[g]iven the severity of impairment of frontal lobe executive functions ... and the potential detrimental impact of these deficits on patient care, it is recommended that the patient [i.e., you] refrain from practicing medicine until these deficits have remitted sufficiently to permit adequate performance of his essential job duties.”

A copy of the Emergency Order of Suspension is attached hereto and fully incorporated herein.

The Emergency Order of Suspension issued by the Kentucky Board, as alleged in paragraph (1) above, constitutes “[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees; the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

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

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend,

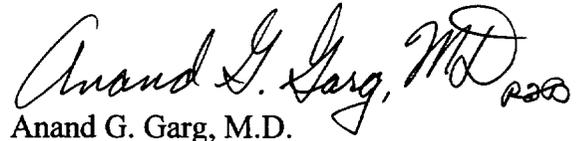
David H. Procter, M.D.

Page 3

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Anand G. Garg, M.D." with a stylized flourish at the end.

Anand G. Garg, M.D.  
Secretary

AGG/bjs  
Enclosures

CERTIFIED MAIL #Z 395 591 287  
RETURN RECEIPT REQUESTED

COMMONWEALTH OF KENTUCKY  
STATE BOARD OF MEDICAL LICENSURE  
CASE NO. 712

FILED OF RECORD  
JUN 18 1999  
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DAVID H. PROCTER, M.D., LICENSE NO. 19140,  
U.S. 23, SOUTH SHORE, KENTUCKY 41175

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at a meeting held on April 14, 1999. Panel B reviewed: a January 28, 1999 investigative memorandum from Doug Wilson, Medical Investigator, regarding allegations made against the licensee by Patient A, with an Investigative Report attached; and, the licensee's February 9, 1998 written response to the allegations made by Patient A; an August 6, 1997 grievance filed by Patient B; a January 28, 1998 investigative memorandum from Mr. Wilson, with an Investigative Report attached; and, the licensee's February 9, 1998 written response to the allegations made by Patient B; an August 16, 1997 grievance filed by Patient C; a January 28, 1999 memorandum by Mr. Wilson regarding that grievance, with an investigative report attached; and, the licensee's February 9, 1998 written response to the allegations made by Patient C; an August 18, 1998 grievance filed by Henry C. Goodman, M.D., with attachments; a January 28, 1999 investigative memorandum by Mr. Wilson regarding this grievance; a November 30, 1998 written response by the licensee's attorney to these allegations; a November 6, 1998 letter from Lisa Banchik, M.D.; a November 30, 1998 letter from R. Scott Scheer, M.D.; a December 18, 1998 letter from Mark L'Hommedieu; and, a report by E.C. Seeley, M.D., Board consultant regarding Grievance No. 99024; a

1999 JUN 23 A 9:38

STATE MEDICAL BOARD  
OF KENTUCKY

January 28, 1999 report by Mr. Wilson regarding information received from the Ohio Pharmacy Board; two memoranda from Ed Crews, CHS Drug Control Unit dated November 20 and December 22, 1998; a listing of controlled substances purchased by the licensee for office use; a 41-page report by L. Douglas Kennedy, M.D., Board consultant; a neuropsychological evaluation by James F. Phifer, Ph.D., with dates of consultation: December 15, 1998, February 5 and 6, 1999; and, the licensee's 1999 Application for Registration of Kentucky Medical/Osteopathic License. Having considered the information before it and being sufficiently advised, Inquiry Panel B hereby ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1) and IMMEDIATELY SUSPENDS the medical license of Dr. Procter.

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B FINDS that there is probable cause to warrant the following FINDINGS OF FACT, which support its Emergency Order of Suspension:

1. At all relevant times, David H. Procter, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. Patient A first contacted the licensee in approximately 1988, while the licensee was treating Patient A's mother. Patient A telephoned the licensee and told him she was going through stress; he called in a prescription for Xanax for her without seeing or evaluating her. She went for her first office visit about two weeks later and continued to obtain Xanax from him for approximately one year. There was an approximate 6-year lapse in their physician-patient relationship. Around August 1996, Patient A saw

1999 JUN 23 AM 9:39  
STATE MEDICAL BOARD  
OF OHIO

the licensee and asked for Lorcet for her headaches. The licensee wrote her a prescription for 30-40 Lorcet #10, with two refills. On a return visit, Patient A told the licensee that two refills was "not getting it done" and the licensee began prescribing 40 Lorcet #10, with three refills. During this time period, the licensee began asking Patient A to go on a date with him. During a later office visit, the licensee noted there was a mole on Patient A's neck and told her to come in after office hours so that he could remove the mole. Patient A returned to the office around 6:30 p.m.; no-one was present except the licensee. He gave her a pain shot and removed the mole from her neck. The licensee then turned the lights down/off and grabbed Patient A. He began to kiss her forcefully and started taking her pants off, fondling her. The licensee then pulled his pants down and had Patient A perform oral sex on him.

3. Patient B became a patient of the licensee's at around age 15 or 16, after being involved in an automobile accident. The licensee prescribed Fioricet for her pain and continued to provide that medication to her over a three-year period, prescribing her 30-40 at a time. At some point, around the age of 18, Patient B had an abortion and suffered from depression after that event. She went to the licensee for treatment of her depression and the licensee told her to write out all of her problems in a letter they could review during her next office visit. During this next office visit, the licensee kissed Patient B on her way out of the office. On the following office visit, after reviewing her latest letter, the licensee began kissing Patient B. He then attempted to have her perform oral sex upon him in the examination room. When she declined, he removed her clothing, laid her on the examination table and had sexual intercourse

STATE MEDICAL BOARD  
OF OHIO

1999 JUN 23 A 9:15

with her. This began a pattern of office visits, in which the licensee would review Patient B's most recent letter with her and then have sexual intercourse with her in his office. After some period, he stopped counseling her during these visits and simply had sexual intercourse with her; however, he would write prescriptions for controlled substances to her. Patient B estimates that she had sexual intercourse with the licensee in his office approximately twenty times. On one occasion, Patient B suffered a drug overdose in the licensee's office and the licensee had his secretary transport Patient B home. After this incident, Patient B entered a drug rehabilitation program.

4. Patient C had been a patient of the licensee's for some time prior to August 1996; during that period, the licensee had spoken to her about working for him. When she took her application to his office after hours, the licensee exposed his penis to her and suggested they engage in sexual acts; she declined and left the office. Around January 1997, Patient C was treated by the licensee at his office for neck pain; the licensee gave her an injection. During this office visit and after she had been sedated, the licensee had her lay on the examination table. He then removed her underwear and performed oral sex upon her.
5. During the course of its investigation, the Board received information from the Ohio Pharmacy Board that the licensee was prescribing excessive amounts of controlled substances to patients who then filled the prescriptions in Ohio. The Board obtained a prescription survey of the four-county area including the licensee's Kentucky practice location. The patient charts of a number of patients were selected and obtained for review. A Board consultant reviewed these patient charts and has

STATE MEDICAL BOARD  
OF OHIO  
1999 JUN 23 4 41 PM

provided a 41-page report detailing his findings. The consultant then formed these overall conclusions.

From my overall review of the over 60 charts and the interviews submitted to the Kentucky Board of Medical Licensure, it would appear that there are a great many problems with every chart I reviewed. There is a serious problem with a lack of history, physical examination, past medical history, medications, past forms of therapy tried and the results, previous diagnostic testing with results, review of systems, past work, social and family histories. There is no clear assessment and plan or problem oriented approach to these patients at all. There is symptomatic relief for the patient's [sic] over an extended period of time – months and years – including controlled substances. The mainstay of treatment is benzodiazepines and opioids in the form of Valium, Ativan and then hydrocodone usually. Nonsteroidal anti-inflammatories and muscle relaxants were not used in any significant amount to speak of. There was no persistent use of physical therapy or any other modalities. There was no systematic work up of the patients to determine the source of their problems to determine if it was physical and, if so, what body part, as well as psychological and if so, what impact. Also, there were no other factors involving family and social problems pursued. Many patients received medications for anxiety disorders though they were not evaluated for depression or formerly evaluated for anxiety disorders. This clearly is a breach of the standards of practice in the Commonwealth of Kentucky. Stating strictly from a medical necessity and practice standards standpoint, Dr. Procter prescribed and dispensed medications in such amounts that he knew or had reason to know under the attendant circumstances were excessive under accepted prevailing medical practice standards. It also appears that the physician engaged in conduct that departed from and failed to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky. Also, the physician committed a pattern of acts during the course of the course of the [sic] physician's medical practice which, under the attendant circumstances would be deemed to be gross incompetence, gross ignorance, gross negligence or malpractice. Also, I strongly feel that this physician's practice constitutes a danger of the health, welfare and safety of the physician's patients and the general public. Reasons for the above statements are listed in each one of the cases above. I do not believe that Dr. Procter's activity with his patients constitutes the practice of medicine. I believe it constitutes the prescription of controlled substances for symptomatic relief over extended periods of time. This clearly does not meet even the minimal criteria for the practice of medicine within the Commonwealth of Kentucky.

6. During an interview of the licensee, he noted that he was having difficulty with his short-term memory, after receiving a closed head injury in a traffic accident some three weeks earlier. The licensee related that he was being treated for this injury at Steven Deitch, M.D., a neurologist. When interviewed on or about February

STATE MEDICAL BOARD OF OHIO  
STATE MEDICAL BOARD OF OHIO  
1991 JUN 23 9:39 AM

1999, Dr. Deitch reported that, as of December 4, 1998, he had ordered the licensee not to work due to his having a memory deficit. Dr. Deitch also reported that he had arranged for a neuropsychological evaluation of the licensee. The Board obtained a copy of that neuropsychological evaluation, which was performed on December 15, 1998 and February 5-6, 1999, by James F. Phifer, Ph.D.. In that report, Dr. Phifer concluded, "Given the severity of impairment of frontal lobe executive functions (difficulties with concentration, ability to manage simultaneous demands, impaired ability to shift mental "set") and the potential detrimental impact of these deficits on patient care, it is recommended that the patient refrain from practicing medicine until these deficits have remitted sufficiently to permit adequate performance of his essential job duties." The licensee also provided this information as part of his 1999 Application for Registration of Kentucky Medical/Osteopathic License, which he signed on December 31, 1998.

7. In or around December 1997, the licensee ordered a nerve conduction test for Patient D. Patient D reports that no needle sticks or measurements were done during this test. The licensee ordered the test through Comprehensive Medical Data, Inc., also d.b.a. Intergroup. Comprehensive Medical Date is owned and operated by R. Scott Scheer, M.D., and Lisa Banchik, M.D., two physicians who are not licensed in Kentucky and who do not maintain a medical office in Kentucky. Although the licensee did not perform the test on Patient D, he submitted an insurance claim to CHA Healthcare in the amount of \$1,360, stating that he had conducted the test. Comprehensive submitted an insurance claim to the same company in the amount of

STATE MEDICAL BOARD  
OF OHIO  
JUN 23 A 9:39

\$1,224 for interpretation of the tests. This information was provided to another board consultant, who concluded in relevant part,

....  
The practice of the Company investigating the insurance coverage for a given patient and then providing billing services for the physician without charge certainly encompasses the definition of fee-splitting as defined by the Judicial Council of the American Medical Association.

...it is my opinion that such procedures were not medically necessary.

There are two insurance claim forms submitted by Dr. Procter or for him over his signature for services rendered to [Patient D] on 12/1/97 totalling \$2630.00, so it is apparent that he did bill for these services.

...for the reasons stated above... in my opinion violate the principles of medical ethics as interpreted by the Judicial Council of the American Medical Association in Section 2.19 and Section 6.03. It is my further opinion that the actions of Dr. Procter depart from the standard in violating KRS 311.595 Par. (19).

...

Since it is my opinion that the practices of Dr. Procter and the Company are unethical and below the standard of care as outlined in paragraphs 1 and 2 above, it follows that patients are exploited and the public harmed by being subjected to overcharging and likely subsequent increases in health insurance premiums as a result.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and all information available to it, and pursuant to KRS 13B.125(2), Inquiry Panel B makes the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. KRS 311.592(1) provides that an Inquiry Panel may issue an emergency order suspending a physician's license when the panel has probable cause to believe that a physician has violated the terms of an order placing him on probation or a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

1997 JUN 23 A 9:39  
STATE MEDICAL BOARD  
OF OHIO

3. Inquiry Panel B CONCLUDES there is probable cause to believe that the licensee has engaged in conduct prohibited by KRS 311.595(5); 311.595(8); 311.595(9), as illustrated by KRS 311.597(1), 311.597(3) and 311.597(4); 311.595(10); 31.595(11); and, 311.595(19).
4. Inquiry Panel B CONCLUDES that there is probable cause to believe that the licensee's practice constitutes a danger to the health, welfare and safety of his patients and the general public.
5. Inquiry Panel B CONCLUDES, as a matter of law, that there is a legal basis, under KRS 311.592(1), to enter an order suspending the licensee's Kentucky medical license.
6. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

The Board specifically concludes that a physician's practice generally constitutes a danger to the health, welfare and safety of his/her patients where the physician has

1999 JUN 23 A 9 39  
STATE MEDICAL BOARD  
OF OHIO

violated the appropriate boundaries in a physician-patient relationship by engaging in romantic or sexual conduct with a patient in an existing physician-patient relationship with that physician. The Board further concludes that a physician who violates such boundaries with one patient is likely to violate those boundaries with other patients.

7. The United States Supreme Court has ruled that it is no violation of the Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988); and, Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).
8. KRS 13B.125(3) provides,

Any person required to comply with an emergency order issued under subsection (2) of this section may request an emergency hearing to determine the propriety of the order. The agency shall conduct an emergency hearing within ten (10) working days of the request for hearing. The agency shall give all affected parties reasonable notice of the hearing and to the extent practicable shall conduct the hearing in conformity with this chapter. A hearing officer qualified in accordance with KRS 13B.040 may conduct the hearing on the emergency order. Within five (5) working days of completion of the hearing, the agency or hearing officer shall render a written decision affirming, modifying or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety or welfare.

KRS 13B.125(4) provides that such decision shall be a final order of the agency and may be appealed by either party aggrieved to the Jefferson Circuit Court.

#### **EMERGENCY ORDER OF SUSPENSION**

Based upon the Findings of Fact and Conclusions of Law and upon all of the information available to it, Inquiry Panel B has determined that an emergency order is

STATE MEDICAL BOARD  
OF OHIO  
JUN 23 9 39 AM '99

necessary in this case to protect the health, safety and welfare of the licensee's patients and the general public. Accordingly, Inquiry Panel B hereby ORDERS that the licensee's Kentucky medical license is SUSPENDED IMMEDIATELY and shall remain suspended until final resolution of the underlying Complaint and Show Cause Order in this case or until further Order of this Panel.

SO ORDERED this 18th day of June, 1999.

  
PRESTON P. NUNNELLEY, M.D.  
CHAIR, INQUIRY PANEL B

Certificate of Service

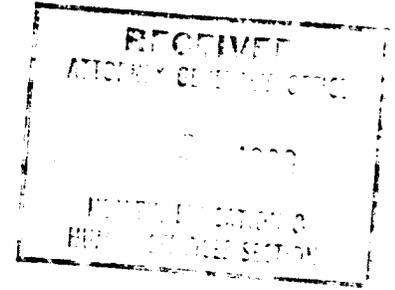
I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a true and correct copy was mailed via certified mail, return receipt requested, to David H. Procter, M.D., U.S. 23, South Shore, Kentucky 41175 on this 18th day of June, 1999.

C. Lloyd Vest II

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

STATE MEDICAL BOARD  
OF OHIO  
JUN 23 9 39 AM 1999

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT



David H. Procter, M.D., :  
Appellant-Appellant, :  
v. : No. 88AP-851  
State of Ohio, : (ACCELERATED CALENDAR)  
State Medical Board of Ohio, :  
Appellee-Appellee. :

---

MEMORANDUM DECISION

Rendered on February 21, 1989

---

MR. WILLIAM K. SHAW, JR., for appellant.

MR. ANTHONY J. CELEBREZZE, JR., Attorney General,  
and MR. CHRISTOPHER J. COSTANTINI, for appellee.

---

APPEAL from the Franklin County Court of Common Pleas.

McCORMAC, J.

The State Medical Board of Ohio, appellee, reprimanded David H. Procter, M.D., appellant, for a misrepresentation on appellant's application for renewal of his Ohio Certificate to Practice in Ohio. The common pleas court affirmed the order of the State Medical Board finding that it was supported by reliable, probative, and substantial evidence.

Appellant asserts that the common pleas court erred because no discipline is permissible under R.C. 4731.22(A) and that the charge against appellant has no basis under the statutes of Ohio.

When appellant, a Kentucky resident, submitted his application for renewal of his Ohio license to practice medicine, there was pending against him disciplinary action initiated by Kentucky, which disciplinary action was later decided by Kentucky in appellant's favor. The renewal card, supplied appellant by the State Medical Board, requires a signature by the applicant which certifies under penalty of the loss of the right to practice medicine and surgery in the state of Ohio that he has completed during the last biennium the requisite hours of continuing medical education. The instructions on the front of the card include, among other things, that the reverse side MUST be completed. The reverse side of the card requires any change of address to be noted and asks several questions to which it states that R.C. 4731.281 requires that a response be given. The questions include: (1) whether the applicant has been found guilty or pled guilty or no contest to various crimes; (2) whether the applicant is addicted or dependent upon alcohol or any chemical substance; and (3) whether the applicant has had a disciplinary action taken or initiated against him by a state licensing agency or has had any hospital privileges suspended or revoked. The card returned by appellant answered "no" to these questions. Dr. Procter readily admitted that the answer was incorrect to the question of whether there had been any disciplinary action taken against him by a state licensing agency. However, he disclaimed any responsibility for the incorrect answer, stating that an office employee

who was unaware of the disciplinary action had filled out the card and that he merely signed where indicated on the front of the card.

Two questions are raised concerning the use of the incorrect answer as a basis for the discipline of appellant. Firstly, appellant contends that the State Medical Board has no authority to ask some of the questions on the back side of the application form and that the board is limited to asking about matters specifically authorized by R.C. 4731.281. Secondly, appellant contends that, even if the offending questions could properly be asked, an applicant can be penalized only for an intentional falsification.

R.C. 4731.281 provides that every person licensed to practice medicine in Ohio shall complete a form furnished by the medical board for renewal of his license. Specifically, R.C. 4731.281 requires a certification of the necessary continuing medical education requirements, the providing of certain identifying information such as address and number of his certificate to practice, and the reporting of certain criminal offenses of which he has been found guilty to or which he has entered a plea of guilty or no contest. R.C. 4731.281 contains no specific provision about whether the applicant has had any disciplinary action taken or initiated against him by a state licensing agency.

Appellant argues that R.C. 4731.281 is exclusive in its requirements for registration and that the medical board cannot add requirements, desirable as it may be, to obtain additional information and that, therefore, appellant cannot be punished for an incorrect answer to questions which the board had no authority to ask.

We do not believe that the General Assembly intended to limit the medical board to the specific information outlined in R.C. 4731.281 in formulating its renewal certificate. While the information specified therein is required, the board is also given specific authority to promulgate the form to be used. The board has authority to discipline medical practitioners and to make investigations in conjunction with those duties. A power of an agency may be fairly implied from an express power where it is reasonably related to the duties of the agency. See Waliga v. Bd. of Trustees of Kent State Univ. (1986), 22 Ohio St. 3d 55, at 57. The information sought by the board of a person seeking a renewal of his license is reasonably related to the board's powers to investigate and to discipline, particularly in relation to a physician licensed in another state. It would be highly pertinent to ascertain whether complaints have been filed against the physician in another state. In this case, the complaint, which was filed in Kentucky and pending when the form was completed, related to the improperly dispensing of controlled substances to patients. Since Ohio residents could also be affected, an immediate investigation by Ohio may be appropriate after being informed of the Kentucky complaint.

We agree with the common pleas court and the medical board that the question to which appellant provided an incorrect answer was one within the power and authority of the medical board to ask an applicant seeking recertification pursuant to R.C. 4731.281.

Appellant next contends that it was error for the board to find him in violation of R.C. 4731.22(A), contending that, as a matter of fact and law, he did not violate that section.

R.C. 4731.22(A) provides, as pertinent, as follows:

"(A) The state medical board \*\*\* may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board."

Appellant argues that the only conduct punishable under that section is intentional fraud. We disagree. The General Assembly included misrepresentation together with fraud and deception as a ground for discipline. Misrepresentation is an untrue statement of facts. A misrepresentation may be negligent or reckless as well as intentional. The General Assembly did not specify a culpable mental state in regard to misrepresentation as it has provided in other situations. For example, see R.C. 4731.22(B)(4) and R.C. 4447.12(D). The facts would support a finding that, although there may have been no intent to misrepresent the facts, the misrepresentation was reckless. Appellant allowed his employee to answer the questions without providing her the basis to know the answers and he did not check the answers which were made. Hence, the misrepresentation was sufficient to provide the basis for a violation pursuant to R.C. 4731.22(B). The less aggravated form of misrepresentation probably was taken into account by the board in ordering only a reprimand rather than a more severe penalty.

Appellant's assignments of error are overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

YOUNG and HOOPER, JJ., concur.

HOOPER, J., of the Miami County Common Pleas Court,  
sitting by assignment in the Tenth Appellate  
District.

---

The court document for this date cannot be found in the records of the Ohio State Medical Board.

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY,

OHIO RECEIVED  
ATTORNEY GENERAL'S OFFICE  
SEP 1 1983  
HEALTH, EDUCATION &  
HUMAN SERVICES SECTION

DAVID H. PROCTER, M.D.,

Appellant,

-vs-

STATE OF OHIO, STATE MEDICAL BOARD,

Appellee.

:  
:  
:  
CASE NO. 88CV-04-3014  
:  
JUDGE WEST  
:

DECISION AND ENTRY

TERMINATED

Rendered this 29th day of August, 1988.

The Court finds it undisputed there was a misrepresentation on appellant's application for renewal of his Ohio certificate to practice medicine in Ohio. The fact the misrepresentation involved a matter which if fully disclosed would not have affected the renewal of the license is a mitigating factor. However, the Court is obliged to find the order of reprimand by the State Medical Board is supported by reliable, probative and substantial evidence and the order is affirmed. Costs to Appellant.

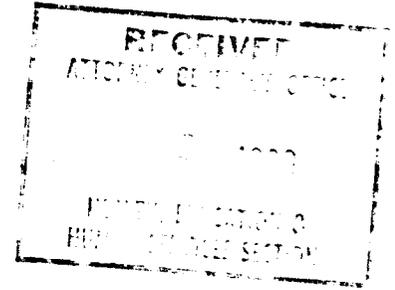
COPIES TO:

William K. Shaw, Jr.  
Attorney for Appellant

Christopher J. Costantini  
Assistant Attorney General  
Attorney for Appellee

*West*  
R. PATRICK WEST, JUDGE

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT



David H. Procter, M.D., :  
Appellant-Appellant, :  
v. : No. 88AP-851  
State of Ohio, : (ACCELERATED CALENDAR)  
State Medical Board of Ohio, :  
Appellee-Appellee. :

---

M E M O R A N D U M     D E C I S I O N

Rendered on February 21, 1989

---

MR. WILLIAM K. SHAW, JR., for appellant.

MR. ANTHONY J. CELEBREZZE, JR., Attorney General,  
and MR. CHRISTOPHER J. COSTANTINI, for appellee.

---

APPEAL from the Franklin County Court of Common Pleas.

MCCORMAC, J.

The State Medical Board of Ohio, appellee, reprimanded David H. Procter, M.D., appellant, for a misrepresentation on appellant's application for renewal of his Ohio Certificate to Practice in Ohio. The common pleas court affirmed the order of the State Medical Board finding that it was supported by reliable, probative, and substantial evidence.

Appellant asserts that the common pleas court erred because no discipline is permissible under R.C. 4731.22(A) and that the charge against appellant has no basis under the statutes of Ohio.

When appellant, a Kentucky resident, submitted his application for renewal of his Ohio license to practice medicine, there was pending against him disciplinary action initiated by Kentucky, which disciplinary action was later decided by Kentucky in appellant's favor. The renewal card, supplied appellant by the State Medical Board, requires a signature by the applicant which certifies under penalty of the loss of the right to practice medicine and surgery in the state of Ohio that he has completed during the last biennium the requisite hours of continuing medical education. The instructions on the front of the card include, among other things, that the reverse side MUST be completed. The reverse side of the card requires any change of address to be noted and asks several questions to which it states that R.C. 4731.281 requires that a response be given. The questions include: (1) whether the applicant has been found guilty or pled guilty or no contest to various crimes; (2) whether the applicant is addicted or dependent upon alcohol or any chemical substance; and (3) whether the applicant has had a disciplinary action taken or initiated against him by a state licensing agency or has had any hospital privileges suspended or revoked. The card returned by appellant answered "no" to these questions. Dr. Procter readily admitted that the answer was incorrect to the question of whether there had been any disciplinary action taken against him by a state licensing agency. However, he disclaimed any responsibility for the incorrect answer, stating that an office employee

who was unaware of the disciplinary action had filled out the card and that he merely signed where indicated on the front of the card.

Two questions are raised concerning the use of the incorrect answer as a basis for the discipline of appellant. Firstly, appellant contends that the State Medical Board has no authority to ask some of the questions on the back side of the application form and that the board is limited to asking about matters specifically authorized by R.C. 4731.281. Secondly, appellant contends that, even if the offending questions could properly be asked, an applicant can be penalized only for an intentional falsification.

R.C. 4731.281 provides that every person licensed to practice medicine in Ohio shall complete a form furnished by the medical board for renewal of his license. Specifically, R.C. 4731.281 requires a certification of the necessary continuing medical education requirements, the providing of certain identifying information such as address and number of his certificate to practice, and the reporting of certain criminal offenses of which he has been found guilty to or which he has entered a plea of guilty or no contest. R.C. 4731.281 contains no specific provision about whether the applicant has had any disciplinary action taken or initiated against him by a state licensing agency.

Appellant argues that R.C. 4731.281 is exclusive in its requirements for registration and that the medical board cannot add requirements, desirable as it may be, to obtain additional information and that, therefore, appellant cannot be punished for an incorrect answer to questions which the board had no authority to ask.

We do not believe that the General Assembly intended to limit the medical board to the specific information outlined in R.C. 4731.281 in formulating its renewal certificate. While the information specified therein is required, the board is also given specific authority to promulgate the form to be used. The board has authority to discipline medical practitioners and to make investigations in conjunction with those duties. A power of an agency may be fairly implied from an express power where it is reasonably related to the duties of the agency. See Waliga v. Bd. of Trustees of Kent State Univ. (1986), 22 Ohio St. 3d 55, at 57. The information sought by the board of a person seeking a renewal of his license is reasonably related to the board's powers to investigate and to discipline, particularly in relation to a physician licensed in another state. It would be highly pertinent to ascertain whether complaints have been filed against the physician in another state. In this case, the complaint, which was filed in Kentucky and pending when the form was completed, related to the improperly dispensing of controlled substances to patients. Since Ohio residents could also be affected, an immediate investigation by Ohio may be appropriate after being informed of the Kentucky complaint.

We agree with the common pleas court and the medical board that the question to which appellant provided an incorrect answer was one within the power and authority of the medical board to ask an applicant seeking recertification pursuant to R.C. 4731.281.

Appellant next contends that it was error for the board to find him in violation of R.C. 4731.22(A), contending that, as a matter of fact and law, he did not violate that section.

R.C. 4731.22(A) provides, as pertinent, as follows:

"(A) The state medical board \*\*\* may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board."

Appellant argues that the only conduct punishable under that section is intentional fraud. We disagree. The General Assembly included misrepresentation together with fraud and deception as a ground for discipline. Misrepresentation is an untrue statement of facts. A misrepresentation may be negligent or reckless as well as intentional. The General Assembly did not specify a culpable mental state in regard to misrepresentation as it has provided in other situations. For example, see R.C. 4731.22(B)(4) and R.C. 4447.12(D). The facts would support a finding that, although there may have been no intent to misrepresent the facts, the misrepresentation was reckless. Appellant allowed his employee to answer the questions without providing her the basis to know the answers and he did not check the answers which were made. Hence, the misrepresentation was sufficient to provide the basis for a violation pursuant to R.C. 4731.22(B). The less aggravated form of misrepresentation probably was taken into account by the board in ordering only a reprimand rather than a more severe penalty.

Appellant's assignments of error are overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

YOUNG and HOOPER, JJ., concur.

HOOPER, J., of the Miami County Common Pleas Court,  
sitting by assignment in the Tenth Appellate  
District.

---

The court document for this date cannot be found in the records of the Ohio State Medical Board.

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

STATE OF OHIO  
THE STATE MEDICAL BOARD OF OHIO  
65 SOUTH FRONT STREET  
SUITE 510  
COLUMBUS, OHIO 43266-0315

April 15, 1988

David H. Proctor, M.D.  
Route 1, Box 416  
South Shore, Kentucky 41175

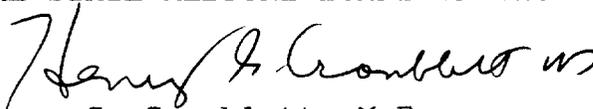
Dear Doctor Proctor:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board, and an excerpt of the Minutes of the State Medical Board; meeting in regular session on April 13, 1988, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

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

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

THE STATE MEDICAL BOARD OF OHIO

  
Henry G. Cramblett, M.D.  
Secretary

HGC:em  
Enclosures

CERTIFIED MAIL NO. P 158 073 982  
RETURN RECEIPT REQUESTED

cc: William K. Shaw, Esq.

CERTIFIED MAIL NO. P 158 073 983  
RETURN RECEIPT REQUESTED

STATE OF OHIO  
THE STATE MEDICAL BOARD OF OHIO  
65 SOUTH FRONT STREET  
SUITE 510  
COLUMBUS, OHIO 43266-0315

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 Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on April 13, 1988, including Motions approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of David H. Proctor, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

  
Henry G. Cramblett, M.D.  
Secretary

April 15, 1988  
\_\_\_\_\_  
Date

THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

DAVID H. PROCTOR, M.D.

\*

ENTRY OF ORDER

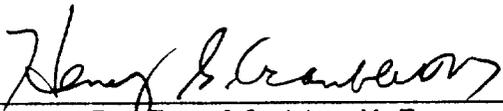
This matter came on for consideration before the State Medical Board of Ohio the 13th day of April, 1988.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board, in this matter designated pursuant to R.C. 4321.23, a true copy of which is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the 13th day of April, 1988.

It is hereby ORDERED:

That David H. Proctor, M.D., be REPRIMANDED for misrepresentation of fact in his application for renewal of his Ohio license for the 1987-1988 biennium.

(SEAL)

  
Henry G. Cramblett, M.D.  
Secretary

April 15, 1988

Date

REPORT AND RECOMMENDATION  
IN THE MATTER OF DAVID H. PROCTOR, M.D.

The Matter of David H. Proctor, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 25, 1988.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

During the course of this hearing, rules of evidence were relaxed to allow both the State and the Respondent latitude in introducing evidence and examining witnesses.

II. Basis for Hearing

- A. By letter of April 8, 1987 (State's Exhibit #1), the State Medical Board notified David H. Proctor, M.D., that it proposed to take disciplinary action against his certificate to practice medicine or surgery in Ohio. The Board alleged that Dr. Proctor's Kentucky medical license was suspended by a January 15, 1987, Order of the Kentucky State Board of Medical Licensure, said suspension to become effective March 1, 1987. The Kentucky Board's action was based upon findings of improper prescribing practices. The Ohio Board alleged that the Kentucky suspension constituted violation of Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 17, 1987: "The revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state for an action that would also have been a violation of this chapter (Chapter 4731)", to-wit: Sections 4731.22(B)(2), 4731.22(B)(3), and 4731.22(B)(6), Ohio Revised Code.

In addition, the Board alleged that Dr. Proctor's negative answer to the question, "AT ANY TIME SINCE THE LAST RENEWAL OF YOUR CERTIFICATE HAVE YOU: Had any disciplinary action taken or initiated against you by a State licensing agency?" on his renewal card for the 1987-1988 biennium constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

The Board also advised Dr. Proctor of his right to request a hearing in this matter.

- B. By letter received by the State Medical Board on May 5, 1987 (State's Exhibit #2), William K. Shaw, Esq., requested a hearing in this matter on behalf of Dr. Proctor. Mr. Shaw's letter also advised that the Kentucky Board had reopened Dr. Proctor's case, had conducted an additional hearing, and had set the matter for final adjudication at its May 21, 1987, meeting. Mr. Shaw further set forth Dr. Proctor's position with regard to the Board's second allegation.

### III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Christopher J. Costantini, Assistant Attorney General.
- B. On behalf of the Respondent: William K. Shaw, Esq.

### IV. Exhibits Examined

In addition to those listed above, the following exhibits were identified and admitted into evidence in this matter:

A. Presented by the State

1. State's Exhibit #3: May 8, 1987, letter to William K. Shaw, Jr., Esq., from the State Medical Board advising that a hearing initially set for May 18, 1987, was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit #4: December 29, 1987, letter to Attorney Shaw from the State Medical Board setting the hearing for February 25, 1988.
3. State's Exhibit #5: Certification by C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, of copies of the Kentucky Board's Order of Temporary Restriction, Complaint, Findings of Fact and Conclusions of Law, and Order concerning Dr. Proctor.
4. State's Exhibit #6: May 9, 1986, Complaint of the Kentucky State Board of Medical Licensure with regard to Dr. Proctor.
5. State's Exhibit #7: May 9, 1986, Order of Temporary Restriction of the Kentucky State Board of Medical Licensure with regard to Dr. Proctor's prescribing privileges.
6. State's Exhibit #8: December 15, 1986, Findings of Fact and Conclusions of Law by the Hearing Examiner of the Kentucky State Board of Medical Licensure with regard to Dr. Proctor.
7. State's Exhibit #9: January 30, 1987, Order of the Kentucky State Board of Medical Licensure suspending Dr. Proctor's medical license for two months commencing March 1, 1987, said suspension to be followed by a probationary period of five years.

8. State's Exhibit #10: Copy of Dr. Proctor's Ohio Application for Biennial License Renewal for the 1987-1988 biennium.
9. State's Exhibit #11: March 2, 1987, Order of the Kentucky State Board of Medical Licensure rescinding its January 30, 1987, Order pending consideration of Dr. Proctor's Motion to Reconsider.
10. State's Exhibit #12: March 24, 1987, Order of the Kentucky State Board of Medical Licensure reopening the Complaint in Dr. Proctor's case, scheduling it for further hearing, and setting aside that Board's Order of January 30, 1987.
11. State's Exhibit #13: July 22, 1987, Order of the Kentucky State Board of Medical Licensure subsequent to a second hearing in Dr. Proctor's case, ordering that no disciplinary action be taken against Dr. Proctor's license to practice medicine in Kentucky.

B. Presented by the Respondent

1. Respondent's Exhibit A: February 26, 1986, letter to Douglas D. Wilson, Medical Investigator, Kentucky Board of Medical Licensure, from Dr. Proctor indicating the enclosure of copies of daysheets for 23 patients.
2. Respondent's Exhibit B: May 13, 1986, letter to C. William Schmidt, Executive Director, Kentucky State Board of Medical Licensure, from Dr. Proctor requesting a review of his patient records by a physician reviewer.
3. Respondent's Exhibit C: July 2, 1986, letter to David W. Carby, General Counsel, Kentucky State Board of Medical Licensure from Bill Byrd, President, Professional Health Management, Inc., concerning remedial measures taken and to be taken by Dr. Proctor in his practice.
4. Respondent's Exhibit D: July 17, 1986, letter to David W. Carby, General Counsel, Kentucky Board of Medical Licensure, from Bill Byrd, President, Professional Health Management, Inc., reporting on remedial measures taken by Dr. Proctor and stating his understanding that the July 28 hearing had been cancelled.
5. Respondent's Exhibit E: August 25, 1986, letter to David W. Carby, General Counsel, Kentucky Board of Medical Licensure, from Bill Byrd, President, Professional Health Management, Inc., setting forth his understanding as to future meetings with Dr. Proctor and stating that Dr. Barbara Freeman had agreed to act as a third party physician and to provide reports with regard to Dr. Proctor.
6. Respondent's Exhibit F: September 9, 1986, letter to Mr. Carby from Mr. Byrd reporting a visit by Mr. Byrd and Dr. Freeman to Dr. Proctor's office to determine his compliance.

7. Respondent's Exhibit G: October 1, 1986, letter to Mr. Carby from Mr. Byrd reporting on Dr. Proctor's compliance and discussing conditions for reinstatement of his Schedule II prescribing privileges.
8. Respondent's Exhibit H: October 16, 1986, letter to Mr. Carby from Mr. Byrd reporting Dr. Proctor's progress.
9. Respondent's Exhibit I: November 21, 1986, letter to Mr. Carby from Mr. Byrd reporting Dr. Proctor's progress and presenting proposals for final disposition.
10. Respondent's Exhibit J: January 20, 1987, letter to Mr. Carby from William K. Shaw, Jr., Esq., requesting a meeting on behalf of Dr. Proctor with regard to a news release concerning action by the Kentucky Board against Dr. Proctor's license and Dr. Proctor's desire to comply with the previous informal agreement.
11. Respondent's Exhibit K: January 21, 1987, letter to Mr. Carby from William K. Shaw, Jr., Esq., enclosing an Authorization of Release of Information signed by Dr. Proctor.
12. Respondent's Exhibit L: March 2, 1987, Order of the Kentucky State Board of Medical Licensure rescinding its Order of January 30, 1987, pending consideration of Dr. Proctor's Motion to Reconsider (duplicate of State's Exhibit #11).
13. Respondent's Exhibit M: March 24, 1987, Order of the Kentucky State Board of Medical Licensure reopening the Complaint in Dr. Proctor's case, scheduling it for further hearing, and setting aside its Order of January 30, 1987 (duplicate of State's Exhibit #12).
14. Respondent's Exhibit N: Certified copy of the June 9, 1987, Findings of Fact and Conclusions of Law of the Hearing Examiner of the Kentucky State Board of Medical Licensure pursuant to the Board's rehearing order.
15. Respondent's Exhibit O: July 22, 1987, Order of the Kentucky State Board of Medical Licensure ordering that no disciplinary action be taken against Dr. Proctor's license to practice medicine in Kentucky (duplicate of State's Exhibit #13).
16. Respondent's Exhibit R: July 22, 1985, memorandum to William Schmidt, Executive Director, Kentucky Medical Licensure Board, from Ron Burgess, Unit Supervisor, Drug Enforcement Unit, Office of the Attorney General of Kentucky, referring Dr. Proctor and other physicians for investigation and appropriate action.
17. Respondent's Exhibit S: February 22, 1988, affidavit of David H. Proctor, M.D.
18. Respondent's Exhibit T: February 19, 1988, affidavit of Shirley Ann Kraft.

FINDINGS OF FACT

1. On May 9, 1986, the Kentucky Board of Medical Licensure issued a Complaint and an Order of Temporary Restriction against David H. Proctor, M.D. By his own admission, Dr. Proctor received copies of the Kentucky Complaint and Order of Restriction at some time between May 9 and May 13, 1986.

These facts are established by State's Exhibits #6 and #7 and by the testimony of Dr. Proctor (Tr. at 15, 33).

2. Pursuant to this Complaint, the Kentucky State Board of Medical Licensure issued an Order on January 30, 1987 suspending Dr. Proctor's license to practice medicine in Kentucky for a period of two months, said suspension to become effective March 1, 1987, and to be followed by a probationary period of five years. However, upon Dr. Proctor's motion for reconsideration, the Kentucky Board rescinded its January 30, 1987, Order, reopened his case, and scheduled it for further hearing. On July 22, 1987, subsequent to the second hearing, the Kentucky Board ordered that no disciplinary action be taken against Dr. Proctor's license to practice medicine in Kentucky.

These facts are established by State's Exhibits #11, #12, and #13; Respondent's Exhibits L, M, and O; and the testimony of Dr. Proctor.

3. At hearing, the State recommended dismissal of this Board's allegations with respect to Paragraph 1 of its April 8, 1987, letter (State's Exhibit #1), because of the Kentucky Board's July 22, 1987, dismissal of its charges against Dr. Proctor.

This fact is established by the motion of Christopher J. Costantini, Assistant Attorney General (Tr. at 27).

4. At some time in October or early November, 1986, Dr. Proctor submitted to the State Medical Board of Ohio his application for biennial license renewal for the 1987-1988 biennium. This renewal card was completed with Dr. Proctor's signature in the CME certification section on the front of the card. On the reverse side of the card, each question was answered by means of a check mark in the box designated "NO", including the question "AT ANY TIME SINCE THE LAST RENEWAL OF YOUR CERTIFICATE HAVE YOU: Had any disciplinary action taken or initiated against you by a state licensing agency?" At hearing, Dr. Proctor admitted that "NO" was an incorrect response to this question.

These facts are established by the testimony of Dr. Proctor (Tr. at 15-17) and by State's Exhibit #10.

5. At hearing, Dr. Proctor testified that although he had read the CME certification before he had signed that portion of his Ohio renewal card, he had not looked at the back of the card. It had been customary for his office manager, Shirley Kraft, an employee of eight years, to complete renewal forms, as well as various other office forms and papers. At the time Ms. Kraft had completed the Ohio renewal card, she was not aware that disciplinary action had been initiated against Dr. Proctor by the Kentucky Board. Dr. Proctor's testimony to this effect was fully corroborated by the testimony of Shirley Kraft.

These facts are established by the testimony of Dr. Proctor (Tr. at 16-22, 48-50) and by the testimony of Shirley Kraft (Tr. at 57-67).

#### CONCLUSIONS

1. Although the Board's allegations, as set forth in Paragraph 1 of its citation letter (State's Exhibit #1) were accurate, they have been mooted by the Kentucky Board's subsequent dismissal of its charges against Dr. Proctor and the rescission of its January 30, 1987, Order. Accordingly, I find no current violation of Section 4731.22(B)(18), Ohio Revised Code.
2. Dr. Proctor admitted that his answer to the question on his Ohio renewal application, as to whether any disciplinary action had been taken or initiated against him by a State licensing agency since the time of his last renewal, was incorrect. Such misrepresentation of fact constitutes a violation of Section 4731.22(A), Ohio Revised Code. Although it would appear from the testimony of Dr. Proctor and Shirley Kraft that Dr. Proctor's incorrect answer was caused by carelessness and neglect, rather than by a conscious attempt to deceive the Ohio Board, Dr. Proctor must bear responsibility for the accuracy of his application. It is noted that the instructions on the front of the renewal card clearly state that the reverse side must be completed.

Respondent's contention that intentional misrepresentation must be shown is **not** reflected in the language of 4731.22(A), Ohio Revised Code. Respondent's further contention, that an incorrect response to a question not specified in Section 4731.281, Ohio Revised Code, would fail to provide a basis for finding a violation of Section of Section 4731.22(A), is not well taken. Section 4731.281, which specifies certain information to be supplied by an applicant for renewal, has in the past been interpreted as setting forth minimum requirements, not as placing limitations upon the Board's ability to request additional information pertinent to an applicant's fitness for continued Ohio licensure. While the scope of Section 4731.281 might arguably provide an excuse for failure to answer certain questions on the renewal application, it cannot serve as a haven for one who answers, but provides incorrect information.

PROPOSED ORDER

It is hereby ORDERED that David H. Proctor, M.D., be REPRIMANDED for misrepresentation of fact in his application for renewal of his Ohio license for the 1987-1988 biennium.

  
\_\_\_\_\_  
Wanita J. Sage  
Attorney Hearing Examiner

88 MAR 18 PM 2:22

EXCERPT FROM THE MINUTES OF APRIL 13, 1988

REPORTS AND RECOMMENDATIONS

Ms. Nester left the meeting at this time.

.....

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Doyle E. Campbell, M.D., Jack E. Markel, D.N., Philip Emmert, D.P.M., Michael D. Cerny, D.O., Stanley D. Wissman, M.D., Thomas J. Markoski, D.O., A. Michael Broennle, M.D., Judith A. Wolfe, M.D., Henry E. Montoya, M.D., Minoo Padoem, M.D., David H. Procter, M.D., Maruthi Vadapalli, M.D., Gregory A. George, M.D., Mark P. Namey, D.O., Edwin N. Cook, D.O., and Alfred L. Stanford, M.D. A roll call was taken:

ROLL CALL:	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye
	Dr. Stephens	- aye

.....

REPORT AND RECOMMENDATION IN THE MATTER OF DAVID H. PROCTER, M.D.

.....

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. SAGE'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF DAVID H. PROCTER, M.D. DR. KAPLANSKY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

.....

DR. KAPLANSKY MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED ORDER IN THE MATTER OF DAVID H. PROCTER, M.D. DR. O'DAY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

STATE OF OHIO  
THE STATE MEDICAL BOARD  
Suite 510  
65 South Front Street  
Columbus, Ohio 43266-0315

April 8, 1987

David H. Procter, M.D.  
Rt. 1 Box 416  
South Shore, KY 41175

Dear Doctor Procter:

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

1. On or about January 15, 1987, the State Board of Medical Licensure of the Commonwealth of Kentucky issued an Order suspending your license to practice medicine in Kentucky for a period of two (2) months, effective March 1, 1987, subjecting said license to a five (5) year period of probation upon terms and conditions, and requiring that you pay a fine in the amount of five thousand dollars (\$5,000). Said Order was based upon the following Findings of Fact:
  1. That Dr. David H. Procter failed to take and maintain adequate histories and physicals of his patients as indicated by Exhibits "A" through "T".
  2. That Dr. Procter inappropriately prescribed Schedule II narcotic drugs which are addicting.
  3. That Dr. Procter inappropriately was administering scheduled drugs to patients who he knew to be addicted to such drugs and who he had reason to know were not using such drugs in an appropriate manner.
  4. That Dr. Procter is taking remedial steps in his practice although he continues to use scheduled drugs for the treatment of patients with chronic pain syndrome.

Pursuant to Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 17, 1987, the revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state for an action that would also have been a violation of Chapter 4731., Ohio Revised Code, is grounds to limit, revoke, suspend, refuse to register or reinstate your certificate or to reprimand you or place you on probation. The actions upon which the suspension of your Kentucky license was based would also violate Sections 4731.22(B)(2), 4731.22(B)(3), and 4731.22(B)(6), Ohio Revised Code.

April 8, 1987

2. In applying for a certificate of registration to practice medicine or surgery for the 1987-1988 biennium, you responded in the negative to the question, "At any time since the last renewal of your certificate have you had any disciplinary action taken or initiated against you by a state licensing agency?" In fact, the State Board of Medical Licensure of the Commonwealth of Kentucky had initiated action against you by the issuance of a Complaint and an Order of Temporary Restriction on or about May 9, 1986, a date subsequent to the last renewal of your certificate.

Such acts in the above paragraph (2), individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

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

You are 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.

In the event 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.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

*Henry G. Cramblett HGC*  
Henry G. Cramblett, M.D.  
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 569 365 177  
RETURN RECEIPT REQUESTED